

CANADA / JUDGMENT

# S.K. v. S.M.

2021 BCSC 241

## COURT

Supreme Court of British Columbia

## DECIDED

16 February 2021

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2021 BCSC 241 S.K. v. S.M. IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: S.K. v. S.M., 2021 BCSC 241 Date: 20210216 Docket: E54162 Registry: New Westminster Between: S.K. Claimant And S.M. and S.S.M. Respondents Before: The Honourable Madam Justice Douglas Reasons for Judgment Counsel for Claimant: M. Dyonisius Counsel for Respondents: A.(P.) Sekhon Place and Date of Trial: New Westminster, B.C. July 13-17, 20-24, 27-31, August 17-18, 2020 Place and Date of Judgment: New Westminster, B.C. February 16, 2021 Table of Contents INTRODUCTION. 4 LITIGATION HISTORY. 5 ISSUES. 5 CREDIBILITY AND RELIABILITY OF EVIDENCE. 6 Credibility of the Claimant 6 Credibility of Respondent 10 Other Witnesses. 10 DIVORCE. 11 RELOCATION. 12 CUSTODY, GUARDIANSHIP, AND PARENTING ARRANGEMENTS. 14 Claimant's Position. 14 Respondent's Position. 14 Legal Framework. 15 The Child's health and emotional well-being, s. 37(2)(a) 16 The Child's Views, s. 37(2)(b) 19 Relationship between the Child and significant persons in his life, s. 37(2)(c) 19 History of Child's Care, s. 37(2)(d) 21 The Child's Need for Stability, s. 37(2)(e) 24 The parties' ability to execute parenting responsibilities, s. 37(2)(f) 25 The impact of family violence on the Child's safety, security and well-being, s. 37(2)(g) 30 Whether the actions of a person responsible for family violence indicate an impaired ability to care for the Child and meet his needs, s. 37(2)(h) 32 Whether an arrangement that requires co-operation is appropriate, s. 37(2)(i) 32 Other Civil or Criminal Proceedings, s. 37(2)(j) 33 Conclusion re Relocation and the Best Interests of the Child. 34 PARENTING TIME. 35 Claimant's Position. 35 Respondent's Position. 35 Legal Framework. 36 Analysis and Conclusion. 37 THE PARTIES' INCOMES. 37 Claimant's Educational and Work History. 37 Claimant's Current Immigration Status. 37 Claimant's status to work in Canada. 40 Respondent's Educational and Work History. 42 CHILD SUPPORT. 43 Claimant's Position. 43 Respondent's Position. 43 Legal Principles. 43 Analysis and Conclusions. 45 SPECIAL AND EXTRAORDINARY EXPENSES. 48 SPOUSAL SUPPORT. 49 Claimant's Position. 49 Respondent's Position. 49 Legal Principles. 50 Analysis and Conclusions. 52 Compensatory Support 52 Non-Compensatory Support 52 DIVISION OF FAMILY PROPERTY. 54 Excluded Property. 54 Valuation Date/Reapportionment of Family Property. 56 Respondent's Assets. 58 FFR. 58 Surrey Condo. 60 TD Accounts. 61 TD Employment Ownership Investment Plan. 62 Claimant's Assets. 62 Apartment in India. 62 Bank of America Account 64 Jewellery. 64 Other Assets. 65 Parties' Pensions. 65 Parties' Vehicles. 66 Parties' Net Financial Positions. 66 Occupational Rent 68 SPECIAL COSTS. 69 SUMMARY. 69

## INTRODUCTION

- [1] The parties met on an Indian matrimonial website in about February 2016. They met in person for the first time in March 2016 and married two months later in Seattle on May 9, 2016. It was a second marriage for both. The claimant learned she was pregnant in late 2016 and gave birth to a son in June 2017 (the "Child"). The parties' marriage was short-lived. They separated on September 6, 2017, after having cohabited for only about 10 months.
- [2] The claimant was born in India in 1977 and is currently 44. She is an Indian citizen. When the parties met, she was living in the US and working as a software consultant for Accenture, an Indian multinational company. Her immigration status in Canada is unclear. At trial, she said she is currently unemployed and unable to work in BC. The parties anticipated a family life together in BC. Things did not work out as planned.
- [3] The respondent was born in India in 1972 and is currently 48. He immigrated to Canada in 2000, settling in Ontario before relocating to BC in 2008. He is a Canadian citizen and lives with his mother and co-respondent, S.S.M. When the parties met, he was working as a financial planner with the Toronto-Dominion Bank ("TD") in Surrey, BC. He continues to work in this capacity.
- [4] The claimant's position evolved over the course of these proceedings. In her notice of family claim, she sought sole custody and guardianship of the Child. In her opening statement at trial, she sought sole decision-making authority as the Child's primary caregiver or, alternatively, joint responsibility with her being the primary parent having final decision-making authority and the respondent being at liberty to contest the same. In closing submissions, she admitted that both parties are joint guardians of the Child and sought more limited sole decision-making authority. She wishes to relocate with the Child to Toronto and seeks child support, spousal support, and an unequal division of family property.
- [5] The respondent agrees that both parties are joint guardians pursuant to the Family Law Act, S.B.C. 2011, c. 25 (the "FLA") and seeks joint custody of the Child pursuant to the Divorce Act, R.S.C. 1985, c. 3 (the "DA"). He requests sole decision-making authority for all matters related to the Child's passport, final decision-making authority if the parties cannot reach agreement on parenting matters (with the claimant being at liberty to apply to vary or overturn those decisions), an order terminating spousal support, a valuation of family property as of the date of separation, and occupational rent from the claimant during her sole occupancy of the parties' former family residence (the "FFR").
- LITIGATION HISTORY
- [6] This litigation has a lengthy history characterised by high conflict, mutual distrust, multiple incendiary allegations, and numerous court appearances. To date, there has been little in the way of cooperative parenting; the parties have been unable to resolve any important parenting issues without court intervention. The Child is currently only three years of age. In deciding parenting matters, I have focused exclusively on the Child's best interests. In doing so, I found it unnecessary to address the substantial volume of extraneous evidence

introduced at trial.

- [7] Both parties allege the other failed to comply with their document disclosure obligations and ask this court to draw adverse inferences as a result. Neither party produced all relevant documents up to the date of trial. However, the claimant's repeated non-compliance with both the Supreme Court Family Rules (the "SCFR") and multiple court orders is notable. It prompted numerous court applications, significantly complicated the resolution of this claim, and prolonged the trial. Neither party conducted any examinations for discovery. Both confirmed they wished to proceed to trial on the available documents. The trial of this action was adjourned three times before it proceeded in July 2020.

## ISSUES

- [8] This action gives rise to the following issues:

- a) Does the evidence support granting the parties a divorce?
- b) Is relocating the Child in his best interests?
- c) What are the appropriate parenting arrangements for the Child?
- d) What are the parties' incomes?
- e) What retroactive and prospective child support is payable?
- f) Is the claimant entitled to spousal support?
- g) How is family property to be valued and divided?
- h) Is the respondent entitled to any excluded property claims?
- i) Is the respondent entitled to occupational rent? CREDIBILITY AND RELIABILITY OF EVIDENCE

- [9] The parties offered irreconcilable versions of most material events. Credibility permeated all issues in dispute. Accordingly, I have addressed it at the outset.

- [10] The relevant principles for assessing witnesses' credibility are discussed in the frequently cited passages of Justice O'Halloran in *Faryna v. Chorny*, [1951] 2 D.L.R. 354 at 357 (B.C.C.A.) and Justice Dillon in *Bradshaw v. Stenner*, 2010 BCSC 1398 at para. 186. I have applied those principles here. Credibility of the Claimant

- [11] The claimant's conduct during this litigation was both striking and noteworthy. She swore an extensive number of affidavits. She brought multiple applications, including some without notice. She made numerous wild and unsubstantiated allegations. For example, she suggested that the respondent was involved in human trafficking, operated a brothel in his basement, had lured her to BC under false pretences as a sex slave and "slave of the house", was involved in his first wife's allegedly suspicious death, and that his mother was a criminal who practiced witchcraft. Ultimately, the claimant's uncorroborated assertions served

merely to raise serious questions about her judgment and her ability to look beyond self-interest to appreciate the impact of her actions on others including, notably, the Child.

- [12] There were significant conflicts between the claimant's sworn financial statements, her multiple filed affidavits, the documents produced, and her evidence at trial. Her evidence did not consistently mesh well with her actions, which often appeared duplicitous, strategic, and motivated to suit her convenience. For example, despite moving for protection orders, she admitted in cross-examination that she had no concern about the respondent posing any risk to the Child and that she asked for supervised parenting because he was "harassing" her. Apart from the claimant's disputed evidence about an altercation that allegedly occurred the day the parties separated, the evidence does not support the conclusion that the claimant was ever at risk. Notably, she left the Child (when he was less than 12 months old) in the respondent's unsupervised care for an extended period in June 2018, when she traveled to India. On June 13, 2018, shortly before her departure, Justice Armstrong ordered that the respondent be given unsupervised parenting time with the Child (thereby replacing the February 5, 2018 supervised parenting order of Justice Dardi previously in place).
- [13] The claimant's repeated non-disclosure of relevant documents was egregious. Her actions demonstrated a consistent lack of respect for the court process. She failed to approve court orders. She failed to comply with court orders. She failed to pay fines imposed for her non-compliance with court orders. She misrepresented the terms of un-entered supervised parenting orders to Dr. Krywaniak, the parties' sole joint expert, and parenting supervisors, falsely asserting that the respondent was confined to supervised parenting in public places only. When confronted with that suggestion in cross-examination, she variously suggested that the orders contained errors, were the product of her deficient legal representation, and were inconsistent with the transcripts of oral proceedings (which she maintained were more reliable than the terms of entered court orders). The claimant was quick to offer explanations and to assign blame, but slow to acknowledge any shortcomings in her own conduct. She frequently portrayed herself as a victim and construed terms in court orders as designed to make her life difficult.
- [14] The claimant disclosed documents in this action selectively, as convenient to her, late in the day, including at trial. Despite her document disclosure obligations pursuant to the SCFR, R. 5-1 and R. 9-1, and multiple orders compelling her to produce documents, she neither listed nor produced her complete Bank of America account statements, Accenture employment file, Canada or US Immigration files, Canada or US tax returns, notices of assessment for the years 2017-2019, or any documents regarding her ownership of real property in India. She focused instead on attempting to justify her non-disclosure. Given the claimant's obvious intelligence, I conclude that her asserted inability to understand the import of court orders was disingenuous.
- [15] The claimant failed to cooperate fully with the assessment of registered psychologist, Dr. Krywaniak, who authored a March 12, 2019 report pursuant to s. 211 of the FLA. He noted that his assessment was significantly complicated by "several no-shows on her part" and her

cancellation of "a number of visits". She failed to complete all of the tests he wished to administer; some of her answers were invalid and uninterpretable. Dr. Krywaniak found that she had a pattern of creating drama and "offered a rather complicated story" in relating the history of her relationship with the respondent; the same was true at trial. Dr. Krywaniak noted an obvious discrepancy between the claimant's portrayal of herself as a victim and his impression that she "seemed pretty much fully in control". I concur.

- [16] The claimant gave many lengthy, rambling, unresponsive answers at trial. She was often loud, accusatory, and emotionally volatile. Her evidence included frequent hyperbole. Despite being directed to focus on the questions and documents being put to her, she often strayed beyond those limits and was a somewhat ungovernable witness.
- [17] Although she had counsel, she attempted to exert considerable control over the trial process, interjecting during objections, directing counsel to put specific documents to her, and answering questions in cross-examination with questions of her own. When called in reply to address a narrow *Browne v. Dunn* (1893), 6 R. 67 at 70-71 (U.K.H.L.) objection, she offered unsolicited evidence, immediately following and directly contrary to an intra-trial ruling. The claimant had the benefit of advice from many different lawyers over the course of these protracted proceedings. After two days of closing submissions, she fired her trial lawyer and attempted to submit additional documentation to the court registry on her own behalf.
- [18] Much of the claimant's evidence was unbelievable; some of it appeared to be completely fabricated. It evolved over the course of these proceedings and at trial. For example, in her Affidavit #18, sworn September 16, 2018, she deposed that the forgery charges "fixed" on her by the respondent had been dropped. In cross-examination she admitted that statement is incorrect, suggesting instead that the wording of the criminal charges against her had been changed. Those criminal charges were pending at the time of this trial.
- [19] Ultimately, I am unable to accept much of the claimant's evidence. I conclude that she was an untrustworthy witness whose uncorroborated evidence is largely unreliable. I find the comments of Justice Southin in *Le v. Milburn*, [1987] B.C.J. No. 2690 at para. 2 (S.C.) to be instructive: When a litigant practices to deceive, whether by deliberate falsehood or gross exaggeration, the court has much difficulty in disentangling the truth from the web of deceit and exaggeration. If, in the course of the disentangling of the web, the court casts aside as untrue something that was indeed true, the litigant has only himself or herself to blame. In this case there has been some deliberate falsehood and some exaggeration.
- [20] As the Court of Appeal cautioned in *Weintz v. Weintz*, 2014 BCCA 118 at para. 43, "[n]on-disclosure of relevant information that is in the possession and control of a party" and "necessary for the determination of an issue in the litigation, is a risky strategy [that] has typically attracted adverse consequences to that party." Given the claimant's consistent non-disclosure of documents that are relevant to material issues in this action and her flagrant disregard of multiple court orders compelling her to do so, I make adverse inferences

against her, as appropriate: SCFR, R. 5-1(28)(f); s. 213(2)(b) FLA; Wu v. Sun, 2011 BCCA 239 at paras. 35-45 [Wu]. I also conclude that the documents she was ordered to produce would not have assisted the claimant. Credibility of Respondent

- [21] I do not have the same concerns about the respondent. He was a careful witness who testified in a clear, thoughtful, and responsive manner. Despite the many scandalous accusations leveled against him, he remained polite and respectful in his evidence and did not criticise the claimant's parenting.
- [22] The respondent's evidence was consistent with the documents he produced and generally more balanced and nuanced than the claimant's. He was not successfully challenged on any alleged inconsistencies in either his sworn financial statements or his filed affidavits. I found no significant inconsistencies in his evidence; his answers were not undermined in any material way on cross-examination.
- [23] I conclude that the respondent did his best to answer questions in a forthright manner. Where there are material conflicts in the uncorroborated evidence, I generally prefer his evidence to that of the claimant. Other Witnesses
- [24] The parties' mothers testified at trial. While I accept that both attempted to be helpful, it was my impression that their evidence was coloured by loyalty to their children.
- [25] The two involved parenting supervisors, Sindy Jeffry and Rodica Baloj, gave evidence. Ms. Jeffry was a frank and direct witness who "called out" the claimant "on her drama" when involved with the parties. I found her to be more neutral in her evidence than Ms. Baloj. There was a notable discrepancy between Ms. Baloj's contemporaneous records and her evidence at trial; she was considerably more forgiving of the claimant at trial than she was at the time of her involvement.
- [26] In October 2019, the claimant retained Ms. Baloj to prepare a report on her behalf; it was not admitted into evidence given concerns about whether she had the qualifications and neutrality required of an expert. I conclude that the claimant's retainer of Ms. Baloj as an "expert" may have prompted the claimant to moderate her behaviour in an effort to generate a favourable report and, by extension, softened some of Ms. Baloj's previously held views. Ms. Baloj suggested that the claimant had "matured" over the course of their relationship; the evidence does not support that conclusion. At trial, Ms. Baloj repeated some of the claimant's allegations, despite being unable to verify them independently. Some of her answers strayed into unsolicited opinion evidence, despite her report having been ruled inadmissible. She volunteered her views on irrelevant matters outside the scope of her knowledge, suggesting for example, that the claimant was initially "very much in love" with the respondent. While neither helpful nor responsive, that evidence raised questions about her objectivity.

