

CANADA / JUDGMENT

S.L.M. v. J.L.M.

2025 BCSC 1072

COURT

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2025 BCSC 1072 S.L.M. v. J.L.M.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

S.L.M. v. J.L.M.,

2025 BCSC 1072

Date: 20250610

Docket: E52619

Registry: Vernon

Between:

S.L.M.

Claimant

And

J.L.M.

Respondent

Before: The Honourable Madam Justice Fitzpatrick

Reasons for Judgment

Counsel for Claimant:

L. Bosdet

The Respondent, appearing in person:

J.L.M.

Place and Date of Trial:

Vernon, B.C.

April 7-11, 14-17, 2025

Place and Date of Judgment:

Vernon, B.C.

June 10, 2025

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INTRODUCTION

- [1] These reasons arise from the trial of a high conflict family matter.
- [2] The issues to be addressed include divorce, parenting of the parties' nine-year-old son and five-year old daughter (collectively, the "Children"), retroactive and prospective child support and spousal support, and the division of family property and debt. In addition, the claimant mother ("SM") seeks a protection order in relation to the respondent father ("JM").

BACKGROUND FACTS

- [3] The following are my initial findings of fact.

Pre-Separation

- [4] In spring 2013, the parties met in Cochrane, Alberta.
- [5] At the time, SM was living in Cochrane in a place she rented from her grandmother's estate, for which she paid rent and utilities (the "Cochrane Residence"). At some earlier time, SM had provided a deposit to the estate, thinking that one day she would purchase the Cochrane Residence.
- [6] In 2013, SM operated a consulting business in respect of environmental reclamation work in southern and northern Alberta.
- [7] In spring 2013, JM owned a townhouse in Calgary (the "Townhouse"). Years earlier, JM began working in Fort McMurray ("Fort Mac") as a heavy-duty technician in the oil and gas industry where he was employed by Finning Canada. His work schedule from the start of his employment has never changed, in that he works one week in Fort Mac and then has one week off.
- [8] Around December 2013, JM began spending more time with SM at the Cochrane Residence.
- [9] By no later than spring 2014, the parties had begun a lasting relationship. Around that time, they formed a joint vision of moving to a rural location.
- [10] In early 2014, JM sold the Townhouse. In summer 2014, after the sale of the Townhouse had completed, they purchased land in Golden, BC, with the intention of building a home. To finance construction of the new home, the parties obtained a builders' mortgage, although the plan was that JM would do most of the construction work.
- [11] From 2014-2016, the parties lived at the Cochrane Residence. JM spent long periods of time working on the new home when he was not working in Fort Mac. In order to do so, JM took substantial time off work.

- [12] In December 2015, the parties' first child ("CRM") - a son - was born.
- [13] In spring 2016, the parties moved to Golden, where they rented a basement suite while the new home (the "Family Home") was being prepared for occupancy. In December 2016, the parties moved into the Family Home (although it was not yet finished). At the time, CRM was approximately one year old.
- [14] After CRM was born, SM became primarily a stay-at-home mother in order to care for him, after initially trying out a day care for a short time. Starting in August 2018, SM continued to do part-time consulting work on a limited basis as a Senior Archeologist with Core Heritage Consulting ("Core Consulting").
- [15] In April 2019, the parties' second child ("CAM") - a daughter - was born.
- [16] On August 10, 2019, the parties were married in Kelowna, BC.
- [17] From the time of CRM's birth, JM's role has largely been the family's provider. Over that time, after the family moved into the Family Home, JM's work schedule continued such that he would work one week in Fort Mac and then return to SM and the Children in the Family Home for one week. During his week at the Family Home, JM remained active in finishing the construction of the Family Home.
- [18] On March 19, 2021, the parties separated.
- [19] Over the course of their relationship to the time of separation, the parties had largely kept their finances separate.

Post-Separation

- [20] After the parties' separation, in summer 2021, SM was offered an on-site part-time position through Core Consulting. This position had the potential to evolve into full time work, with flexible hours. However, this job required that SM be on-site at Core Consulting's Invermere office.
- [21] In summer 2021, SM filed a court application to allow her to relocate with the Children from Golden to Invermere, approximately a 1.5 hour drive from Golden.
- [22] On September 1, 2021, as I will describe below, with court approval, SM and the Children moved to Invermere and CRM began kindergarten there. For a brief period of time, JM remained living in Golden, having parenting time on the weekends when he was off work.
- [23] Around October 2021, JM moved to Invermere. Since then, by court order, the parties have been in a shared parenting arrangement with each having approximately 50% of the time with the Children.

- [24] In November 2024, SM obtained a fulltime position as a senior project manager with an archeology company, WSP Canada Inc., coincidental with CAM starting full time kindergarten in September 2024.
- [25] At present, CRM is in Grade 3 and CAM is in Kindergarten at an Elementary School in Invermere.
- [26] SM now earns employment income of \$122,000 and some dividend income. JM continues to be employed full time in Fort Mac, earning \$178,472 in 2024.