- [27] H.V. was once a friend of both parties. Her friendship with the claimant soured after the parties separated. H.V. testified in a candid and forthright manner. Her evidence was consistent at trial and not materially undermined on cross-examination.
- [28] Dr. Krywaniak has a full-time practice focused on neuropsychology, learning disabilities, child protection, custody, and access cases. He has more than 25 years' experience preparing s. 211 reports. He assessed both parties in the presence of the Child and was a fair, balanced, and thoughtful witness. I place considerable weight on his evidence.
- DIVORCE
- [29] The uncontradicted evidence permits me to grant the uncontested divorce both parties seek. I am satisfied they have lived separate and apart for more than one year and that there is no possibility of reconciliation. The orders made in these reasons address the needs of the Child. There is no evidence of collusion.
- [30] I grant the order for divorce to take effect 31 days after the date of these reasons.
- RELOCATION
- [31] The claimant says that, if she is allowed to relocate with the Child to Toronto, Ontario, she will be able to secure immediate employment there with Accenture in her area of speciality. She suggests that her skills are not in demand in BC, asserting they are "most appreciated" at Accenture's head offices in Ontario and Quebec.
- [32] Although historically the claimant has moved frequently while employed by Accenture, she maintained that she could work at its Toronto head office without the need to travel. That evidence was not corroborated by any credible documentary or other evidence. No one from Accenture testified at trial. The claimant described no specific offer of employment. She suggested that she and the Child could share a house with an unnamed cousin in Toronto. That evidence was similarly uncorroborated. Apart from this unidentified cousin and relatives the claimant said she has in the Buffalo, New York region, there is no evidence that she has any extended family support in the Toronto area. She suggested that the respondent could follow her to Toronto if he wished, as TD has branches "everywhere". Alternatively, she said he could fly to Toronto at his own expense one week per month to exercise his parenting time. She proposed that he stay with a friend (since he used to work in Ontario), arguing that this parenting arrangement would save him money as she will be able to work and will no longer require spousal support.
- [33] The respondent opposes the claimant's relocation request, saying it will effectively end his ability to have a meaningful relationship with the Child. He testified that the claimant confirmed at the parties' last trial management conference that she would not seek to relocate with the Child until the COVID-19 pandemic was over. She gave him notice of her intention to relocate with the Child one week before trial.

- [34] Section 65(1) of the FLA defines "relocation" as "a change in the location of the residence of a child or child's guardian that can reasonably be expected to have a significant impact on the child's relationship" with a guardian or one or more other persons having a significant role in the child's life. I am satisfied that the claimant's relocation to Toronto can reasonably be expected to have a significant impact on the respondent's relationship with the Child.
- [35] There are two mechanisms for the relocation of children in Part 4 of the FLA: (1) where no order or written agreement is in place regarding parenting arrangements (s. 46); and (2) where a written agreement or order respecting parenting arrangements or contact with the child is in place (s. 65). The parties disagree about which section governs. The claimant says that because there were no parenting orders in place when she commenced this action in the Provincial Court, s. 46 applies. The respondent argues that because there are now multiple interim parenting orders in place, s. 65 applies.
- [36] As noted by the Court of Appeal in *K.W. v. L.H.*, 2018 BCCA 204 at para 90 [K.W.], there has always been a difference in the approach to mobility cases depending on whether they involve an application to vary existing arrangements or an application for an initial determination of those arrangements. Division 2 and Division 6 of Part 4 of the FLA maintain that distinction; the latter places a higher burden on a parent seeking relocation: *K.W.*, at para. 90, citing *Fotsch v. Begin*, 2015 BCCA 403 at para. 58.
- [37] Absent an existing agreement between the parties, when an initial application is brought for an order respecting parenting arrangements under s. 46 and a guardian indicates in his or her pleadings or by notice in writing of an intention to change the child's residence, s. 46 applies notwithstanding that an interim order is made in the course of the proceedings: *K.W.*, at para. 92. Accordingly, I conclude that s. 46 governs here.
- [38] Section 46 of the FLA requires a court to consider the factors set out in s. 37 of the FLA regarding the child's best interests and the reasons for changing the location of the child's residence. A court must not consider whether the guardian who is planning to move would do so without the child. I consider below the claimant's request to relocate in the context of assessing the Child's best interests, having regard to the factors outlined in s. 37(2) of the FLA, as part of a blended analysis: *K.W.*, at paras. 108-111, citing *Falvai v. Falvai*, 2008 BCCA 503 at para. 25. I have also considered the views of Dr. Krywaniak who observed that a broad range of deeply interwoven legal, vocational, and familial factors complicates the parties' situation. CUSTODY, GUARDIANSHIP, AND PARENTING ARRANGEMENTS
- [39] The claimant brought these proceedings pursuant to the DA and the FLA. The FLA refers to guardianship and parenting arrangements rather than custody and access. At trial, the parties agreed they are both legal guardians of the Child pursuant to s. 39 of the FLA. However, they disagree about the division of parental responsibilities set out in s. 41 of the FLA. Claimant's Position

- [40] There were inconsistencies in the claimant's position at trial. In her opening statement, she acknowledged that both parties are joint guardians but asked that she be the Child's primary caregiver with sole parental responsibilities or, alternatively, that parental responsibility be exercised in accordance with the Joyce model (with the claimant making final decisions and the respondent being at liberty to contest them). In closing, she acknowledged that both parties are joint guardians of the Child but maintained that she ought to be the Child's primary caregiver and given sole responsibility for all matters itemised in s. 41 of the FLA, except for those in subsections (e), (j), (k), and (l). The claimant sought an order that all communications between the parties be confined to writing. Respondent's Position
- [41] The respondent seeks joint custody of the Child pursuant to the DA. He proposes that the parties share all parental responsibilities pursuant to s. 41 of the FLA, except for those relating to the Child's passport, as set out in s. 41(g). He says the claimant is a flight risk and argues that he ought to have sole responsibility for the Child's passport and retain it at all times. He proposes that the claimant be required to deposit her own passport with her counsel, that her counsel release it to the claimant only on confirmation from him that the Child is in his care, and that the claimant recommence parenting time with the Child only once he has confirmation that she has taken those steps. The respondent is prepared to make this a mutual term. Alternatively, he suggested that it be reviewable on completion of the pending criminal proceedings against the claimant.
- [42] The respondent consents to an order prohibiting both parties from travelling outside of BC with the Child without the other's notarised consent. He suggests that, if both parties approve travel with the Child, the travelling party must provide a detailed itinerary (including contact information and accommodations) for the duration of the trip. He amended this proposal in his closing submissions, suggesting instead that neither party be permitted to travel with the Child outside BC for any reason, other than an emergency, until the Child is 7 or 8 years old.
- [43] The respondent says the claimant's inflexible approach to decision-making will make it virtually impossible for them to consult and make effective parenting decisions together. In his view, she discounts the importance of his role as a father in the Child's life, noting that she assesses his contribution against the gold standard of a "mother's" care. Given her tendency to assign blame, he argues that he is better suited to making parental decisions when the parties cannot agree, citing *B.D.M. v. A.E.M.*, 2014 BCSC 453 at paras. 170-181 [B.D.M.]. In the event of a disagreement, he proposes that he make the decision, with leave to the claimant to refer the matter to the Court pursuant to s. 49 of the FLA.

## Legal Framework

- [44] In making a custody order under s. 16 of the DA, the court's only consideration is the best interests of the child of the marriage (s.16(8)). The test for considering the "best interests" of a child is set out in *Gordon v. Goertz*, [1996] 2 S.C.R. 27 and *Orring v. Orring*, 2006 BCCA 523. Section 40 of the FLA governs the allocation of parenting responsibilities. Pursuant to s. 41

of the FLA, a court may allocate parenting responsibilities to one parent entirely, apportion them equally between both parents, or assign them specifically to each parent. The parties may also share parenting responsibilities equally pursuant to the Joyce model of guardianship.

- [45] Section 37(2) of the FLA sets out the factors relevant to a court's consideration of the child's best interests.
- [46] As noted by Justice Sewell in *B.D.M.*, at para. 94, the practical issue that arises from the overlapping provisions of the DA and the FLA is that, while parenting responsibilities can be allocated among guardians under the FLA, the authorities suggest that a custodial parent cannot have his or her powers similarly limited. In *B.D.M.*, at para. 112, Sewell J. decided that defining parental responsibility within the rubric of custody would cause further discord and strife between the parties and not promote the child's best interests. Accordingly, he recognised both parents as guardians who had the right to be consulted about important parenting matters but held that one parent must have final decision-making authority.
- [47] I adopt that approach here. The underlying objectives of s. 16(8) of the DA and s. 37(1) of the FLA are identical; both require the court to consider the best interests of the Child in determining parental responsibility: *B.D.M.*, at para. 115. The doctrine of paramountcy is not engaged: *B.D.M.*, at paras. 113-115. The Child's health and emotional well-being, s. 37(2) (a)
- [48] Both parties agree the Child had some early mild developmental delays. Accordingly, treating paediatrician, Dr. Mudaffer Ahmed Al-Mudaffer, referred him to the Surrey Infant Development Program ("IDP") where he was formally assessed in February and March 2020 for concerns regarding communication and gross motor skills. As noted by Dr. Krywaniak, it was the respondent who first raised issues regarding the Child's development and who organised further medical investigation. Dr. Krywaniak stated in his report that the claimant "seems to deny that this is a real problem and sees [the Child] as doing well and not having any type of problem". At trial, the claimant described the Child as active, intelligent, and a "quick learner"; she has great aspirations for him, suggesting that he is destined for Harvard. While she agreed in direct examination that the Child is thriving, she qualified this evidence in cross-examination, saying he does well when in her care.
- [49] According to the respondent, the Child's early speech issues have been addressed and he now communicates like any three-year old. He said the Child's height and weight are within normal limits. In his view, the Child has benefited from the stable shared parenting arrangement that was initiated in 2018 and formalised on May 31, 2019. He said there have been corresponding improvements in previous areas of concern, as documented in the records of the Child's treating health care professionals.
- [50] The May 27, 2020 IDP developmental assessment report indicates:

- a) Both parents' observations of the Child were consistent except for cognition, attributed by IDP consultant, Christina Wu, to the different types of activities each engaged in with the Child, a finding she described as expected, even when parents live together;
  - b) Although the Child's general development was mildly delayed, over the previous seven months (when he spent equal time with both parents in separate households), he engaged in a variety of activities, showed significant progress, and demonstrated a "vast vocabulary"; and
  - c) Given concerns regarding his communication score, the parties were given an opportunity to complete a screening questionnaire for an Autism Spectrum Disorder ("ASD") diagnostic assessment before the Child was discharged from the IDP.
- [51] No treating medical practitioner testified at trial. By consent, extracts from the Child's medical records were admitted into evidence for the truth of their contents. On June 9, 2018, family physician, Dr. Sumathi Gudapathi, noted the Child was eating solids, sleeping well, and "mum has no concerns". He concluded that the Child was healthy and thriving. His records are generally unremarkable and disclose no significant concerns.
- [52] Extracts from the records of treating paediatrician, Dr. Al-Mudaffer, provide the following information:
- a) On November 27, 2016, Dr. Al-Mudaffer saw the Child for delayed walking and recommended a physiotherapy assessment;
  - b) On January 21, 2019, Dr. Al-Mudaffer referred the Child to the IDP for an assessment of gross motor skills;
  - c) On May 1, 2019, Dr. Al-Mudaffer observed that the Child was quite an anxious boy who "seemed fine" once you started playing with him;
  - d) On August 23, 2019, the Child was assessed for growth and developmental follow-up, was on the waiting list for speech language therapy, was doing better from a social communication standpoint, remained anxious, and was affectionate with the respondent;
  - e) On October 16, 2019, Dr. Al-Mudaffer noted that the Child had very good speech development, was thriving, and had been referred to the Child to Child Psychology and Counselling for "social or situational anxiety";
  - f) On October 17, 2019, Dr. Al-Mudaffer wrote that the Child had very good language development and probable situational or social anxiety and he had recommended that the claimant "mix [the Child] up with other kids" and suggested a child psychology referral for assessment and counselling;
  - g) On January 17, 2020, Dr. Al-Mudaffer noted that the Child's weight had been incorrectly recorded previously in his notes and confirmed that he "has always been growing well", his behaviour was "improving", and he "seemed happy and chatty"; and

- h) On July 7, 2020, Dr. Al-Mudaffer completed a growth assessment, noting the Child was "doing much better than before", was "certainly more sociable", had good eye contact, and seemed to be comfortable around other children.
- [53] On all the evidence, I conclude that the Child is currently doing well. On the evidence of both parties, he is bright, active, and communicative. It appears he has made substantial progress since early developmental delays were identified. The medical records describe no significant ongoing concerns. The Child's Views, s. 37(2)(b)
- [54] The Child is too young to express his views on any matter in issue. Relationship between the Child and significant persons in his life, s. 37(2)(c)
- [55] The two most significant people in the Child's life are his parents. On all the evidence, he has developed a strong bond with both. Despite the obvious hostility between the parties, it is clear they love their son.
- [56] Dr. Krywaniak testified that almost every child wants a relationship with both parents. If possible, he agreed that co-operative shared parenting is in the Child's best interests, noting as follows in his report:
- a) Both parents love the Child and want what is best for him (although they might disagree about what that is);
  - b) The claimant has made some efforts to minimise or undermine the respondent's parenting role;
  - c) The Child's relationship with the respondent was "reasonable", "positive", and likely to develop normally and substantially with increased exposure; and
  - d) If the parents are to have an ongoing co-parenting arrangement, the respondent would be more likely than the claimant to facilitate the other parent's role in the Child's life and to support contact with the other parent.
- [57] The respondent said it has been a continual struggle for him to get parenting time and that the claimant does not value his role as a father in the Child's life. Those statements are consistent with Dr. Krywaniak's observations and the claimant's filed affidavit evidence in these proceedings. In her affidavit #13, sworn June 13, 2018, she deposed that parenting visits with children under two years of age do "not make any sense for the child as he cannot remember anything", suggesting that a "baby is not a father's toy to be given to him through court orders", a child "should not be put to such psychological abuse", the "law here is a mere torture for babies and children often giving them child disorders, all for fathers' two hours of rights", and that parenting visits "have just become a way of child abuse for the little baby". While those statements lack any credible evidentiary foundation, they reveal something about the claimant's view of a father's parental role. The respondent consistently referred to the Child as "our" child; by contrast, the claimant described him as "her" child. While not material, I find that detail to be generally illustrative of the parties' contrasting

approaches to parenting. On all the evidence, I conclude that the respondent is generally more flexible than the claimant and more inclined to look for solutions than to assign blame.

- [58] According to the respondent, while he encourages the Child to see the claimant, she maintains there is nothing she can do if the Child does not wish to see him. The claimant admitted in cross-examination that she may have instructed one of the involved parenting supervisors to return the Child to her if he cried when with the respondent. Ms. Jeffry did not think the claimant was putting enough effort into "building excitement" in the Child about parenting time with the respondent. While Ms. Baloj admitted that transfers between the parties could be challenging, she agreed that, once they had occurred, the Child was "fine" with the respondent.
- [59] In my view, if the Child were to reside primarily with the claimant, she is less likely than the respondent to facilitate the other party's parenting time. That conclusion is consistent with Dr. Krywaniak's opinion regarding shared parenting. I conclude that the Child has benefited from the stable shared parenting arrangement currently in place. History of Child's Care, s. 37(2)(d)
- [60] On September 6, 2017, the claimant contacted the police and alleged that a physical altercation had occurred between the parties. The respondent was removed from the FFR, taken into custody, charged with assault, and released on bail. In cross-examination, the claimant denied that she intended to put him in jail, saying that, if she had intended to do so, she would have "made a bigger allegation". Thereafter, the respondent was denied parenting time, followed by a period of supervised parenting. Since May 2019, the parties have shared equal parenting on a rotating 3-4-4-3 schedule.
- [61] The claimant missed no opportunity to criticise the respondent at trial. She suggested that he was responsible for the Child's mild eczema, early motor delay, and "W sitting" (i.e., sitting with his legs in the position of the letter "W"). She meticulously recorded the Child's weight before and after his visits with the respondent, alleging that he was not feeding the Child properly, not following the diet she gave him, and that the Child lost weight while in his care. She exploited an obvious error in the involved paediatrician's records regarding the Child's weight in an effort to suggest that the respondent was neglectful. The respondent said she often distorted events, attempting on one occasion to characterise a minor scratch as a head injury.
- [62] The claimant reinforced that view at trial. She introduced photographs of the Child, taken by her following parenting time with the respondent, asserting that they demonstrated the presence of injury. Objectively, they showed nothing of concern. Dr. Krywaniak testified that, although the claimant described various medical "injuries" the Child had allegedly suffered, he was unaware of any medical evidence to substantiate them. None was adduced at trial. In cross-examination, the claimant admitted that she assumed the Child's early developmental delay was related to the respondent's care.

- [63] The claimant's own actions are inconsistent with her stated concerns about the respondent's parenting abilities. She maintains that she was "forced" to travel to India in June 2018 because he sabotaged her spousal sponsorship application submitted to Immigration Canada. She said her visitor's visa required her to leave Canada every six months. Because the claimant failed to produce her complete Canada and US Immigration files, it was not possible to verify her assertion that it was necessary for her to travel to India to renew her visitor's visa. The respondent suggests that she did so in order to transfer or dispose of property there. However, his evidence on this point was similarly uncorroborated. What is clear is that the claimant left the Child in his unsupervised care while she was out of the country from mid-June until late July 2018.
- [64] Before June 2018, the respondent testified that it was a struggle for him to obtain parenting time. Accordingly, he said he was shocked to receive a call from the Ministry for Children and Family Development and to learn that the claimant had made inquiries about placing the Child in foster care while she was in India. He later learned that she had also inquired about hiring a full-time nanny to care for the Child while she was away rather than have him do so. He said that is how he learned she was planning a trip in June 2018. The claimant did not challenge that evidence. On June 12, 2018, the day before the scheduled hearing of the respondent's application to remove parenting supervision, the claimant admitted in cross-examination that she consented to an order allowing him to have unsupervised parenting time.
- [65] The claimant originally planned to remain in India for 60 days. She says that she returned early because of her concerns that the Child appeared "drowsy" and "lifeless" on Facetime calls. On her return in July 2018, she asserts that the Child was "in shock", "totally altered", "freaking out", not sleeping, and "W-sitting". She suggested that the respondent had been feeding the Child chocolate and sugar to make him sleep, allegations she attempted unsuccessfully to corroborate with photographic evidence. She also alleged this diet caused the Child to develop eczema, an allegation that was similarly unsupported by any credible evidence. The claimant attributed these alleged behavioural issues to the Child's "forced" separation from her and to the respondent's neglect. However, she ultimately conceded in cross-examination that she "did not attribute them to anything".
- [66] Notably, the claimant filed an application to renew a protection order, shortly before leaving the Child in the respondent's unsupervised care again in November 2018, so that she could travel to Montreal. On her return, she obtained a December 3, 2018 order reinstating supervised parenting. The respondent said he had assumed it was unnecessary to file responding materials because the claimant had just left the Child in his unsupervised care for eight consecutive days.

- [67] On all the evidence, I conclude that, if the claimant had genuine concerns about the respondent's parenting, she would not have left the Child in his unsupervised care for extended periods in June, July, and November 2018. By contrast, the evidence strongly suggests that her applications for supervised parenting and protection orders were strategically motivated. When it suited her convenience, she was content for the respondent to have unsupervised parenting.
- [68] The respondent testified that the claimant refused Dr. Krywaniak an opportunity to assess the respondent's parenting in his own home. Dr. Krywaniak corroborated that evidence. Ms. Baloj agreed that the claimant told her the respondent's parenting time was restricted by court order to public places only. Accordingly, the respondent exercised his early parenting time with the Child at McDonald's and shopping malls, sub-optimal locations that were bright, noisy, unsanitary, and not ideally suited for a baby.
- [69] The claimant denied imposing this term, suggesting that she had "nothing to do with home visits" (i.e., supervised parenting in the respondent's home). In cross-examination, she claimed that she did not know what supervised parenting was before admitting that she requested it because the respondent was "harassing" her and she could "sense he had a criminal mind". She later suggested that the Court imposed supervised parenting on its own initiative and that she had not requested it. She also asserted that the September 24, 2018 supervised parenting order of Justice Armstrong (which does not confine the respondent's parenting time to "public places") was drafted incorrectly and that it is necessary to review the transcript of this oral proceeding to ascertain what orders were made. After this transcript (which does not mention restricting the respondent's parenting time to public places) was put to her in cross-examination, the claimant admitted that she did not think the respondent posed a risk to the Child.
- [70] The respondent says that he has always focused on the Child's needs, noting he is the one who addressed early developmental delays by involving a paediatrician. He said the claimant's actions forced him to begin taking pictures of the Child before exercising parenting time for his own protection. He has a flexible work schedule, sets most of his own appointments, and has mostly worked from home since the onset of COVID-19. While the claimant expressed concerns about him leaving the Child in S.S.M's care, the respondent said he is never required to do so for more than a few hours at a time and that his office is only 15 minutes from his home.
- [71] On all the evidence, I conclude that while both parties are capable of providing for the Child's needs, the respondent is the one more likely to foster the Child's relationship with the other parent. The Child's Need for Stability, s. 37(2)(e)
- [72] The Child clearly needs stability. He has lived most of his life at the FFR. He attends various activities and programs in BC. All the health care professionals who have been involved in his care are in BC. Given his young age, I accept that all or most of these relationships are likely transient.

[73] Dr. Krywaniak opines as follows in his report:

- a) The claimant is happy to have the Child with her wherever she might settle, but the respondent has a more stable life in the Vancouver area;
- b) Based on the information available to him, the claimant is likely to move with some frequency, something that can be disruptive in a child's life if it occurs too often; and
- c) The respondent would likely be able to provide the Child with a more stable lifestyle over the long term given his established living arrangements and broad social circle.

[74] The respondent considers the claimant to be a flight risk. If she is able to return to India, he fears that he may never see the Child again. The claimant made repeated reference to her affluent family in India and the life she was accustomed to there with servants in a house "like a palace". She claimed that she would have been "treated like a queen" if she had given birth in India, admitting in cross-examination that this is what she thought she deserved. H.V., the claimant's former friend, testified that she was aware the claimant wanted to obtain a passport for the Child and "get away with him".

[75] Extracts from the claimant's Bank of America statements in evidence reference multiple Xoom transfers with the undefined annotation "INDN" between May and October 2017. Those entries are consistent with the possible transfer of money from that account to India, a suggestion the claimant disputed. At a minimum, I conclude they lend some credence to the respondent's concern that the claimant may have been planning a return to India without his knowledge.

[76] On all the evidence, the respondent has a more stable life than the claimant. Like Dr. Krywaniak, I conclude that life for the Child will be more predictable in BC. The respondent has a secure job, a steady income, personal savings, the support of his mother, and an established network of friends, clients, and work colleagues in BC. By contrast, on her own evidence, the claimant has no job, no income, and no family residing in BC. Her immigration status is unclear.

[77] I conclude that ensuring continued stability in the Child's life favours him remaining in BC. The parties' ability to execute parenting responsibilities, s. 37(2)(f)

[78] Dr. Krywaniak discussed the parties' parenting abilities in his report. His information regarding their parenting abilities was "a bit uneven" because:

- a) He was unable to observe the respondent interact with the Child under conditions comparable to those he observed with the claimant and the Child; and
- b) The claimant did not complete at least one of his intended evaluations and her test results were therefore incomplete.

- [79] Dr. Krywaniak concluded that the claimant's parenting demonstrated a lack of structure within the home and in her interactions with the Child; in his view, this contributed to a lack of focus and missed opportunities for language development and active learning. He observed that the Child's eating patterns were inappropriately reinforced and that the claimant had difficulty organising herself in order to be on time for appointments; in his view, this reflected an apparent lack of consideration, awareness, or understanding of the effect of her actions on others.
- [80] Dr. Krywaniak expressed some concerns about the claimant's parenting skills and found the respondent to be more focused and engaging in his interactions with the Child than the claimant and more grounded in his expectations. The respondent was able to discuss parenting more broadly than the claimant and appeared to have a reasonably balanced approach to parenting, despite his somewhat limited experience with the Child. It appeared to Dr. Krywaniak that the respondent was somewhat more attentive to the process of the Child's learning.
- [81] In Dr. Krywaniak's opinion, either parent would likely provide reasonable care for the Child. However, in his view, the respondent "seems a bit more aware or concerned about things that he finds troubling". He also noted that it was unclear whether the claimant valued the respondent's role in the Child's life.
- [82] The parties have been embroiled in protracted interlocutory disputes over parenting time since 2017. On November 3, 2017, Justice Riley granted a protection order pursuant to s. 183(3)(a)(i) of the FLA, prohibiting the respondent from having any contact with the Child. On January 19, 2018, the respondent was granted five hours/week of parenting time by order of Justice Armstrong (entered September 24, 2018), on the condition that his interactions with the Child be supervised by a professional agency. On June 13, 2018, Armstrong J. modified his initial parenting order to allow for unsupervised parenting time. The respondent was allowed unsupervised parenting time while the claimant was in India. His parenting time was increased to a maximum of 48 hours on alternating weekends.
- [83] This arrangement was short-lived. On December 3, 2018, by order of Justice Morellato (entered August 1, 2019), it was again restricted to supervised parenting limited to five hours per week. On May 7, 2019, by order of Justice Crawford, the respondent resumed unsupervised parenting time; Crawford J. subsequently varied this order to provide for the shared 3-4-4-3 parenting rotation currently in place. By order dated October 10, 2019, Justice Branch found the claimant to be in breach of the rotation set out in the May 31, 2019 order of Crawford J.
- [84] Initially, the respondent had no fixed parenting time. He said this created difficulties: the claimant was consistently late, made many last minute scheduling changes, and offered a variety of excuses for refusing him parenting time (including, for example, that she was busy, would not be ready, the Child was sleeping, or the weather was bad). This was corroborated by text messages in evidence between the parties and the parenting

supervisors' records. He said the claimant fired Ms. Jeffry, after discrediting and blaming her, forcing him to hire a replacement. Thereafter, the claimant had issues with Ms. Baloj, at some point complaining that her reports were misleading and glorifying the respondent as a "motherly type".