INTERIM ORDERS

- [27] Throughout these proceedings (commenced in June 2021), the parties have been governed by a number of interim orders with respect to the various issues. The relevant portions of those orders are:
- a) September 1, 2021: Justice Wilkinson ordered that:
 - i. By consent, all communications would occur via Our Family Wizard ("OFW") and limited to issues of parenting time and related to the best interests of the Children. All communications were to be in writing, except for emergencies where telephone communication was allowed; and
 - ii. SM's relocation with the Children to Invermere from Golden was allowed. In that event:
 - (1) If JM resided outside of Invermere, he had parenting time on his weeks off from Friday to Sunday;
 - (2) If JM relocated to Invermere, the parties would have parenting on a week on / week off rotation;
 - (3) JM would have a minimum of 50% of the vacation time of the Children, if not working; and
 - (4) The parties shared all parental responsibilities under s. 41 of the Family Law Act, S.B.C. 2011, c. 25 [FLA];
- (the "Wilkinson Order")
- b) January 24, 2022: at the judicial case conference, Associate Judge (then Master) Schwartz granted an order:
 - i. establishing interim child support payable by JM of \$1,649 per month (based on JM's Guideline income of \$162,637 and SM's Guideline income of \$41,600) effective February 2022; and
 - ii. establishing a week on / week off parenting time rotation, with drop-offs or pick ups or exchanges at CAM's day care, CRM's school or the Bosley's pet store in Invermere;
- (the "JCC Order")

- c) September 9, 2022: Justice Masuhara granted an order:
- i. Dismissing SM's application to vary the Wilkinson Order and the JCC Order, save to provide that, when a parent did not have parenting time, that parent would have parenting time by video conference every other day;
 - ii. Providing that communications were to be factual and related to the Children and free of "unnecessary narratives and grievances";
 - iii. SM was to have sole parenting responsibilities to arrange therapy for the Children;
 - iv. JM was to pay interim spousal support to SM at \$1,413 per month, commencing March 1, 2021 (based on JM's Guideline income of \$162,637 and SM's Guideline income of \$47,397); and
 - v. Child support payable by JM was varied from the JCC Order to reduce the amount to \$1,564 per month.

(the "Masuhara Order")

- d) January 23, 2023: Schwartz A.J. granted the following orders:
- i. Amended the JCC Order to change the location of the parenting exchanges to the RCMP detachment in Invermere; and
 - ii. Ordered a s. 211 report by Leanne Harder or such other person as determined by SM, with the full cost to be paid from the net sale proceeds of the Family Home;

(the "s. 211 Order")

- e) September 4, 2024: Justice Douglas granted an order:
- i. Allowing a \$60,000 interim distribution to each party from the net sale proceeds of the Family Home with the remainder to be held in trust; and
 - ii. Addressed the s. 211 report issues to allow SM to retain Carrie McNeely, Dr. Bolgar or another professional, require SM to sign the necessary retainer forms for that professional and provide that, in the event that JM did not return the forms, SM was at liberty to have the report completed without JM's participation.

(the "Douglas Order")

[28] Many of the provisions in the above interim orders have informed the issues to be addressed at the trial and also been of assistance in formulating the orders that I have granted in the final order, as below.

DATE OF COHABITATION

[29] The parties disagree as to the date when they began cohabiting.

[30] SM takes the position that they began cohabiting on December 31, 2013, when she says JM moved into the Cochrane Residence where she resided.

- [31] JM takes the position that the date of cohabitation was sometime in 2015. He points specifically to the fact that, in 2014, both parties indicating "single" as their status in their income tax filings for that year. In 2015, both parties did change they status for income tax purposes to "common law".
- [32] JM's position on this issue, per his pleadings and court filings and oral submissions, has fluctuated over time. In his original Response to Family Claim, he indicated that the date of separation was on February 1, 2014. The date was later confirmed by JM in his Affidavit #4 sworn August 24, 2022. Later, on May 31, 2023, his Amended Response to Family Claim indicated that the date of cohabitation was August 1, 2019, a date only days before they were married, which is clearly incorrect.
- [33] The fact that parties indicated a legal status of their income tax returns is not determinative of the matter: Barnes-Morrison v. Kolas, 2024 BCSC 2033 at para. 36.
- [34] I do not consider that JM's current position is supported by the weight of all of the evidence.
- [35] By 2015, the parties were well underway in building their lives together in a substantial manner. By early 2014, the parties had shown real commitment to their relationship. JM had moved into the Cochrane Residence and, by spring 2014, he sold the Townhouse in anticipation of purchasing the land on which the Family Home would be constructed. On May 30, 2014, JM's offer to purchase the land was accepted, a key move to solidifying the parties' plan to live together in a rural community.
- [36] I conclude that the date of the parties' cohabitation was JM's initial date of February 1, 2014.

DIVORCE

- [37] The parties seek an order for divorce. Sections 8-12 of the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.) The [DA] set out the requirements that must be satisfied in order for me to grant a divorce.
- [38] I conclude that those requirements are satisfied based on the evidence presented. In particular, as I have found above, the parties have been separated since March 19, 2021. In addition, both parties agree that there is no chance that they will reconcile.
- [39] I will address below the reasonable arrangements that are to be made for the support of the Children, having regard to the applicable Federal Child Support Guidelines, SOR/97-175 (the "Guidelines").
- [40] I grant the parties an order for divorce, to take effect on the 31st day after the issuance of this order.

GUARDIANSHIP / PARENTING OF THE CHILDREN

- [41] SM's pleadings refer to both the DA and the FLA as the basis for the relief she seeks. Nevertheless, I am satisfied that the DA provisions should be applied, although I would add that the result would not have been different under the FLA.
- [42] Each party agrees that both of them are guardians of the Children under s. 39(1) of the FLA.
- [43] SM seeks an order that she have sole decision-making with respect to parental responsibilities for the Children with an obligation to keep JM informed, and subject to JM having the ability to seek information directly from third parties (i.e., teachers and medical professionals, etc.) and his ability to seek a review of any decision she might make.
- [44] SM also seeks exclusive parenting time with the Children, save for JM having parenting time with the Children every other weekend. She also seeks an order that, on an interim basis, JM's parenting time be supervised by a family member or a professional. She seeks an order that this be at JM's cost.
- [45] SM also seeks an order to compel JM to undergo a "psychiatric assessment" at his cost to "confirm his capacity to safely co-parent the Children" without supervision. Until that time, SM says that JM's parenting time should continue to be supervised.
- [46] In the alternative, if no supervision is ordered, SM also seeks an order that JM's parenting time be substantially reduced to every other weekend from Friday afternoon to Sunday afternoon.
- [47] JM seeks a continuation of the existing arrangements, with both parties sharing parental responsibilities. He also seeks an order that the parties continue with the week on / week off parenting schedule that has been in place since October 2021 after both parties moved to Invermere.
- [48] Both parties agree to the continuation of the parenting exchanges at the Invermere RCMP detachment. In addition, they both consent to the appointment of a parenting coordinator.