- [85] Ms. Jeffry described an early transfer of the Child between the parties, saying that the claimant "way overreacted" to events. Following this "first uproar", things improved. By contrast, Ms. Jeffry reported that everything went well with the respondent. Ms. Baloj agreed that the Child had started to form an attachment to the respondent by the third visit; she was impressed with the respondent's learning and thought he had made a good start. Ms. Jeffry attempted to supervise one parenting visit with the respondent in his home; the claimant refused to permit it, stating there was "violence in the home". At a minimum, on all the evidence, that assertion was a gross overstatement; at worst, it was a complete fabrication. Ms. Jeffry corroborated that the claimant was consistently late dropping off and collecting the Child, thereby cutting into the respondent's parenting time. She agreed the claimant allowed "no leeway" with scheduling issues.
- [86] Ms. Baloj was initially involved with the parties from March to May 2018 (when the Child was 8 to 10 months old). She agreed that, ideally, supervised parenting takes place in a parent's home and that the claimant told her the respondent was required by court order to exercise his parenting time in a public place. She did not question this statement; accordingly, all the parenting visits she supervised took place at a mall. In cross-examination, Ms. Baloj agreed that the respondent was very motivated to understand the Child and to develop a relationship with him; her contemporaneous notes corroborate that statement. She agreed he was flexible, took time off work to be with the Child, and that his requests for scheduling changes were reasonable. She recorded in her notes that she "pretty much worked herself out of a support job" as the "father does everything and the baby works with him". She admitted the claimant was reluctant to change the parenting schedule.
- [87] Ms. Baloj's records suggest that the claimant was consistently difficult, rigid, and uncompromising regarding the scheduling of parenting time. It is my general impression that Ms. Baloj was significantly more forgiving of the claimant's conduct and less generous in her assessment of the respondent's parenting skills at trial than she was at the time of her involvement. For example, in her March 31, 2018 notes, she wrote: "[a]s usually [sic], dad was very engaging and endearing, making funny faces and noised [sic] to entertain him". When this note was put to her in cross-examination, she admitted only that the respondent "behaved well for that visit", despite reference to "as usually [sic]" in her records. In her May 13, 2018 notes, Ms. Baloj described at length an altercation she had with the claimant, noting that, within minutes of refusing a parenting visit, the claimant "flipped the story", accusing Ms. Baloj of cancelling it and suggesting that the respondent was paying her "extra money to create confusion and drama". Ms. Baloj wrote that the claimant "was fabricating everything" and her "behaviour does not make sense". When confronted with those notes in cross-examination, Ms. Baloj offered an unsolicited and inadmissible opinion about how this

incident had "triggered anxiety" in the claimant who had "acted in fear", an explanation that she did not record in her notes and one she was not qualified to give at trial.

- [88] Ultimately, Ms. Baloj conceded only that the claimant was rigid and inflexible regarding the modification of existing court orders and "sticky" about the Child's routines. While the claimant expected strict adherence from the respondent regarding scheduling matters, Ms. Baloj was more forgiving of the claimant in her evidence, suggesting that she "seems to understand time in her own culture". Ultimately, the discrepancies between Ms. Baloj's contemporaneous notes and her evidence at trial reinforced concerns about her objectivity.
- [89] In response to the final open-ended question the claimant was asked in direct examination, she suggested for the first time that the Child might have witnessed adults engaged in sexual activity when at the respondent's home. This new allegation is not referenced in any of her complaints to the RCMP or in any of her multiple filed affidavits in evidence at trial. In cross-examination, the claimant admitted that she had "no solid proof" of this allegation, which the respondent vehemently denies. It was uncorroborated by any credible evidence and I reject it as unproven. However, the claimant's decision to raise this serious allegation for the first time at trial, in the absence of any credible evidence to substantiate it, is troubling.
- [90] Ultimately, I am satisfied on the evidence that both parties have the ability to execute their parenting responsibilities and to meet the Child's needs. However, on all the evidence, I conclude that the respondent is the party most likely to promote a positive relationship between the Child and the other parent. I am troubled by the claimant's distortion of events, her confrontational approach to this litigation, her inflexibility, the nature, tone, and content of her communications, and her apparent lack of insight regarding the impact of her actions. As in B.D.M., at para. 155, I conclude that her conduct demonstrates a "complete absence of any constructive approach to the issues of shared parenting". The impact of family violence on the Child's safety, security and well-being, s. 37(2)(g)
- [91] Family violence is defined in s. 1 of the FLA. It includes psychological and emotional abuse of a family member in the presence of the parties' child: K.W., at para. 121. Section 38 of the FLA outlines the factors a court must consider in assessing family violence.
- [92] The claimant asserts that the respondent physically assaulted her on September 6, 2017, the day they separated. The parties tell very different stories about what transpired that day. It is unclear precisely what occurred. The claimant alleges that he "beat her"; the respondent disputes that evidence. She says the respondent kicked the sofa where her elderly father was sitting so hard that he "could have fallen" and "gone into multiple fractures". Notably, the evidence of G.K., the claimant's mother, was inconsistent with the claimant's assertions; she said the respondent "pushed her husband on the sofa". Ultimately, I found the evidence of neither to be compelling or persuasive on this matter.
- [93] Based on the police records in evidence, the claimant reported:
- a) S.S.M. attempted to give cow's milk to the Child and this caused an argument;

- b) The respondent pushed the claimant, twisted her arm, and kicked the sofa where her father was sitting; and
  - c) The respondent threatened to hit her father. The claimant also described being "choked" on one previous occasion.
- [94] There is no indication in the police records that the Child witnessed any physical altercation between the parties, assuming one occurred. A "small red mark" was identified on the claimant's wrist. According to the respondent, it was intentionally self-induced; the claimant disputes that evidence.
- [95] The respondent admits that the parties had an argument on September 6, 2017; he denies it became physical. He says that, within minutes of coming downstairs after getting ready to take the Child to an immunisation appointment that day, the police arrived and he was confronted with the claimant's allegations. He denies any of the events described by the claimant actually occurred. He suggests that she orchestrated events, noting she filed a spousal lien on title to the FFR the same morning. In cross-examination, he denied her allegations of abuse (including throwing a phone and a laptop, pulling, pinching and twisting her arm, and covering her face with a pillow when she was snoring).
- [96] The claimant asserted that "some violence occurred" every day the parties were together; she was vague on details. She suggested that she had been induced to move to BC under false pretences, was "entrapped" here, and that the respondent and his mother did not respect her, abused her, and humiliated her parents during their visit to Canada in July 2017. It is clear that the relationship between the claimant and S.S.M. was strained. S.S.M. admitted that her presence in the FFR was "the main issue"; the claimant said S.S.M. was the "main reason life was hell". The claimant repeated her allegations of abuse to Dr. Krywaniak, asserting S.S.M. was "about to" throw boiling water on her one day when she was carrying the Child. S.S.M. disputed that allegation, saying she was merely making tea and that nothing untoward occurred. The claimant admitted that no boiling water was actually thrown. The assault charges against the respondent were ultimately stayed. According to the claimant, he had "fixed" a criminal case on her by then and she was advised not to pursue charges against him, evidence that overlooks the fact the respondent neither approves nor prosecutes criminal charges.
- [97] Dr. Krywaniak noted in his report that both parents completed the CAP Inventory to explore issues research has shown are correlated with the potential for child abuse. The respondent's score was modestly elevated for unhappiness and distress. The claimant's score was more elevated in the distress category and significantly elevated for rigidity and problems with other individuals. His assessment and interview of the respondent did not suggest a proclivity towards violence. Despite both parties seeing the other as having strong aggressive tendencies, Dr. Krywaniak did not see the Child as being at risk.

- [98] In cross-examination, the claimant admitted that she did not think the respondent was a risk to the Child.
- [99] Ultimately, the claimant's unsubstantiated allegations raise troubling questions about her motives, judgment, and ability to engage in cooperative parenting in the Child's best interests. On all the evidence, I conclude that the Child is not at risk. Whether the actions of a person responsible for family violence indicate an impaired ability to care for the Child and meet his needs, s. 37(2)(h)
- [100] The claimant repeatedly vilified the respondent, suggesting his involvement in a variety of nefarious activities. Because I do not accept that evidence, I have not repeated it here. In my view, there is no objective evidentiary basis for concluding that the Child is at risk due to family violence.
- [101] I accept that the parties have a toxic relationship and a poor prognosis for improving it. However, I conclude there is no credible evidence that the respondent has engaged in family violence, as contemplated by s. 38 of the FLA. Whether an arrangement that requires co-operation is appropriate,
- s. 37(2)(i)
- [102] Dr. Krywaniak noted in his report that, given their ages, neither party is likely to have another child, a fact that may have intensified their conflict. He stated that both parties' profiles suggest the possibility of antisocial personality disorders; both see themselves as falling well within normal limits on their adult self-reports while viewing the other as having serious psychological or behavioural difficulties. He concluded that does not signal a good prognosis and that the parties will probably be unable to develop an effective co-parenting relationship without help.
- [103] The parties admit they do not communicate well. Their inability to do so was apparent at trial. The respondent agreed they are engaged in a "blame game" rather than meaningful discussion. He expressed doubt about whether cordial dialogue with the claimant regarding parenting matters is possible. I share that concern.
- [104] Like Dr. Krywaniak, I view the parties' realistic prognosis for achieving calm, measured, and collaborative communications as poor. I am not optimistic they will be able to engage in meaningful discussions about what is objectively in the Child's best interests, even with professional assistance. As noted by Sewell J. in B.D.M. at para. 161, love is not enough to make an effective parent. As in B.D.M., I am concerned about the claimant's apparent inability to distinguish between her own perceptions and objective reality and her lack of insight regarding the impact of her behaviour on others.
- [105] In the circumstances, I conclude that it is necessary for one of the parties to have final decision-making authority. On all the evidence, I find that the respondent is the parent most likely to make decisions in the Child's best interests if the parties are unable to reach agreement. In an effort to encourage the parties to make reasonable efforts to achieve

consensus, to ensure that the respondent focuses exclusively on the Child's best interests in any parenting decisions he makes, and to minimise unnecessary court applications, I make an order, in accordance with the stated purposes in s. 222(a), (b), and (c) and pursuant to ss. 224(1)(a) and 227(c) of the FLA, that the parties engage the services of a third party adjudicator (i.e., a parenting coordinator, Family Justice Counsellor, or other professional available to assist with family dispute resolution) and mediate any disagreements between them relating to any issues in this proceeding before applying to court. It is hoped that this requirement will encourage both parties to be reasonable, to set aside their personal hostility, and to work collaboratively in the Child's best interests. In doing so, they will achieve their shared goal of promoting the Child's long-term health, happiness, and well-being. Other Civil or Criminal Proceedings, s. 37(2)(j)

[106] The claimant asserts that the respondent and his mother are currently facing domestic assault charges in India stemming from events that occurred there in or about 2018. The respondent and his mother dispute those allegations; both deny being in India in 2018, or having been served with any documents regarding legal proceedings there. The claimant introduced a document that she said she obtained via Indian online court services. I am unable to draw any meaningful inferences from it. I find these allegations have not been proved on any credible admissible evidence.

[107] At the time of this trial, the claimant was facing criminal charges as follows:

- a) One count of causing the Passport Program to use a passport application as if it were genuine, knowing it to be forged, contrary to ss. 368(1)(b) and 463 of the Criminal Code ("CC"); and
- b) One count of making a false or misleading statement to procure a passport for the Child (i.e., advising a Passport Program officer that the respondent had signed the Child's passport application), contrary to s. 57(2) of the CC. Conclusion re Relocation and the Best Interests of the Child

[108] Ultimately, I conclude that it is in the Child's best interests for him to remain in BC. He is currently doing well, has a stable life here, and is benefiting from the shared parenting arrangement now in place. By contrast, the claimant's plans for relocating to Toronto are tentative at best. I view her proposal regarding the respondent's long distance co-parenting of the Child as unrealistic. There is no evidence that she has been offered employment in Ontario. Her assertion that she could live with an unnamed cousin was not corroborated. On her own evidence, she has no robust extended family support in Toronto.

[109] The parties will share equal parenting responsibilities for all matters set out in s. 41 of the FLA, with the exception of s. 41(g) regarding the Child's passport, which will be the respondent's sole responsibility. On all the evidence, I conclude that the claimant is a flight risk. If the parties are unable to reach agreement regarding any of the other matters set out in s. 41 of the FLA, the respondent is authorised to make the final decision in the Child's best interests. The parties are required to mediate any dispute arising from those decisions

before applying to this Court to vary or overturn them, as set out above. Given these orders, I conclude it is unnecessary for me to restrict the parties' ability to travel with the Child outside BC and I decline to do so. In my view, given the Child's age, it is unrealistic to expect that the parties will be able to confine their communications to writing, as proposed by the claimant. PARENTING TIME Claimant's Position

- [110] The claimant proposes that, if she is unable to relocate with the Child, the parenting schedule be amended. She wishes to remain in the FFR until she has permanent residence status in Canada, suggesting that the respondent have parenting time with the Child three weekends per month (from Friday to Sunday) and on the fourth week-end (when the Child is with her) one week-day evening for three or four hours. She proposes that holidays and special occasions be divided equally once the Child starts school, with consecutive holidays not to exceed one week.
- [111] The claimant maintains that the current parenting rotation does not work well for the Child. She argues that the Child ought to reside primarily with her because they are closely bonded and she is the better parent. She asserts that she is in the best position to provide consistent care for the Child and to attend to his treatment needs. While she admitted in cross-examination that a child needs both parents, she expressed concern that the respondent would "hand the Child off to his mother" during the day when he works. Respondent's Position
- [112] The respondent proposes that the shared parenting arrangement currently in place continue. He seeks to re-implement a police enforcement clause against the claimant for his parenting time, noting that, since it has been in place, he has been able to exercise his parenting time as scheduled. He seeks an order that the Child remain with him when the claimant travels outside BC and that the existing parenting schedule recommence on her return.
- [113] The respondent proposes the following additional terms:
- a) When the Child commences full-time elementary school in 2023, the parties will each have three non-consecutive weeks of time with the Child, in addition to their current parenting schedule, during summer holidays in July or August each year;
  - b) The respondent will provide notice to the claimant of his planned summer holiday weeks by May 1, 2023;
  - c) The claimant shall provide notice to the respondent of her planned summer holiday weeks by May 14, 2023;
  - d) The parties will alternate first choice of their summer holiday weeks every year thereafter;
  - e) When the Child commences full-time elementary school, the parties will share Christmas and spring break holidays as follows:

- i. The respondent will have the Child during the week including Christmas Day in odd-numbered years, and the claimant will have the Child for the week including Christmas Day in even-numbered years; and ii. The respondent will have the first week of spring break in odd-numbered years and the claimant will have the first week of spring break in even-numbered years.
- [114] The respondent says the Child is currently doing well and is benefiting from the stable shared parenting schedule currently in place. He references the medical records in evidence that demonstrate a corresponding improvement in previous areas of concern.

## Legal Framework

- [115] The court may only consider the best interests of the Child when making orders for parenting time or contact. Section 37(4) dictates that, in making an order under Part 4 of the FLA, a court may only consider a person's conduct if it substantially affects a factor set out in s. 37(2). Analysis and Conclusion
- [116] For the reasons set out above, I see no reason to change the shared parenting schedule that has now been in place for more than one year. On all the evidence, the Child has benefited from having equal access to both parents. The police enforcement clause in the respondent's favour appears to have facilitated his exercise of parenting time and I conclude that it ought to remain in place. I conclude that is neither practical nor feasible for me to make orders now that affect the Child once he enters elementary school in 2023 and I decline to do so. I have provided the parties with a mechanism for resolving parenting issues in these reasons. THE PARTIES' INCOMES Claimant's Educational and Work History
- [117] The claimant describes herself as a "high achiever", admitting in cross-examination that she is a "highly qualified" worker. She has two masters' degrees in finance earned in India, co-authored a book on finance, and has at least 16 years of international IT experience. Before she married the respondent, she was earning a lucrative income in the US. She has worked with Accenture since 2013 and, on her evidence, maintains a good relationship with this company. However, the evidence regarding her current employment status with Accenture is unclear. Historically, she says that Accenture arranged specific projects and work visas for her before settling her in different countries. She denied there are job opportunities with Accenture Canada in BC in her area of speciality (Systems Applications and Products or "SAP"). She said the nature of her work requires her to be "on site", is not transferrable between locations, and that she is currently on a leave of absence with Accenture until she "sorts out her personal issues". She maintains that the respondent's "fixing" of a criminal case on her has hampered her professional growth. It is unclear whether the claimant is entitled to work in Canada. Claimant's Current Immigration Status
- [118] The respondent says the claimant has worked in Canada and remains able to do so. He argues that her non-disclosure favours drawing an adverse interest and imputing an income to her in an amount equal to her 2017 US salary (\$121,182 CDN).

- [119] On the claimant's evidence, she is currently in Canada on a 10-year multi-entry visitor's visa that expires in 2026. She denies this visa authorises her to work in Canada. It is common ground that the respondent submitted a spousal sponsorship application seeking permanent resident status on the claimant's behalf in December 2016, about when they learned she was pregnant. On December 12, 2016, the respondent paid Citizenship and Immigration Canada the required application fee. The claimant maintains that the respondent intentionally sabotaged this application by removing documents from it. She admitted in cross-examination that she did not witness him take those steps but assumes he did so. The respondent disputes this allegation. It is entirely unclear on the evidence what might have motivated him to do so. In December 2016, the parties were newlyweds who were expecting their first child and planning a life together in BC.
- [120] The respondent said he asked the claimant many times for the documents necessary to complete the spousal sponsorship application and that she failed to provide him with her Indian birth certificate. In early 2017, he was busy working and spending time at the hospital with his critically ill father. In cross-examination, the claimant said she gave him her birth certificate in 2017. On its face, this evidence is inconsistent with her assertion that he sabotaged the sponsorship application in December 2016. On her own evidence, it would then have been incomplete. The parties agree the application was not withdrawn; it was simply never re-submitted.
- [121] According to the claimant, she applied for an open work permit in February 2017; the respondent paid the required fee. She asserts that Immigration Canada rejected her application because she required the sponsorship of either the respondent or an employer. According to the respondent, she submitted it improperly, applying from the US instead of from within Canada. His evidence is supported by the March 29, 2017 letter from Citizenship and Immigration Canada to the claimant refusing her work permit and stating that she had "failed to present evidence to demonstrate that [she] qualif[ied] for an open work permit from outside Canada". Based on his own experience, the respondent expected it would be easy for the claimant (who was married to a Canadian and resident in Canada) to obtain an open work permit. In cross-examination, the claimant suggested that the parties had discussed the respondent moving to the US; he disputes that evidence.
- [122] The claimant said she applied for a work permit on humanitarian and compassionate grounds in January 2018; she suggested this application was being held in abeyance because of the pending criminal charges against her. That application was neither produced nor in evidence. The claimant attempted to introduce a letter, purportedly providing information about it, at trial, saying that she had just received it. She did not explain why she did not obtain it earlier or why she had not produced her complete Canada Immigration file, which would have included her work permit application. Given the document disclosure obligations outlined in the SCFR, R. 9-1, the claimant's non-compliance with multiple orders compelling production of her complete Canada and US Immigration files, her late production of this new document in isolation, and the absence

of any compelling explanation for not producing it earlier, I upheld the respondent's objection and this letter was not admitted into evidence.

- [123] The claimant also testified that an immigration lawyer applied for permanent residency status on her behalf in March 2019; she said that she expects a final decision to take several months. This application was similarly neither produced nor in evidence. In her affidavit #14, sworn July 18, 2018, prepared when she had different legal counsel, the claimant deposed that her "humanitarian and compassionate application for residency is in process" and that she then had "implied PR [permanent residency] status". When confronted with that statement in cross-examination, she denied that she could work as a permanent resident without a work permit.
- [124] According to the respondent, the claimant made no concerted effort to find work in Canada after they married. After learning she was pregnant, and despite asserting that it was a "delicate" pregnancy, she accepted four short-term work placements in the Eastern US (in Philadelphia, St. Louis, New Jersey, and Detroit) over a period of eight to ten months.
- [125] In April 2017, the respondent made a down payment on the FFR, taking possession of it in June 2017. He said he was planning for their married life in BC. The respondent admitted that he remained willing to sponsor the claimant in November 2017, even after her allegations of assault resulted in his removal from the FFR and criminal charges against him. Although he previously considered this to form part of his parenting responsibilities, he said that doing so now is not an option: they are no longer in a spousal relationship and he expected to be a witness at her criminal trial.
- [126] Ultimately, the claimant's current immigration status is unknown. Production of her complete Canada and US Immigration files, as ordered, could easily have clarified that matter. While the claimant produced an undated scanned copy of her passport, ostensibly copied in preparation for the parties' previously set November 2019 trial date, she failed to produce either her original passport or a current copy of it at trial. Without the most current version of her passport, or her complete US and Canadian immigration records, it is impossible to ascertain the claimant's current immigration status or to determine whether she obtained subsequent work visas. Given my assessment of the claimant's credibility, I do not accept her evidence regarding her immigration status in the absence of current, credible, corroborating documentation. Claimant's status to work in Canada
- [127] Based on the claimant's sworn financial statement dated November 30, 2017, she was then on long-term disability with no pay after being "fired" by Accenture for a "Detroit USA project". On its face, this is inconsistent with the February 17, 2020 letter from Accenture stating that she was on maternity leave from June 2017 to April 2018, and that she remained an employee with Accenture in the US until November 2018. Nevertheless, on page 5 of her financial statement, the claimant records her last date of pay as November 14, 2017. She disclosed no income.

- [128] The claimant maintains that the best evidence of her work history is her passport, which indicates when she entered and exited Canada and the US. I disagree. The best evidence of her work history would have been her complete Accenture employment records and her Canada and US tax returns. She produced none of those documents, despite being ordered or obliged to do so.
- [129] In cross-examination, the claimant admitted that she sent Accenture emails she has not produced. She conceded that the only Accenture documents she produced are the ones in the document books entered as exhibits at trial. She subsequently qualified this evidence, noting that she is "not an employment lawyer" and "thinks that is all". She suggested that she did not understand what other documents needed to be produced, what was meant by a "complete" employment or immigration file, and that privacy laws would preclude the production of those records. None of those explanations was persuasive.
- [130] In cross-examination, the claimant asserted that she cannot apply for jobs in Canada without a work permit; she later revised this answer, contending that she had made "uncountable" applications for "countless" jobs in Vancouver and attended two local job fairs in 2019. Those statements were not corroborated by any credible evidence. The claimant identified no specific prospective employers that she has approached for work in BC.
- [131] By contrast, the respondent said that the claimant mostly worked from home after they met and that she continued to do so in Canada. Her Royal Bank of Canada ("RBC") statements from April 20, 2018 to November 5, 2019 disclose virtually identical bi-weekly deposits from Accenture between December 31, 2018 and March 21, 2019. The respondent testified that they are consistent with her US Accenture employment income. The claimant's complete RBC records were not in evidence.
- [132] In her affidavit #1, sworn November 3, 2017, the claimant deposed that "[b]etween about mid-November 2016 and March 2017", she worked for Accenture "from home in Canada", asserting that Accenture allowed her to do so for medical reasons. She attempted to explain the discrepancy between this affidavit (sworn when she had legal counsel) and her evidence at trial by suggesting that she was simply "imparting her duties to a new consultant" during her medical leave and had described this as "working from home". Her sworn affidavit was not similarly qualified. Her explanation was not persuasive.
- [133] According to a February 17, 2020 letter from Accenture's Human Resources Department, the claimant was hired on November 22, 2018 as a full-time Application Development Associate Manager in its Montreal office, earning \$86,700 (CDN). This letter indicates a "separation date" of March 15, 2019. Those dates correspond with deposits made to the claimant's RBC account.
- [134] At trial, the claimant admitted that Accenture provided her with a Canadian work permit from November 2018 to April 2019. She suggested that Accenture fired her from this project in February 2019 because this litigation forced her to return to BC. She said that Accenture

continued to pay her "expense reimbursement" and a relocation allowance until March 2019. Those statements were not corroborated by any credible documentary evidence. It is unclear why Accenture would have paid the claimant a relocation allowance when she did not relocate to Montreal. Her 2018 T4 statement discloses taxable employment income from Accenture of \$5,866.79. She produced no T4 statements for 2019. She disclosed no tax returns despite being obliged to do so pursuant to the SCFR, R. 5-1. Respondent's Educational and Work History

- [135] The respondent has worked in the financial industry in Canada for about 18 years. He has an established career and a stable client base in the Surrey area. His evidence regarding his employment income was clear, consistent with his financial statements, bank records, and pay stubs, and this information was not seriously challenged.
- [136] In 2019, he received a stock option bonus (earned over the previous three years and paid in 2019), increasing his income that year to \$261,619. Based on a TD summary of his 2020 year-to-date earnings in the amount of \$129,034 (to June 30, 2020), I estimate his annual 2020 income to be \$258,068. CHILD SUPPORT Claimant's Position
- [137] Although the parties now share equal parenting time, the claimant has paid no child support to date. She maintains that she has no income and is unable to find work in BC. She says the respondent paid no child support from September to November 2017 and she seeks retroactive child support for those three months. Respondent's Position
- [138] By order of Master Caldwell dated November 15, 2017, the respondent was ordered to pay the claimant \$1,841 in support for three months. On February 20, 2018, Justice Dardi ordered the respondent to pay \$1,955 in child support, commencing March 1, 2018. Although the parties have been co-parenting the Child since May 2019, child support payments have not been altered to reflect this arrangement. The respondent denies that he is in arrears of child support. The respondent disclosed employment income of \$223,887 on his June 30, 2020 financial statement. Legal Principles
- [139] Both the FLA (s. 150) and the DA (s. 15.1(3)) adopt the Federal Child Support Guidelines, S.O.R./97-175 (the "Guidelines") to determine the appropriate amount of child support. Deviation from the Guidelines is permissible in limited circumstances: FLA, s. 150 and DA, s. 15.1(8). If child support is ordered in an amount that differs from what the Guidelines require, the court must provide reasons: FLA, s.150(5) and DA, s. 15.1(6)). Section 147(1) of the FLA states that "[e]ach parent and guardian of a child has a duty to provide support for the child" subject to the exceptions in 147(1)(a) and (b) (neither applies here).
- [140] The objectives of the Guidelines are set out in s.1 as follows:
- (a) to establish a fair standard of support for children that ensures they continue to benefit from the financial means of both spouses after separation;

- (b) to reduce conflict and tension between spouses by making the calculation of child support orders more objective;
- (c) to improve the efficiency of the legal process by giving courts and spouses guidance in setting the levels of child support orders and encouraging settlement; and
- (d) to ensure consistent treatment of spouses and children who are in similar circumstances.

[141] Section 9 of the Guidelines provides for a set-off of child support if the parties are sharing parenting time roughly equally. Such orders must clearly state that both parties have an obligation to pay child support to ensure they receive child tax benefits: *Latoria v. R.*, 2015 TCC 221. Section 19 of the Guidelines permits a court to impute income in certain circumstances: 19 (1) The court may impute such amount of income to a spouse as it considers appropriate in the circumstances, which circumstances include the following:

- (a) the spouse is intentionally under-employed or unemployed, other than where the under-employment or unemployment is required by the needs of a child of the marriage or any child under the age of majority or by the reasonable educational or health needs of the spouse;
- (f) the spouse has failed to provide income information when under a legal obligation to do so.