Legislative Provisions

- [49] Sections 16.1-16.3 of the DA allow this Court to grant a parenting order providing for the exercise of parenting time and decision making responsibility.
- [50] The DA provisions ensure that only the best interests of the children are to be considered in relation to a parenting order:
- 16 (1) The court shall take into consideration only the best interests of the child of the marriage in making a parenting order or a contact order.
- [51] In addressing what is in the best interests of the children, s. 16 of the DA also provides:

16 (2) When considering the factors referred to in subsection (3), the court shall give primary consideration to the child's physical, emotional and psychological safety, security and well-being.

- (3) In determining the best interests of the child, the court shall consider all factors related to the circumstances of the child, including
- (a) the child's needs, given the child's age and stage of development, such as the child's need for stability;
 - (b) the nature and strength of the child's relationship with each spouse, each of the child's siblings and grandparents and any other person who plays an important role in the child's life;
 - (c) each spouse's willingness to support the development and maintenance of the child's relationship with the other spouse;
 - (d) the history of care of the child;
 - (e) the child's views and preferences, giving due weight to the child's age and maturity, unless they cannot be ascertained;
 - (f) the child's cultural, linguistic, religious and spiritual upbringing and heritage, including Indigenous upbringing and heritage;
 - (g) any plans for the child's care;
 - (h) the ability and willingness of each person in respect of whom the order would apply to care for and meet the needs of the child;
 - (i) the ability and willingness of each person in respect of whom the order would apply to communicate and cooperate, in particular with one another, on matters affecting the child;
 - (j) any family violence and its impact on, among other things,
 - (i) the ability and willingness of any person who engaged in the family violence to care for and meet the needs of the child, and
 - (ii) the appropriateness of making an order that would require persons in respect of whom the order would apply to cooperate on issues affecting the child; and
 - (k) any civil or criminal proceeding, order, condition, or measure that is relevant to the safety, security and well-being of the child.
- .
- (5) In determining what is in the best interests of the child, the court shall not take into consideration the past conduct of any person unless the conduct is relevant to the exercise of their parenting time, decision-making responsibility or contact with the child under a contact order.

(6) In allocating parenting time, the court shall give effect to the principle that a child should have as much time with each spouse as is consistent with the best interests of the child.

[52] SM has advanced allegations of family violence, which must also be considered, given the s. 16(1)(j) factor above.

[53] "Family violence" is defined in s. 1 of the DA. The relevant portions (based on SM's allegations) are as follows:

family violence means any conduct, whether or not the conduct constitutes a criminal offence, by a family member towards another family member, that is violent or threatening or that constitutes a pattern of coercive and controlling behaviour or that causes that other family member to fear for their own safety or for that of another person -- and in the case of a child, the direct or indirect exposure to such conduct -- and includes

(d) harassment, including stalking;

(f) psychological abuse;

[54] SM and the Children are "family member(s)" as that term is also defined in s. 1 of the DA.

[55] The DA also sets out what this Court must consider in relation to family violence. Section 16 provides more detail as to matters that must be considered in terms of the impact of "family violence" in relation to the s. 16(3)(j) factor above, when considering any proposed parenting plan for a child:

(4) In considering the impact of any family violence under paragraph (3)(j), the court shall take the following into account:

(a) the nature, seriousness and frequency of the family violence and when it occurred;

(b) whether there is a pattern of coercive and controlling behaviour in relation to a family member;

(c) whether the family violence is directed toward the child or whether the child is directly or indirectly exposed to the family violence;

(d) the physical, emotional and psychological harm or risk of harm to the child;

(e) any compromise to the safety of the child or other family member;

(f) whether the family violence causes the child or other family member to fear for their own safety or for that of another person;

(g) any steps taken by the person engaging in the family violence to prevent further family violence from occurring and improve their ability to care for and meet the needs of the child; and

(h) any other relevant factor.

- [56] The role of family violence in the best interests analysis was discussed in *Barendregt v. Grebliunas*, 2022 SCC 22. Although expressed in the context of a relocation case, the Court's comments apply generally:
- [143] The suggestion that domestic abuse or family violence has no impact on the children and has nothing to do with the perpetrator's parenting ability is untenable. Research indicates that children who are exposed to family violence are at risk of emotional and behavioural problems throughout their lives: Department of Justice, *Risk Factors for Children in Situations of Family Violence in the Context of Separation and Divorce* (February 2014), at p. 12. Harm can result from direct or indirect exposure to domestic conflicts, for example, by observing the incident, experiencing its aftermath, or hearing about it: S. Artz et al., "A Comprehensive Review of the Literature on the Impact of Exposure to Intimate Partner Violence for Children and Youth" (2014), 5 I.J.C.Y.F.S. 493, at p. 497.
- [146] The recent amendments to the Divorce Act recognize that findings of family violence are a critical consideration in the best interests analysis: s. 16(3)(j) and (4). The Divorce Act broadly defines family violence in s. 2(1) to include any violent or threatening conduct, ranging from physical abuse to psychological and financial abuse. Courts must consider family violence and its impact on the ability and willingness of any person who engaged in the family violence to care for and meet the needs of the child.
- [57] *Barendregt* was recently discussed in *K.M.N. v. S.Z.M.*, 2024 BCCA 70, where the court observed:
- [2] Assessing the "best interests of [a] child [for purposes of a parenting order] is a heavy responsibility, with profound impacts on children, families and society": *Barendregt v. Grebliunas*, 2022 SCC 22 at para. 8. It is also a highly "individualized and discretionary" inquiry: *Barendregt* at paras. 9, 97.
- [3] Consequently, an appellate court will only intervene with a parenting order where it is shown that a judge committed "material error, a serious misapprehension of the evidence, or an error in law": *Barendregt* at para. 103, internal references omitted. See also *Van de Perre v. Edwards*, 2001 SCC 60 at para. 11.
- [4] In my view, there has been material error in this case. More specifically, the judge failed to conduct a proper analysis of allegations of family violence advanced by K.M.N., the appellant mother. He did not factually determine those allegations. Nor in assessing the best interests of the child did he consider the effect of the child's exposure to family violence directed towards the mother. Instead, he limited the best-interests analysis to evidence of violence specifically directed towards the child.