[142] A payor spouse is required to work to full capacity, whether in the context of determining child or spousal support: *P.K.C. v. J.R.R.*, 2014 BCSC 932 at para. 99; *Chapman v. Chapman*, 2020 BCSC 1029 at para. 108. A parent bears an onus and responsibility to adduce evidence to justify a failure to work to capacity: *Reggelsen v. Reggelsen*, 2007 BCSC 219 at para. 18. The courts have a broad discretion to impute income to one or both spouses for the purposes of determining child and spousal support. A party seeking to have income imputed to the other spouse bears the onus of establishing the evidentiary foundation to ground such a finding by the court: *Marquez v. Zapiola*, 2013 BCCA 433 at para. 36 [Marquez]. For the reasons set out above, I find that the respondent has met this burden and accordingly I have exercised my discretion to draw adverse inferences against the claimant.

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

[144] In *M.A.G. v. P.L.M.*, 2014 BCSC 126 at para. 52, the Court held three fundamental principles are applicable to all applications for child support:

- a) Parents have a joint legal obligation to support their children;

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

[145] A parent will not, as a general rule, avoid child support obligations by a "self-induced" decline in income: *Hanson v. Hanson*, [1999] B.C.J. No. 2532 at para. 14 (S.C.).

[146] It is with those principles in mind that I consider the claimant's earning capacity. Analysis and Conclusions

[147] For the reasons set out above, I do not accept the claimant's evidence that she has not worked since the date of marriage or that she is unable to do so now. As in *Henderson v. Bal*, 2016 BCSC 858 at paras. 84, 99, and 101-102 [*Henderson*], I conclude that the claimant's non-disclosure of her complete employment and immigration files warrants drawing an adverse inference against her. I find that she has either worked in BC, remotely in Canada or the US, or that she has failed to work to capacity. The best available information indicates as follows:

- a) In 2017, the claimant earned \$91,400/year (USD) or \$121,182 (CDN) (based on the letter from Accenture dated February 17, 2020, confirming her annual US salary from March 23, 2015 to November 21, 2018); and
- b) In 2018, she was offered a salary of \$86,700/year (CDN) (based on Accenture's 2018 offer of employment in its Montreal office).

[148] As a result of the claimant's material non-disclosure, it is impossible to determine whether or not she was paid her full salary or received benefits during her maternity leave between June 26, 2017 and April 1, 2018. The redacted extracts produced by the claimant from her Bank of America account (which do not include balances over time) indicate deposits to this account from Accenture during her maternity leave. Those deposits are inconsistent with the claimant's financial statement sworn November 30, 2017 which indicates that she then had no income.

[149] On the limited documents available, the claimant earned \$86,700 from her employment with Accenture Montreal from November 22, 2018 to March 15, 2019. Her employment status thereafter is unclear. Given the claimant's non-disclosure, I draw the adverse inference that she either has the capacity to work or has been working. In light of the evidentiary difficulties presented by her failure to produce relevant documents, I impute an annual income of \$86,700 to the claimant for the years 2017 forward. While I accept that \$86,700 may be a conservative estimate of the claimant's current income-earning capacity, I conclude it is a reasonable figure for the purpose of imputing the minimum amount she could have earned annually, commencing in 2017 and thereafter.

[150] I assess the parties' obligations to pay child support as set out below. Period Claimant's Income Child Support Payable by Claimant Respondent's Income Child Support Payable by Respondent 2017 (Sept- Dec) (Child with Claimant) \$86,700 \$0 \$226,784 \$7,820 (\$1,955/mo) January-May 2018 (Child with Claimant) \$86,700 \$0 \$225,923 \$9,740 (\$1,948/mo) June-July 2018 (Child with Respondent) \$86,700 \$1,658 (\$829/mo) \$225,923 \$0 August-November 2018 (Shared Parenting) \$86,700 \$3,316 (\$829/mo) \$225,923 \$7,792 (\$1,948/mo) December (Child with Claimant) \$86,700 \$0 \$225,923 \$1,948 January- April 2019 (Child with Claimant) \$86,700 \$0 \$261,619 \$8,908 (\$2,227/mo) May -December 2019 (Shared Parenting) \$86,700 \$6,632 (\$829/mo) \$261,619 \$17,816 (\$2,227/mo) 2020 (Shared Parenting) \$86,700 \$9,948 (\$829/mo) \$258,201 \$26,400 (\$2,200/mo)

[151] To the date of trial, the respondent had paid a total of \$64,173 in child support:

- a) \$1,841 for December 2017;
- b) \$23,232 in 2018 (\$1,841 from January to February and \$1,955 from March to December);
- c) \$23,460 in 2019 (\$1,955 from January to December); and
- d) \$15,640 in 2020 (\$1,955 from January to August).

[152] Based on their above-noted incomes, I calculate the parties' obligations to pay child support as set out below. Child Support Payable by Claimant Year Child Support Paid Child Support Owed Difference 2017 \$0 \$0 \$0 2018 \$0 \$4,974 [-\$4,974] 2019 \$0 \$6,632 [-\$6,632] 2020 \$0 \$9,948 [-\$9,948] 2021 (to Feb) \$0 \$1,658 [-\$1,658] TOTAL \$0 \$23,212 [-\$23,212] Child Support Payable by Respondent Year Child Support Paid Child Support Owed Difference 2017 \$1,841 \$7,820 [-\$5,979] 2018 \$23,232 \$19,480 \$3,752 CR 2019 \$23,460 \$26,724 [-\$3,264] 2020 (to Dec) \$26,400 \$26,400 \$0 2021 (to Feb) \$4,400 \$4,400 \$0 TOTAL \$79,333 \$84,824 [-\$5,491]

[153] Setting off the parties' respective child support obligations, assuming the respondent has complied with his obligations to pay child support as ordered to date, the respondent is entitled to a credit of \$17,721 (\$23,212 - \$5,491), representing the claimant's unpaid child support owed to and including February 2021. I have made no retroactive adjustment for arrears of child support in the amount of \$5,523 (\$1,841 x 3 for September to November 2017) as requested by the claimant. On my calculations, after a set-off of the parties' respective obligations, no arrears are owed. SPECIAL AND EXTRAORDINARY EXPENSES

[154] Section 7 of the FLA addresses extraordinary expenses such as daycare and extra-curricular activities. Neither party addressed this issue. I direct the parties to discuss any special and extraordinary expenses for the Child before they are incurred and order any such expenses to be paid in proportion to their respective incomes, as set out above. SPOUSAL SUPPORT  
Claimant's Position

- [155] The claimant says she could become self-sufficient immediately if she were permitted to relocate to Ontario. Otherwise, she contends that she requires at least one additional year of spousal support to permit her to retrain and qualify for a position in Accenture's Vancouver office.
- [156] In closing submissions, the claimant sought non-compensatory support while maintaining that compensatory support principles are appropriately considered as part of this assessment. She suggested that the respondent's spousal sponsorship application is relevant to an assessment of her entitlement to spousal support, citing *Charan v. Charan*, 2018 BCSC 1537. She testified that, pursuant to the spousal sponsorship application, the respondent agreed to look after her for three years.
- [157] The claimant's June 2020 financial statement discloses no employment income, child support payments of \$54,000, and spousal support of \$23,460. She reported monthly expenses of \$9,643, representing an alleged annual shortfall of \$92,256. Respondent's Position
- [158] The respondent denies the claimant is entitled to any further spousal support on either a compensatory or non-compensatory basis. He argues that spousal support should cease forthwith. He currently pays all expenses associated with the FFR, apart from the claimant's personal utility costs.
- [159] The respondent's June 30, 2020 financial statement discloses annual employment income of \$223,887 and a bonus (based on the three previous years) of \$27,805 for a total income of \$251,692. He reported annual expenses of \$266,927 and an annual shortfall of \$15,235.
- [160] To date, assuming he has continued to make payments as ordered, the respondent has paid \$159,000 in spousal support as follows:
- a) \$6,000 in December 2017;
  - b) \$43,500 in 2018 (\$6,000 for January to February and \$4,500 for June to December);
  - c) \$52,500 in 2019 (\$4,500 for January to November and \$3,000 in December);
  - d) \$48,000 in 2020 (\$3,000 for January to April and \$4,500 for May to December); and
  - e) \$9,000 to and including February 2021.
- [161] He says spousal support was increased to \$4,500 in May 2020 to facilitate the claimant's payment of a damage deposit on the expectation that the FFR would be sold. The claimant appealed the December 9, 2019 order of Justice Groves, obtained a stay of execution, and the FFR was not sold. The claimant continues to live there. She failed to serve the respondent with the order from the Court of Appeal; he received it after he had already vacated his rental accommodation and packed and transported his possessions to the FFR. The claimant's failure to provide the respondent with notice of this order reflects both non-compliance with the Rules and a basic lack of common courtesy. Legal Principles

- [162] Spousal support orders may be made under either the FLA or the DA. The relevant objectives and factors to be considered in making such an award are mirrored in both statutes: *Li v. Liu*, 2014 BCSC 1110 at para. 35. A court must specify under which statute the order is being made for the purpose of future variation and review applications.
- [163] The objectives of spousal support are set out in s. 161 of the FLA:
- (a) to recognize any economic advantages or disadvantages to the spouses arising from the relationship between the spouses or the breakdown of that relationship;
  - (b) to apportion between the spouses any financial consequences arising from the care of their child, beyond the duty to provide support for the child;
  - (c) to relieve any economic hardship of the spouses arising from the breakdown of the relationship between the spouses;
  - (d) as far as practicable, to promote the economic self-sufficiency of each spouse within a reasonable period of time.
- [164] The nature and significance of compensatory spousal support is discussed in numerous authorities, including *Moge v. Moge*, [1992] 3 S.C.R. 813, *Bracklow v. Bracklow*, [1999] 1 S.C.R. 420 [Bracklow], and *Chutter v. Chutter*, 2008 BCCA 507 at paras. 50-53 [Chutter]. The appropriate measure of compensatory support is not assessed by doing a detailed accounting at the end of a marriage to determine what financial "losses" a spouse suffered as a result of expenditures made during the marriage (including the period of cohabitation). Instead, the Court must have regard to the statutory provisions governing support, the relevant authorities, and the Spousal Support Advisory Guidelines (the "SSAG").
- [165] Non-compensatory support is "grounded in the "social obligation model" of marriage, in which marriage is seen as an interdependent union." Upon a marriage's dissolution, it falls on the former partner to meet the needs of a disadvantaged spouse, not the state: *Chutter*, at para. 54. "Need" alone may be sufficient to ground a claim for spousal support: *Bracklow*, at para. 43. "Need" is something more than basic necessities: *Chutter*, at para. 55:
- [55] The concept of "needs" in the context of non-compensatory spousal support goes beyond basic necessities of life and varies according to the circumstances of the parties. As stated by Finch J.A. (as he then was) in *Myers v. Myers* (1995), 17 R.F.L. (4th) 298, 65 B.C.A.C. 226, at para. 10: "Need" or "needs" are not absolute quantities. They may vary according to the circumstances of the parties and the family unit as a whole. "Need" does not end when the spouse seeking support achieves a subsistence level of income or any level of income above subsistence. "Needs" is a flexible concept and is one of several considerations which a trial judge must take into account in deciding whether any order for spousal support is warranted. Similarly, economic self-sufficiency is a relative concept: *Chutter*, at para. 56.

- [166] The SSAG are a useful tool in determining an appropriate range for spousal support awards: *Redpath v. Redpath*, 2006 BCCA 338 at para. 37; *Kopelow v. Warkentin*, 2005 BCCA 551 at paras. 75-76. The length of the parties' relationship will usually have an impact on the amount of the spousal support award: *Foster v. Foster*, 2007 BCCA 83 at para. 57. Analysis and Conclusions Compensatory Support
- [167] I am not persuaded that the claimant is entitled to compensatory spousal support. This is not a case involving a lengthy marriage where one party made personal sacrifices in order to advance the other's career or to raise a family. On her own evidence, the claimant is highly educated, experienced in the IT field, and has a history of earning a lucrative salary. She is still relatively young and, on her own evidence, has a good ongoing relationship with Accenture.
- [168] The claimant contends that she is unable to work in Canada without a work permit. She maintains that she is unable to work from home, an assertion which is inconsistent with her bank records and her 2018 T4 that discloses employment income from Accenture earned in 2018 when she was not working in Montreal and was mostly in BC.
- [169] The claimant's assertion that she lacks the skills necessary to work in Accenture's Vancouver office was not corroborated by any credible documentary or other evidence. The claimant bears the burden of proving that she is unable to work in BC. I conclude she has not met this burden and that her minimal efforts to find work in BC are relevant when assessing spousal support: *Natanj v. Nasiri*, 2018 BCSC 1122 at paras. 345-346. Non-Compensatory Support
- [170] The claimant argues that she has no income and therefore requires ongoing non-compensatory spousal support to meet her needs if she is not permitted to relocate to Ontario with the Child. The non-disclosure of her complete employment, Canada and US Immigration, and banking records unnecessarily complicated this issue. I have imputed an income to the claimant, based on her capacity to work and the adverse inference that she may be working based on her non-disclosure of relevant documents. She produced no reliable information about her actual income, savings, or assets. Financial non-disclosure can be a relevant factor when assessing a spousal support claim: *S.L.C. v. J.R.C.*, 2020 BCSC 463 at paras. 112-120.
- [171] In assessing non-compensatory support, I have considered the parties' short marriage, the substantial spousal support already paid to the claimant (which now exceeds three years, the length of time the claimant asserts the respondent agreed to support her pursuant to the rejected spousal sponsorship application she submitted in December 2016), and her exclusive rent-free occupation of the FFR since September 2017. I have taken into account her advanced education, her extensive international work experience, and her income-earning history. A spouse is obliged to make reasonable efforts to achieve self-sufficiency following a marriage break-down; in the absence of such efforts, a judge may impute income and reduce the amount of spousal support awarded: *FLA*, s. 213(2); *SCFR*, R. 5-1(28);

Hsieh v. Lui, 2017 BCCA 51 at paras. 47-48; Henderson, at para. 84.

- [172] If mid-range spousal support were ordered in accordance with the Guidelines (based on the parties' actual and imputed incomes in those years and the parenting arrangements then in place) spousal support would be payable as set out below: Claimant's Income Respondent's Income Spousal Support/ Month Spousal Support/ Year 2017 \$86,700 \$226,784 \$2,612 (Sept-Dec) \$10,448 2018 \$86,700 \$225,923 \$2,512 (Jan - May) \$2,747 (Jun - July) \$2,632 (Aug - Dec) \$12,560 \$5,494 \$13,160 2019 \$86,700 \$261,619 \$3,529 (Jan - Apr) \$3,635 (May - Dec) \$14,116 \$29,080 2020 \$86,700 \$258,068 \$3,536 \$42,432 2021 \$86,700 \$258,068 \$3,536 (Jan to Feb) \$7,072 TOTAL \$134,362
- [173] Subtracting \$134,362 from the \$159,000 paid to and including February 2021 (on the assumption the respondent has continued to pay spousal support to date as ordered) the respondent is entitled to a credit of \$24,638, representing an overpayment of spousal support since the date of separation to and including February 2021.
- [174] Ultimately, I conclude that it would be reasonable to order a modest finite amount of additional non-compensatory spousal support to allow the claimant time to arrange her affairs. Accordingly, I order that spousal support be paid on a declining basis commencing March 1, 2021 in the amount of \$3,000, thereafter decreasing by \$500 in every subsequent month up to and including May 1, 2021 when spousal support payments will cease. By then, the respondent will have paid the claimant \$166,500 in spousal support, over more than three years, following a marriage that lasted approximately one year. I conclude that spousal support in this amount fulfills the respondent's obligations. DIVISION OF FAMILY PROPERTY Excluded Property
- [175] The respondent seeks to deduct his equity in the townhouse he purchased in November 2005 and owned before the parties married (the "Townhouse") from the value of family property. He says these funds are traceable and therefore constitute excluded property. He seeks a credit of \$136,380 before the division of family property, citing P.G. v. D.G., 2015 BCSC 1454. He calculates this amount as follows: Assessed Value at DOM Mortgage on Title Equity \$400,000 \$263,620 \$136,380
- [176] The claimant cross-examined the respondent extensively about his failure to produce the seller's statement of adjustments, his mortgage payout statement, or proof of payment of the mortgage on the Townhouse. She observes that he sold the Townhouse privately, suggesting this was a "shady" transaction and that it was sold for more than indicated in the documents produced.
- [177] Those suspicions were not supported by any credible evidence. To address her concerns regarding the amount of payments made towards the mortgage on the Townhouse, the respondent agreed to assess his equity based on the original mortgage amount (as set out in the buyer's statement of adjustments) rather than the reduced balance following his mortgage payments. He conceded that doing so undervalues his equity in the Townhouse and reduces his excluded property claim but says it addresses any alleged deficiencies in his

document production.

[178] Section 85 of the FLA states, in part, as follows: 85 (1) The following is excluded from family property:

- (a) property acquired by a spouse before the relationship between the spouses began;
  - (g) property derived from property or the disposition of property referred to in any of paragraphs (a) to (f). . . .
- (2) A spouse claiming that property is excluded property is responsible for demonstrating that the property is excluded property.

[179] The respondent bears the onus of proving these exclusions on the basis of "clear and cogent evidence": *Shih v. Shih*, 2017 BCCA 37 at para. 43, referred to with approval and applied in *Pisarski v. Piesik*, 2019 BCCA 129 at para. 24 [Pisarski]. If documentary evidence is not available, the party bearing the onus of proof must testify as to his recollection of the transaction in dispute; while that evidence will be scrutinised for credibility, a trial judge is permitted to draw reasonable inferences from evidence that is less than certain or precise in order to do justice between the parties: *Pisarski*, at para. 24. If the respondent proves the exclusion, the onus shifts to the claimant to challenge the factual basis for it.

[180] The respondent concedes that the claimant is entitled to a one-half share of the \$100,000 increase in value of the Townhouse from the date of marriage to the date it sold in July 2017.

[181] I am satisfied that the respondent's equity of \$136,380 in the Townhouse falls within sections 85(1)(a) and (g) of the FLA. He is therefore entitled to an excluded property claim in this amount. Valuation Date/Reapportionment of Family Property

[182] The respondent says it would be significantly unfair to value family property at the date of trial, arguing in favour of a valuation at the date of separation because:

- a) The parties had a short marriage (of about 15 months) and cohabited briefly (for about 10 months);
- b) The claimant made no contribution to the purchase or ongoing costs of the FFR, before or after separation; and
- c) The claimant owns or owned property in India, failed to disclose any documents to permit him to value it, and transferred or disposed of this property in order to defeat his claim for a division of it.

[183] The claimant submitted that family property ought to be reapportioned unequally in her favour because of her indirect contributions to family expenses.

[184] Section 95 of the FLA provides, in part, as follows: 95 (2) For the purposes of subsection (1), the Supreme Court may consider one or more of the following:

- (a) the duration of the relationship between the spouses;
  - (c) a spouse's contribution to the career or career potential of the other spouse;
  - (i) any other factor, other than the consideration referred to in subsection (3), that may lead to significant unfairness.
- (3) The Supreme Court may consider also the extent to which the financial means and earning capacity of a spouse have been affected by the responsibilities and other circumstances of the relationship between the spouses if, on making a determination respecting spousal support, the objectives of spousal support under section 161 [objectives of spousal support] have not been met.

[185] Equal division of family property is the general rule unless there are persuasive reasons for a different result. Unequal division requires something objectively unjust, unreasonable, or unfair in some important or substantial sense: *Jaszczevska v. Kostanski*, 2016 BCCA 286 at paras. 41-42 [*Jaszczevska*]. The requirement for a finding of significant unfairness was intended as a caution against trying to accomplish "perfect fairness": *L.G. v. R.G.*, 2013 BCSC 983 at para. 71.

[186] Under s. 81 of the FLA, each spouse is entitled to a presumptive one-half undivided interest in each family asset as a tenant in common on separation, subject to an order for reapportionment under s. 95. Subject to the exceptions in s. 85, "family property" is all real and personal property owned by one or both spouses at the date of separation (s. 84(1)(a)) or acquired by one or both spouses after separation if it derives from (the disposition of) property encompassed by subsection 84(1)(a). Under s. 87, all family property and family debt is to be valued according to its fair market value at the date of the hearing respecting division of family property and debt.

[187] A court is only to reapportion family property if an equal division would be "significantly unfair": FLA, s. 95(1). Setting the valuation date at another date requires a finding of significant unfairness: *Jaszczevska*, at paras. 41-42; *Blair v. Johnson*, 2015 BCSC 761. Once the court has divided the family assets under Part 5 of the FLA, it must consider the mechanism by which the division of property is to be achieved, pursuant to s. 97.

[188] Given the claimant's non-disclosure of her assets, the short duration of the parties' marriage, and the lack of any credible evidence to support a contribution by the claimant to family property, I conclude that it would be significantly unfair to apportion family property equally or to value it at the date of trial. Accordingly, I value family property at the date of separation. Respondent's Assets FFR

- [189] The respondent's most significant asset is his equity in the FFR. The respondents are the registered owners of the FFR. S.S.M. was put on title because, as a senior, she was eligible for a discount in the payment of property tax. On the advice of his notary, the respondent did not include the claimant's name on title because she was in Canada on a visitor's visa and he wished to avoid paying a 15% foreign buyer's tax. He planned to add her name on title once she became a permanent resident.
- [190] The respondent purchased the FFR for \$895,000 in June 2017 using personal savings, a \$40,000 short-term loan from a friend, and two secure lines of credit from TD in the amounts of \$579,800 and \$136,901. After the Townhouse sold in July 2017, he repaid his friend and returned the money he had withdrawn from his personal investment account. That evidence was consistent with his bank statements.
- [191] The respondent paid all the costs of purchasing the FFR and servicing the two lines of credit secured against it. He paid all property taxes, home insurance, and quarter-annual metered utilities (i.e., water and sewage) from his personal account (to which the claimant has no access). He paid all other utilities costs for about one year after the date of separation. The claimant did not dispute this evidence, admitting that "technically" she did not contribute to the down payment on the purchase of the FFR. She suggested that she contributed by making deposits to the parties' joint account to cover family expenses. In cross-examination, she agreed that she contributed about \$11,000 to the parties' joint account on June 7, 2017, later withdrawing funds from this account June 20, 2017, so she could buy herself a car. She has been paying her own utility expenses since 2018. Based on her 2020 financial statement, she is spending about \$400/month on home maintenance for the FFR. However, those expenses were not corroborated by any credible documentary evidence.
- [192] The respondent currently owes about \$711,000 on the two lines of credit secured against it. He admits the FFR is family property subject to division between the parties. He agrees the claimant is entitled to one-half the equity in the FFR. If he owes the claimant anything after the valuation of family property, he wishes to buy out her interest in the FFR.
- [193] The claimant suggests that she contributed indirectly to the FFR. She prepared a summary of her alleged annual "home expense contributions" totalling \$174,481.23. This summary references many items that cannot accurately be construed as home expenses. For example, it includes travel costs, jewellery purchases, gifts, and the claimant's personal legal expenses. She contends that she paid for groceries and various purchases for the respondent's family members (describing them as "demands" rather than "gifts"). She included her 2019 costs for hydro, gas, heating, and security when she had sole occupancy of the FFR. Ultimately, her summary offered no persuasive evidence to support an unequal division of the FFR in her favour.

- [194] The respondent argues that the FFR (purchased for \$895,000 in June 2017) did not increase in value in the three months after it was purchased and before the parties' separation in September 2017. In the absence of evidence to the contrary, I make that finding. The respondent gave evidence about the mortgages he obtained in the form of two home equity lines of credit, totalling \$710,748.21. On that basis, there was \$184,251.79 in equity in the FFR at the date of separation (\$895,000 - \$710,748.21).
- [195] The respondent's bank statements (indicating his monthly payments on the two lines of credit) are in evidence. He made total mortgage payments of \$107,435.93 from September 2017 to the date of trial. If this amount is subtracted from the total mortgage debt at the date of separation, the difference equals the outstanding mortgage balance (\$603,312.28). This figure does not include any amount(s) the respondent re-borrowed against these lines of credit after the date of separation and addresses the claimant's concern that this figure cannot be ascertained based on the documents in evidence.
- [196] In anticipation of this action proceeding to trial in November 2019, the parties commissioned a joint appraisal of the FFR. It values the FFR at \$1,005,000 effective October 20, 2019. If the FFR is valued at the date of trial, the equity is \$401,687.80 (\$1,005,000 - \$603,312.28). While the evidence demonstrates that the FFR increased in value between the date of separation and the date of trial, for the reasons set out above, I find that it would be significantly unfair to value it after the date of separation.
- [197] The claimant's lawyer cross-examined the respondent extensively about his bank statements, his payments on the two lines of credit secured by the FFR, and the available credit balances. He was challenged about the fact that, despite his consistent payments, the outstanding balances remained essentially unchanged. The respondent readily conceded that he re-borrowed against these lines of credit after the date of separation to meet his financial obligations and that this represents a personal debt. Surrey Condo
- [198] The respondent is a 1% owner of a condominium located at 150 Street in Surrey, purchased by his mother on May 10, 2020 for \$318,000. He pays the monthly mortgage of \$930 and currently lives there with his mother. He argues that this condo is not family property subject to division. The claimant did not challenge that statement.
- [199] This property was purchased following the date of separation. There is no evidence to suggest it was purchased by collapsing family assets and I conclude that it is not family property. TD Accounts
- [200] The respondent holds multiple TD investment accounts. He acknowledges that the claimant is entitled to one-half of the increase in value of these accounts from the date of marriage to the date of separation, noting that she must also share in any corresponding losses in this interval. For the same reasons set out above, he argues that it would be significantly unfair to value these assets at the date of trial.

[201] The claimant asserts that the respondent has failed to provide complete disclosure of his investment account statements. In closing, her lawyer conceded that her questions about these accounts could have been resolved on an examination for discovery. For reasons that are unclear, the claimant conducted no examination for discovery of the respondent. In closing, the claimant's counsel suggested that the respondent had transferred income to "hidden accounts" and to family members, an assertion that was not supported by any credible evidence.

[202] The respondent's TD account statements in evidence do not extend beyond November 2019, the parties' previous trial date. Both parties retained new counsel shortly before trial. According to the respondent's lawyer, he provided the claimant's counsel with a final list of documents before trial, together with a request that she advise him of any outstanding document requests. He says that she did not respond.