SM's Evidence

- [58] SM's position is that this case is about family violence, again, as above, focussed on what she says is harassment (including stalking) and psychological abuse. She refers to the family violence as being directed at her, and therefore indirectly exposing the Children to that family violence: Barendregt at para. 143; S.Z.M. at para. 73.
- [59] SM also asserts that this proceeding is all about "coercive control". She refers to M.A.B. v. M.G.C., 2022 ONSC 7207, where the court discussed this concept:
- [183] There are several aspects of the definition of "family violence" that require special attention in addressing the issues in this case. The first is the concept of "coercive and controlling behaviour." This type of family violence is distinct from others in that it can consist of many different types of acts occurring over time which, in isolation, do not seem abusive or significant, but when viewed in their totality paint a picture of a very abusive relationship. Accordingly, the significance of the individual incidents can only be truly understood in the context of the larger picture. In addition, a pattern of coercive and controlling behaviour is particularly concerning because it is easier to inflict in its various forms post-separation than other types of family violence. The CLRA does not define the terms "coercive" and "controlling," and indeed, doing so would have unduly tied the hands of triers of fact in attempting to address this type of family violence. Coercive control in familial relations has many faces, and it is chameleon-like in the ways that it can evolve, transform, and ebb and flow over time. Further to the principles of legislative interpretation discussed above, the interpretation of the concept of "coercive and controlling behaviour" should be interpreted in a large and liberal manner that best ensures the attainment of the objects of the family violence provisions of the legislation, which is to protect and promote the safety and wellbeing of family members. To date, the caselaw reflects such a broad and purposive approach to the scope of this type of family violence. A general review of this caselaw indicates that "coercive" behaviour includes conduct that is threatening, intimidating or exerts inappropriate pressure on the other person. Behaviour is broadly being considered as "controlling" if its intent or effect is to inappropriately manage, direct, restrict, interfere with, undermine or manipulate any important aspect of the other person's life, including their important relationships and their physical, emotional, intellectual, spiritual, social and financial autonomy or wellbeing.
- [184] For the purposes of this case, it is important to highlight that the concept of a pattern of coercive and controlling behaviour encompasses the following types of behaviour:
1. Engaging in verbal abuse, yelling, name calling and insults (W.A.C. v. C.V.F.; McBennett; K.M. v. J.R.; S.S. v. R.S., 2021 ONSC 2137 (S.C.J.); Freitas v. Christopher, 2021 ONSC 2340 (S.C.J.); M.N.B. v. J.M.B., 2022 ONSC 38 (S.C.J));

2. Making numerous unsubstantiated allegations against the other party (*Armstrong v. Coupland*, 2021 ONSC 8186 (S.C.J.); *I.S. v. J.W.*, 2021 ONSC 1194 (S.C.J.); *K.M. v. J.R.*; *Ammar v. Smith*, 2021 ONSC 3204 (S.C.J.));
3. Unilaterally changing court-ordered parenting time terms without justification (*Armstrong*); and
4. Regularly engaging in behaviour that has the effect of undermining the other parent's authority or influence and alienating the child from that parent (*E.V. v. V.-E.*, 2021 ONSC 7694 (S.C.J.); *Ammar*; *I.S. v. J.W.*; *S.S.G. v. S.K.G.*, 2022 ABQB 130 (Q.B.), per Devlin J.).

[Emphasis added.]

- [60] SM provided a substantial amount of evidence concerning what she contends is the conflict, all laid at JM's feet, over the course of their relationship.
- [61] She refers to some incidents that occurred pre-separation. In this period of time, she also refers to having many complaints about JM that I would characterize more as issues that many couples face, particularly as they adjust to life with children. I have considered those matters, but do not consider them relevant to the issues here, even if true, particularly as to family violence.
- [62] The conflict between the parties began in earnest at the date of their separation. SM describes that they had a fight, in front of the Children. CRM, who was two years old at the time, was upset and crying.
- [63] SM argues that almost all of the correspondence from JM to her and about her is disparaging in tone. I agree that JM speaks of SM in a very negative manner. In the past, he has repeatedly called her a manipulator, a liar, a "low-quality person", and has made comments about her personal life. These communications have been made to SM directly through Our Family Wizard, and to others, including Ms. McNeely and SM's counsel.
- [64] SM has also described a myriad of other incidents over the 2019-2024 time-frame. I will not outline or discuss those in any detail because I propose to address what SM's counsel describes as the "significant points in the evidence". I take these points as central to her argument in contended that JM has engaged in "persistent and consistent coercive control" (which I have slightly edited):
- a) waiting outside of SM's residence for prolonged periods of time and blocking SM's car with his own vehicle;
 - b) conflict at parenting time exchanges including JM disparaging SM in front of the Children. Significantly, on the November 2022 exchange, JM admits that he told SM that she was acting like a psychopath;
 - c) parking for hours outside SM's residence after a discussion with Cst. Kings where he was told the parenting time exchange would occur the next morning;

- d) conflict with the many other people in the Children's lives in front of the Children including using profanity with Cst. Kings when she was attempting to ensure the Children were safe in front of an accident site, taking [CAM] to the school in attempts to pick up [CRM] when it is not his parenting time and speaking about "false sexual abuse allegations" in front of [CAM] and other Children leading to arguments with the principal and teacher;
 - e) arguing with the RCMP and exposing the Children unnecessarily to conflict;
 - f) numerous disparaging and discrediting emails to SM over the course of these proceedings and disparaging emails intended for SM sent through SM's counsel and Ms. McNeely and even to [the court scheduler];
 - f) disparaging SM in front of the Children including in front of [CAM] in the Spring 2022 when the Springdale trailer was sold and advising the prospective purchaser that SM was "a liar" and "could not be trusted";
 - g) repeated breaches of court orders in place including unilaterally taking extra parenting time with the Children without the agreement of SM or order of the court. JM admitted to unilaterally taking parenting time with the Children without the agreement of SM or order of the court in July 2023, October 2023, February 2024 and May 2024.
 - h) breaching the two court orders in place related to the s. 211 report and refusing to participate substantively in the assessment; and
 - i) refusing to agree to any alternative daycare options for [CAM] when SM raised reasonable concerns about the daycare arrangement thus impeding SM's ability to increase her work hours.
- [65] I agree that, post-separation, JM had not acted appropriately in many respects in relation to SM and the Children, including in relation to some of the incidents that SM's counsel relates as above.
- [66] JM has given extensive evidence too as to those incidents. After considering that evidence, which I accept, I conclude that JM's attitude and actions have been largely motivated by frustration and anger directed at SM in relation to two major topics:
- a) JM's disagreement that SM's decision to live in Invermere is the right choice to raise the Children; and
 - b) How SM addressed an issue in spring 2023, when she told the authorities that CAM had stated to her that JM had engaged in inappropriately sexual behavior in touching their daughter. After a thorough investigation by the RCMP and MCFD, nothing came of this investigation. However, in the meantime, SM withheld any parenting time of CAM by JM over some 64 days. JM feels aggrieved by how he was treated, including what he perceives was SM's refusal to accept that the investigation had not revealed any concerns by either MCFD or the RCMP. In addition, JM is angry that SM did not make any effort to acknowledge how he felt and to address his lack of parenting during that time. In turn, JM has levelled his

own sexual abuse allegations at SM, which in my view, do not evidence any such abuse that merits discussion at this trial.

- [67] I do not mean to suggest that JM's inappropriate behavior is excused by his anger and frustration, but it is a relevant factor in considering what actually occurred at these incidents and why.
- [68] The post-separation dealings between the parties have been difficult, particularly in the 2022-2023 time frame, just after the separation and when the sexual abuse allegations arose. In 2024, many of the issues have not continued or arisen.
- [69] I turn to the specifics of the allegations.
- [70] Parking outside of SM's residence: JM admits that he was parked outside of SM's residence at some times. One time was in August 2021, before any parenting schedule was in place when JM came to SM's house in Invermere to see the Children. I accept JM's evidence in that he was attempting to exercise parenting time after returning from Fort Mac, although he did block SM's vehicle for a time unnecessarily. After some conflict and discussion, the parties eventually went to a nearby playground to discuss the matter.
- [71] SM levels allegations of stalking by JM in March 2022 while both were in Golden, when the Family Home was sold; however, I accept his evidence that he was simply parked in Golden (a small town) to complete documentation and that he was not "stalking" SM.
- [72] In December 2022, JM was parked outside of SM's residence attempting to see the Children. A RCMP officer, Cst. Kings, came to tell him to leave, and he did so.
- [73] However, after considering all of the evidence regarding these instances, I am unable to conclude that they represent a pattern of harassment or stalking on JM's part.
- [74] Conflict at parenting exchanges: There have been numerous issues between the parties at these exchanges. For example, when the exchanges were at the Bosley's store, one time JM was asking SM questions in front of the Children. I also agree that, in November 2022, JM called SM a "psychopath" in front of the Children.
- [75] I agree that the Children have suffered some anxiety as a result of these earlier exchanges by reason of conflict between the parties, before the exchanges were moved to the RCMP detachment. In addition, to some extent, the difficulty experienced by the Children at these earlier exchanges has arisen by reason of the young ages of the Children and their difficulty in adjusting to the new parenting regime. This has abated somewhat in later years.
- [76] Some of the conflict at the exchanges arose by reason of SM's father being present. This led eventually to a further order of Schwartz A.J. dated May 16, 2023 to the effect that SM's father was not to attend at the exchanges when JM was present there.
- [77] More recently, the exchanges have been at the RCMP detachment, with no issues. Both parties agree that this should continue.