[203] The respondent's TD bank account statements in evidence are sufficient to permit me to value those assets at the date of marriage and the date of separation as follows:

1. RBC RRSP
  - a. May 1, 2016: \$5,002.35
  - b. Sept 1, 2017: \$5,005.43
2. Direct Trading CDN
  - a. May 1, 2016: \$97,767
  - b. Sept 1, 2017: \$103,118
3. Direct Trading USD
  - a. On May 1, 2016: \$10,000
  - b. On Sept 1, 2017: \$7,523
4. TFSA CDN
  - a. May 1, 2016: \$86,258
  - b. Sept 1, 2017: \$67,422
5. Self Directed RSP- CDN
  - a. May 1, 2016: \$64,644
  - b. Sept 1, 2017: \$99,155
6. RBC RSP: Opened post separation in August 2019 TD Employment Ownership Investment Plan

- [204] The respondent acknowledges that the claimant is entitled to a one-half share of the increase in value of his TD Employee Ownership Investment Plan ("EOIP") from the date of marriage to the date of separation. He says she must also share in any corresponding losses that occurred in those accounts in that period.
- [205] The evidence permits me to value these accounts at the date of marriage and the date of separation as follows:
1. EOP Registered Group RSP
    - a. On April 30, 2016 (closest date entry to marriage): \$11,801
    - b. On August 27, 2017 (closest date entry to separation): \$22,363.37
  2. EOP DPSP
    - a. On April 30, 2016 (closest date entry to marriage): \$3,823.28
    - b. On August 27, 2017 (closest date entry to separation): \$6,689.72
  3. EOP Non-registered
    - a. On April 30, 2016 (closest date entry to marriage): \$14,956.47
    - b. On August 27, 2017 (closest date entry to separation): \$28,135.35 Claimant's Assets Apartment in India
- [206] In her affidavit #3, sworn November 29, 2017, the claimant deposed that she had "an apartment in India which [she] purchased before our marriage", paid for by "monthly installments". She deposed that "the apartment is rented but the rent does not cover the entire monthly mortgage installment". When confronted with this evidence at trial, she admitted to swearing this affidavit but suggested that this apartment is a "family home" in her mother's name and that the amount of the mortgage is equal to the claimant's "share". She agreed that her name is on the mortgage and said her parents are guarantors on this mortgage.
- [207] In her November 30, 2017 financial statement, the claimant disclosed an ownership interest in an apartment in India, valued at \$80,000. She indicated \$389.70 of "gross" rental income for (unidentified) property in India but zero "net" rental income. Although a sworn document, prepared when she had a lawyer, she described this financial statement as "incomplete" and "not to be considered" as it was not filed.
- [208] The claimant made no reference to this Indian apartment in her sworn financial statement dated June 30, 2020. This omission was not adequately explained by the claimant at trial; she said her "share" in this apartment "is the mortgage amount". She said she provided no documentary evidence regarding ownership of this Indian apartment because it is her mother's property and her parents did not want their assets to be associated with this litigation. However, the claimant also said this Indian apartment is "not her asset

completely". In cross-examination, she admitted the mortgage on this apartment is her liability. It is unclear on the evidence why she would be liable on a mortgage for an Indian property in which she has no ownership interest.

- [209] Ultimately, the claimant's evidence regarding this Indian property was unhelpful; it was not corroborated by any credible documentary evidence. She variously denied ever owning an apartment in India, admitted she has a "loan" on this property, and that her parents guaranteed her mortgage. The claimant's mother testified that the only real property she owns in India is the house where she resides. She denied knowing whether the claimant owns property in India.
- [210] According to the respondent, the claimant owned and maintained a four-bedroom Indian apartment during their marriage and rented it to students. He says she began denying that she had an interest in it in about 2018.
- [211] It is not possible to reconcile the inconsistencies in the claimant's evidence regarding this asset. It is unclear whether she has an ownership interest in it, whether it generates income and, if so, in what amount, whether it is subject to a mortgage, and, if so, in whose name or in what amount. Its value (as of the date of marriage, separation, and trial) is unknown. Despite being ordered to do so on multiple occasions, the claimant produced no documents regarding this property. Bank of America Account
- [212] The claimant produced incomplete statements for her Bank of America account. Apart from one statement dated April 15, 2016 (indicating a closing balance of \$42,783.13), she produced no subsequent statements indicating closing balances until January 16, 2018. She disclosed no copies of actual bank statements after February 10, 2018. Instead, she produced statements for April 2017 to November 15, 2017; they appear to be online printouts and include no opening and closing account balances. They are, therefore, of limited assistance.
- [213] It is not possible on the evidence to value the claimant's Bank of America account at the date of marriage, the date of separation, or the date of trial. The respondent argues that an adverse inference ought to be drawn against her given this non-disclosure. He proposed that her Bank of America account be assessed with a minimum value of \$42,783.13 (equal to the closing balance on May 13, 2016) and be subject to equal division. Alternatively, he suggests that the FFR and all other family property be reapportioned 100% to him. There must be an evidentiary basis for valuing undisclosed assets: Wu, at para. 41. The evidence does not permit me to value the claimant's Bank of America account at any material time; accordingly, I decline to do so. Jewellery

- [214] The claimant asserts that she gave the respondent her gold and diamond jewellery on September 23, 2017, the day she arrived in Canada. She said he put it in his safety deposit box and has not returned it. At trial, she suggested this jewellery has a value of \$40,000. In her affidavits filed in these proceedings, she deposed it had a value of \$25,000 to \$30,000. She testified that she increased its estimated value at trial to include "ancestral jewellery" gifted to her, for which she has no invoices.
- [215] The respondent denies the claimant gave him any jewellery to store in his safety deposit box, noting that if she did, it would be family property subject to division. He suggests these items are likely in her US safety deposit box (the contents of which have not been disclosed) or at the FFR (where she has resided since the date of separation).
- [216] The safety deposit sign-in sheet in evidence corroborates the respondent's evidence. It indicates that items were removed from his safety deposit box at 10:10 am on September 23, 2016, the day the claimant arrived in Canada. In cross-examination, she admitted that she arrived in Vancouver that evening. The respondent said he went to the bank that morning to retrieve jewellery owned by his parents from his safety deposit box to give to the claimant as a gift on her arrival in Canada. I am not persuaded on the evidence that the respondent removed jewellery belonging to the claimant from his safety deposit box. The evidence is insufficient to permit me to determine whether such jewellery exists, whether it is excluded property or family property, or to value it. Accordingly, I have not included it in my assessment. Other Assets Parties' Pensions
- [217] The respondent has a TD pension. The TD documents in evidence indicate the "date of plan enrollment" for this pension to be March 1, 2009; the respondent's total contributions effective October 31, 2017 were \$231. Based on his contributions to date, he is entitled to an annual pension income of \$6,471 (or \$539.25/month) at age 65. Given the nominal value of this asset, and the claimant's non-disclosure of Accenture records (which would have provided information about any pension to which she is entitled), the respondent argues that this asset is not divisible.
- [218] Based on the limited evidence at trial, I am unable to assess what, if any, monetary entitlement the claimant might have to the respondent's pension. Based on the respondent's evidence and the documents he produced, it has a nominal value. The claimant has not produced her complete Accenture records which would have confirmed whether or not she has a pension through her longterm employment with that company. For all these reasons, I have not included the respondent's pension in my division of family property.
- [219] Despite being a longstanding employee of Accenture, the claimant maintained that she has no employee pension, evidence that was not corroborated by any credible documentary or other evidence. Although I am unable to assess the value of any employee pension the claimant might have with Accenture, I decline to draw the adverse inference that she has a pension: Wu, at paras. 41 - 42. Parties' Vehicles

- [220] Both parties have leased vehicles. The respondent proposes that each party keep the vehicle leased in their own name and pay the associated cost; the claimant made no submissions on this issue. I order that both parties assume responsibility for the leases in their respective names. Parties' Net Financial Positions
- [221] The parties' net financial positions are summarised below. Asset Value at DOM Value at DOS Increase in Value During Marriage Claimant's Entitlement Respondent's Entitlement Real Property Townhouse \$400,000 N/A \$100,000 \$50,000 \$50,000 FFR N/A \$895,000 -\$136,380 [Excluded Property] \$758,620 N/A \$379,310 \$379,310 Total Value \$858,620 \$0 \$429,310 \$429,310 Debt on Real Property FFR LOCs N/A [-\$710,748] [-\$355,374] [-\$355,374] Net Value \$147,872 \$73,936 \$73,936 Respondent's Assets RBC RSP \$5,002.35 \$5,005.43 \$3.08 \$1.54 \$1.54 Direct Trading Cdn \$97,767 \$103,118 \$5,251 \$2,675 \$2,675 Direct Trading USD \$10,000 \$7,523 [-\$2,477] [-\$1,238] [-\$1,238] TFSA Cdn \$86,258 \$67,422 [-\$18,836] [-\$9,418] [-\$9,718] Self Direct RSP - Cdn \$64,644 \$99,155 \$34,511 \$17,255 \$17,255 RBC RSP N/A N/A E. OIP \$11,801 \$22,363.37 \$10,562.37 \$5,281 \$5,281 EOP DPSP \$3,823.28 \$6,689.72 \$2,866.44 \$1,433.22 \$1,433.22 EOP Non- Registered \$14,956.47 \$28,135.35 \$13,178.88 \$6,589.44 \$6,589.44 Pension Present Value Unknown Present Value Unknown Present Value Unknown 0 0 Claimant's Assets Apt in India Unknown Unknown Unknown Unknown Unknown B of A Account Unknown Unknown Unknown Unknown Unknown Pension Unknown Unknown Unknown Unknown Unknown Net Asset Value \$96,515.09 \$96,515.09
- [222] Based on the above-noted valuation, the claimant is presumptively entitled to an equalisation payment of \$96,515, assuming family property is divided equally.
- [223] The respondent is entitled to the following credits, to be set off against his obligation to make an equalisation payment:
- Child support overpayment: \$17,721
  - Spousal support overpayment: \$24,638
  - Outstanding balance for unpaid fines for contempt: \$1,750 (1/2 of which was deducted by consent at trial from the respondent's August 1, 2020 support payment) Total: \$44,109 These credits reduce the respondent's presumptive equalisation payment to \$52,406.
- [224] However, this valuation of family property includes no assets that the claimant might own. Her non-disclosure of documents precludes identifying or valuing them. It does not take into account the \$107,435.93 the respondent has paid (from the date of separation to the date of trial) to cover the mortgage on the FFR (while the claimant had exclusive possession) or the \$22,801.40 he paid to cover all ongoing costs of the FFR in the same period (including property taxes, City of Surrey utilities, Fortis BC gas, and BC Hydro electricity).
- [225] I find that the respondent's payments to date satisfy his obligation to make an equalisation payment to the claimant. Occupational Rent

- [226] The respondent seeks to recover \$53,101 in occupational rent because the claimant has had sole possession of the FFR from September 2017 to date. From October 2017 to March 2019 (i.e., 18 months), he incurred monthly rental expenses of \$2,300 (for a total of \$41,400), while paying the mortgage costs on the FFR. He says that his actual accommodation costs were higher because his rent did not include utilities. In April 2019, he paid a friend \$701 to share his residence; from May 2019 to February 2020, he agreed to pay his friend \$1,000/month in rent. According to the respondent, he defaulted on this obligation due to financial constraints and he now owes \$11,000. He calculates his total accommodation costs following his September 2017 removal from the FFR to be \$53,101 (\$41,400 + \$701 + \$11,000). The claimant did not address this issue in any substantive manner.
- [227] Justice Verhoeven summarised the principles to be considered in the granting this discretionary remedy in *Ross v. Ross*, 2013 BCSC 1716 at para. 47. In *McFarlen v. McFarlen*, 2017 BCSC 1737 at para. 26, Justice Jenkins concluded that fairness dictated the claimant be entitled to a credit for the rent she was obliged to pay after leaving the matrimonial home, from the sale proceeds.
- [228] On all the evidence, I am satisfied that valuing family property at the date of separation rather than at the date of trial and reapportioning it (as set out above) addresses any significant unfairness to the respondent. Accordingly, I decline to order the claimant to pay occupational rent. SPECIAL COSTS
- [229] The respondent seeks special costs as a remedy for the claimant's non-disclosure of documents and non-compliance with multiple court orders: *Nasiri v. Nasiri*, 2018 BCSC 1122 at pars. 348-353, citing *Garcia v. Crestbrook Forest Industries Ltd.* (1994), 9 B.C.L.R. (3d) 242 (C.A.).
- [230] The trial of this action, involving two parties who were married briefly, have relatively modest net assets, and one child, ought to have been straightforward. The claimant's flagrant disregard of multiple court orders significantly complicated the resolution of this claim, prolonged the trial, and increased costs. In the circumstances, I am satisfied that an award of special costs against her is warranted. SUMMARY
- [231] I make the following orders:
- a) The parties are joint guardians of the Child pursuant to s. 39 of the FLA;
  - b) The parties will share equal parenting responsibilities for all matters set out in s. 41 of the FLA, except for those in s. 41(g) regarding the Child's passport, which shall be the respondent's sole responsibility;
  - c) If the parties are unable to reach agreement regarding any of the matters set out in s. 41 of the FLA (apart from those in s. 41(g)), the respondent is authorised to make the final decision in the Child's best interests;

- d) The parties are required to mediate any disputes arising from disagreements between them about decisions made by the respondent regarding the matters set out in s. 41 of the FLA, before applying to this Court to vary or overturn them;
  - e) The police enforcement clause currently in place in favour of the respondent shall remain in effect;
  - f) Effective March 1, 2021, and on the 1st day of each month thereafter until further agreement of the parties or court order, the parties' respective child support obligations are as follows:
    - i. The respondent shall pay the sum of \$2,200 per month, in accordance with the Guidelines; and ii. The claimant shall pay the sum of \$829 per month, in accordance with the Guidelines; iii. The net difference, payable by the respondent on the first of each month, is \$1,371 per month;
  - g) The FMEP arrears shall be adjusted to zero, provided the respondent has been paying the claimant child and spousal support as ordered to the date of these reasons; and
  - h) Pursuant to the Guidelines, the parties shall share all special and extraordinary expenses for the Child in proportion to their respective incomes, as set out herein, until further agreement of the parties or court order.
  - i) The parties shall:
    - i. Once per year and not later than May 1st, exchange tax returns and other income information relevant to the determination of child support; ii. Review support; and iii. Vary the amount payable July 1st.
  - j) The parties shall retain the vehicles leased in their respective names and assume liability for the corresponding lease payments;
  - k) The respondent's payments to the claimant, as set out in these reasons, satisfy his obligation to make an equalisation payment.
  - l) The claimant has no legal or beneficial ownership interest in the FFR and the spousal lien filed by her on title to the FFR shall be removed effective immediately;
  - m) The respondent shall pay to the claimant spousal support in the amount of \$3,000 effective March 1, 2021, to be reduced by \$500 on the first day of each month thereafter to and including May 1, 2021, at which time spousal support shall cease; and
  - n) The parties are divorced, the divorce to be effective 31 days after the release of these reasons for judgment, pursuant to s. 12 of the Divorce Act; and
  - o) The respondent is entitled to special costs, as agreed upon or assessed.
- [232] If there are any matters arising from these reasons, the parties are at liberty to apply to speak to them within 30 days. "Douglas J."

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