- [78] Issues with the RCMP/school: In May 2024, JM used profanity in front of the Children within earshot of Cst. Kings at a random incident where all were present. However, the evidence does not establish that JM regularly does this and I would speculate that he is not the first parent to use such language inappropriately in front of a child from time to time.
- [79] SM also refers to an incident at the school in February 2024 when JM was asking to speak to CRM and he was addressed by the RCMP. This was recorded; however, I do not consider that JM's conduct was inappropriate in questioning the RCMP about why he was not allowed by the school to be there when no court order was in place to prevent him from seeing the Children at that location.
- [80] SM also refers to JM attending at CRM's school while "attempting to pick up [CRM] when it wasn't his parenting time". I do not accept that JM was present for that purpose - I find that he was there to drop something off for CRM. JM also interacted with the RCMP at this time, in February 2024.
- [81] I also find that, in 2024, JM attended CRM's school and while there, spoke to the teachers about what he described as the false sexual abuse allegations against him. I agree that he made such remarks inappropriately in front of CAM (who was with him) and within earshot of other children in the playground.
- [82] In December 2022, JM was arrested by the RCMP and charged with criminal harassment. It is not clear to me what exactly forms the allegations against JM. In any event, he was eventually released on an Undertaking prohibiting any communication with SM save through Our Family Wizard for the purpose of arranging parenting time. In addition, the Undertaking prohibited JM being near SM's residence or going to her workplace, or being in SM's presence save for exchanges of the Children at the RCMP detachment. I understand that the matter was scheduled to be addressed in Provincial Court in May 2025.
- [83] In October 2023, JM entered into a Peace Bond issued by the Provincial Court substantially on the same conditions as the Undertaking.
- [84] Springdale trailer sale incident: In spring 2022, the parties were selling the trailer. They both attended in Golden for that purpose. JM did not want SM there, but she attended nevertheless with the Children. JM did make inappropriate remarks about SM in front of the potential purchaser. In addition, SM initiated physical contact with JM in an attempt to wrestle documents from him, although JM did not react in kind.
- [85] Breaches of court orders: JM has unilaterally taken extra parenting time with the Children at numerous times, without court approval. He has done so in an attempt to "make up" the extra parenting time that SM received with respect to CAM when she unilaterally withheld CAM from his parenting time in the spring/summer 2023 for 64 days. I appreciate that she did so given the investigation of the sexual abuse allegations, but she did so without court approval and JM's input or consent.

- [86] Inappropriate Communications: Many of JM's communications via Our Family Wizard have been in breach of para. 3 of the Masuhara Order in that they involved "unnecessary narratives and grievances". For example, JM's name-calling and his comments about SM's intelligence, capacities as a parent, and motivations have no place in such exchanges. Likewise, accusations of lying and manipulation, which are unrelated to the Children, and attempts to rehash events prior to the separation, are inappropriate.
- [87] Daycare Issues: SM and JM have had disagreements in the past about where CAM should go to daycare. I have listened to both sides and both have valid points. In the circumstances, I cannot conclude that JM was acting inappropriately in disagreeing with SM or, particularly, that JM's position constituted family violence or coercive control.

The s. 211 Report

- [88] In SM's view, her proposed parenting arrangements are substantively confirmed by the results of the s. 211 report, which she urges should be accorded much weight at this trial.
- [89] As stated above, the s. 211 Order (January 2023) resulted in the appointment of a qualified person (as determined by SM) to prepare a s. 211 report. The court order provided that the mandate of the assessor in preparing the s. 211 report was to address:
- a) the needs of the Children in relation to the family law dispute;
 - b) the views of the Children in relation to the family law dispute; and
 - c) the ability and willingness of each party to satisfy the needs of the Children.
- [90] By the time of the Douglas Order (September 2024), some one and a half years later, no report had been prepared. Paragraphs 6-7 of that Order required that JM would sign and return forms to hire the assessor; however, in the event he did not, SM was at liberty to have the report completed without JM's participation.
- [91] Ultimately, SM retained Ms. McNeely to prepare the report. Indeed, JM did not agree to participate, citing various reasons, including Ms. McNeely's refusal to provide him with certain information and also, her unwillingness to allow him to record their interactions.
- [92] I will digress at this point to address SM's argument that JM was in breach of the s. 211 Order and the Douglas Order in refusing to participate substantively in the assessment. I disagree. Those Orders did not require JM to participate and indeed, the Douglas Order specifically contemplated that JM might not do so.
- [93] SM's counsel refers to the oft-cited summary of Justice Kent as to the context and purpose of s. 211 reports in *Kwan v. Lai*, 2016 BCSC 1626 at para. 46:
- Section 211 of the [FLA] permits the court to seek the assistance of an independent and impartial investigator and to call on that investigator to make recommendations based on the results of his/her investigation (*K.M.W. v. L.J.W.*, 2010 BCCA 572 at para. 50);

- The facts stated in the Section 211 Report are prima facie evidence of their truth (*supra*, para. 50);
 - In performing this role, the court appointed expert functions as "the eyes and ears of the court" and is expected to be impartial, and unbiased, and to make objective recommendations rather than acting as an advocate for any party;
 - Where the assessor is a registered professional with the College of Psychologists of British Columbia, he/she is expected to abide by the "code of conduct" promulgated by that college which imposes various requirements for undertaking assessments and formulating recommendations that are appropriately comprehensive, objective and balanced;
 - There is no protocol or checklist that must be exactly followed in every case and the authors of Section 211 Reports are free to use their education, experience and expertise to conduct the assessments with an eye to assisting the courts in determining what is in the children's best interests (*L.C.T. v. R.K.*, 2015 BCSC 2378 at para. 419);
 - Nevertheless, the court is not obliged to accept the opinions or recommendations of the Section 211 experts; the court does not abdicate its role as the ultimate decision-maker but will give such weight to the Section 211 experts' recommendations and opinions as is appropriate having regard to the circumstances of the case and the relevant evidence adduced (*Shapiro v. Simpson*, 2016 BCSC 2011 at paras. 102-103).
- [94] First, I will acknowledge Ms. McNeely's qualifications to provide a s. 211 report. She is a registered clinical social worker who has worked in the area for many years and prepared numerous s. 211 reports.
- [95] The s. 211 report is dated February 21, 2025. It is an extensive document, almost 300 pages.
- [96] Ms. McNeely was cross-examined by JM during the course of the trial.
- [97] As Ms. McNeely herself acknowledges, the report suffers from the fact that JM did not participate, for his own reasons, and that he did not provide any information from his collateral sources to her. She did, however, appear to rely heavily on her email interactions with JM.
- [98] As such, much of the Ms. McNeely's information, upon which she based her conclusions and recommendations came solely from SM and her collateral sources, who included SM's father, SM's new partner, SM's friend (Becky Sawdon), and an anonymous counsellor. It appears that SM's statements were considered at face value (para. 349). In addition, Ms. McNeely considered all of SM's collateral sources despite their lack of neutrality and also took all of their statements at face value (para. 21).
- [99] In addition, Ms. McNeely met with the Children, as I will discuss below.
- [100] Another concern that arises is Ms. McNeely's apparent willingness to unilaterally expand the mandate of the report.

- [101] Ms. McNeely asked SM if there were additional issues that SM would like addressed. SM indicated that she wanted Ms. McNeely to address parenting time; decision making responsibility and additional recommendations and resources that may be beneficial to the Children (para. 25). However, SM had no authority to expand the mandate for the report. I appreciate that the parties could have consented to allow such an expansion, but JM did not consent and, more importantly, he was not given advance notice of this unilateral expansion of the matters that Ms. McNeely intended to address.
- [102] Accordingly, I have concluded that little weight is to be given to Ms. McNeely's recommendations to the extent that they go beyond the court ordered mandate.
- [103] I will first address SM's statements to Ms. McNeely. SM recounted numerous things to her, despite that much of those statements were not made at this trial. In light of that fact, I have concluded that I will not rely on any statements by SM in the report that were not stated by her at this trial and tested by cross-examination.
- [104] I accept Ms. McNeely's conclusion that SM is a loving and caring mother. I also accept that SM has been particularly distressed by the past conflicts with JM regarding the Children and (to a much lesser degree) their financial matters. Overall, based on the evidence at this trial, I have carefully considered SM's statements to Ms. McNeely concerning being in an abusive relationship with JM post-separation, involving that he exercised "coercive control" over her. In my view, SM's allegations and concerns were overstated and lacking a perspective of the entire relationship since the separation and why these conflicts occurred (which were accepted from SM's point of view by Ms. McNeely without hesitation or critical review). SM took no responsibility for her (albeit much lesser) involvement in the conflicts that occurred.
- [105] I am also concerned about SM's apparent willingness to attempt to delay the issuance of the report, ostensibly to avoid any negative reaction by JM that the Children may experience (para. 23). In my view, she did so in an attempt to provide as little notice to JM before the trial for her own benefit.
- [106] On October 22, 2024, Ms. McNeely "interviewed" the Children together at SM's home. They spent about 35 minutes together in the Children's bedroom outside of SM's presence. Ms. McNeely asked specific questions about their time at JM's house. Ms. McNeely describes that, at this point in the discussion, the Children became "dysregulated" and exhibited body language (they "shut down") when the Children were answering these questions. However, in response to her question as to whether they felt safe their father's home, CRM said he felt safe everywhere and CAM said she feels safe with both parents. When asked about how much time they wanted to spend at each parent's house, CAM said it was "okay" and any change would be more time to SM's house; CRM said he wanted to keep things the way they were.

- [107] Looking at the issues more broadly, I have found that Ms. McNeely has, by accepting all of the statements made to her at face value, leapt to many conclusions that are simply unsupportable in the circumstances.
- [108] Ms. Sawdon's statements to Ms. McNeely can be accurately described as a hyperbolic and emotional "hit piece" on JM and his family, largely based on hearsay. In particular, Ms. Sawdon does not even live in Calgary (or Invermere) so, in terms of the events, she appears to have little or no personal knowledge of events over the last few years. She clearly has a very negative view of JM and, in my view, presented a narrative that was unbalanced and unreliable in the extreme. I reject Ms. McNeely's conclusion that Ms. Sawdon's statements were "particularly useful" (para. 340).
- [109] I found that the statements in the report from SM's partner and SM's father were much more balanced, despite that much of their information came from SM. One of SM's partner's concerns was supporting the Children through counselling, something both parents have agreed to implement.
- [110] Ms. McNeely quoted extensively from the anonymous counsellor, who largely just repeated what SM had told her about JM's behaviors. Ms. McNeely seemingly also accepted the counsellor's statement that JM was a "narcissistic abuser", despite the counsellor stating to Ms. McNeely that she was not qualified to make any such "diagnosis" (para. 225).
- [111] Ms. McNeely also leaps to what I would describe as other irrational conclusions, including her wholesale endorsement of all of JM's actions as being "coercive control", a term that she emphasized constantly - to a fault - in her evidence.
- [112] For example, JM is accused of using coercive control against SM by reason of him allegedly "befriending" the person at MCFD who was involved in the sexual abuse allegations. JM considered that this person was "smart, logical skilled and competent" in his job, something that was conveyed to SM and Ms. McNeely (paras. 30, 204 and 227). However, this was substantially based on SM's speculation that this "friendship" had occurred and had resulted in MCFD deciding not to pursue the sexual abuse allegations, said to be evidence of "gaslighting" SM. No evidence of any such thing is before the Court.
- [113] In another example, Ms. McNeely concludes, as part of her "coercive control" narrative (para. 207), that JM is:
- .. unwilling to ensure his children receive beneficial and/or necessary health care, is unwilling to provide [SM] with salient information regarding their children's wellbeing, and corroborates [SM]'s and collaterals assertions that the children are isolated in [JM]'s care.
- [114] In coming to the above conclusion that there was "isolation", Ms. McNeely relied on JM's refusal to provide consent for renewed counselling sessions; however, JM has explained that his refusal is based on his childhood experiences and his view that additional "play therapy" would not be effective. I find these explanations rational and supportable, and motivated by the best interests of the children. In addition, Ms. McNeely relied on one

incident in January 2025 where JM sent an email to SM that CRM had a head injury without providing specific details. Even accepting that the email could have been more fulsome, JM states that he provided full time care to his son after that injury to ensure that no real difficulties were present. I do not find his failure to report this immediately to SM, which would have been ideal, to be at all supportive of Ms. McNeely's conclusion.

- [115] In addition, Ms. McNeely apparently relied on the statement of the anonymous counsellor that the Children were "isolated" at JM's home (paras. 231-232). However, this allegation of "isolation" appears to originate solely with SM statements to the counsellor (para. 222). At para. 334, Ms. McNeely again states that there is "isolation", noting that this is because of minimal third parties in the Children's lives.
- [116] However, it is anything but clear about what is meant by this word "isolation" as it relates to JM. He acknowledges that his family live in the Calgary area and not close to Invermere; indeed, his argument is that Invermere is not the ideal place to raise the Children, in terms of family, since both his and SM's family live in the Calgary area. At this trial, JM exhibited to me a present and continuing intention to involve the Children in his family's life, including by seeking an order to allow their attendance at family events.
- [117] In my view, there is absolutely no evidence at this trial that the Children are "isolated" in JM's care. To a large degree, the lack of family and friends arises from SM's decision to live and work in Invermere, a small town with which neither parent had a connection before fall 2021.
- [118] In her "Recommendations", Ms. McNeely states:
349. There is corroboration and direct observation of many of the behaviors that constitute coercive control, however, the Assessor's recommendations are based on erring on the side of safety for the children until such time as [JM] is willing to undergo an assessment that can inform the Assessor's current findings.
350. Based solely on the best interests of the children, the Assessor recommends:
- a. The courts would benefit from [JM] undergoing a forensic psychiatric examination to provide additional in-depth information regarding his mental health and capacity to parent-coparent the children;
 - b. The children would benefit from [JM's] parenting time being supervised by professional supervisors, at his expense, until such time as the forensic psychiatric examination confirms that it is in the children's best interests to be in his care without supervision;
 - c. Once the conditions are met for supervised access to be removed, the parenting schedule should reflect that [JM] is unable to participate in the children's education due to his aggressive behaviors and subsequent ban from the school and his unwillingness to communicate with [SM] about their education. Therefore, it would be more beneficial to the children for them to be with [SM] the weekdays and [JM] to have the children two or three

weekends per month. This allows [SM] to facilitate extracurricular activities and health-related appointments.

- d. The children would benefit from [SM] being given full decision-making responsibility so that she can ensure that the children are able to engage in counselling, medical and dental appointments without censure from [JM]. This would allow the children to participate in the extracurricular activities that she deems are in their best interests and for co-parenting to be non-reliant on the cooperation of the parents.

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[119] Ms. McNeely goes on to recommend that JM be given the right to contact health care providers and the school, the issuance of conduct orders and the appointment of a parenting coordinator. Both parties have agreed to these orders.

[120] As stated in the report (para. 332), and confirmed in her testimony, Ms. McNeely considers that JM loves the Children and there are no issues concerning their safety while in their father's care.

[121] It is hard to pinpoint how Ms. McNeely apparently leapt to the conclusion that there were potential mental health concerns regarding JM, said to support her recommendation for supervised parenting time by JM and that he be required to undergo a psychiatric assessment. SM stated to her that JM's father had "mental health issues" (para. 49). Ms. Sawdon also had no difficulty commenting on JM's father's "mental health issues" based on "stories" she had heard.

[122] At para. 332, Ms. McNeely stated that it is "possible" that JM's ability to parent and co-parent is hampered by his own mental health issues, based on statements concerning JM's father and the tone and content of JM's emails. This leap of logic, particularly regarding JM's father, leading to Ms. McNeely's recommendations for supervised visits and a mandatory psychiatric assessment are, in my view, is unwarranted and unsupportable. At one point, as part of this leap of logic, Ms. McNeely relied on some report that JM's father lived under a bridge, from which she speculated that he was mentally ill based on "research" that most homeless people are mentally ill.

[123] Ms. McNeely also places some emphasis on what she perceived as JM's lack of participation and agreement in the Children's extracurricular activities. Yet, the evidence is to the contrary. Both parties acknowledge that they involve the Children in those activities - both parents take the Children skiing, JM takes CRM motorbiking and JM has enrolled CRM in soccer (which SM agreed was a good idea).

Analysis

[124] I accept that both parties are loving and caring parents who provide adequate and appropriate care in their respective households.

- [125] In particular, the evidence at this trial, which I accept, is that there are no safety or other concerns arising from JM's parenting time with the Children. Ms. McNeely confirmed as much and, at best, her conclusions arising from her short interview with the Children were inconclusive.
- [126] Otherwise, SM relies on her self-assessment that the Children are "sad" or "dysregulated" when they return from JM's house and when they are about to go to JM's house, statements which I find are self-serving and uncorroborated. In any event, I have considered SM's credibility in respect of this evidence and do not accept it.
- [127] I accept, without hesitation, that inappropriate behavior - family violence - directed at a parent, can be equally harmful to children indirectly exposed to that family violence: Barendregt at para. 143. The Court refers to research on this topic, something that Ms. McNeely and SM's counsel emphasized.
- [128] As above, I accept that JM has acted inappropriately in relation to SM from time to time. There is no doubt that JM has little respect for SM and that, at many times, he has expressed his disapproval of SM to many people in his life and hers. However, save for isolated incidents in the past, JM's evidence, which I accept, is that he does not speak negatively about SM in front of the Children and in fact, he provides positive reinforcement about their mother to them.
- [129] Again, SM relies heavily on the s. 211 report as supporting the relief she seeks.
- [130] As stated in *M.F.W. v. M.A.H.*, 2020 BCCA 284 at para. 22, the Court is not required to follow the recommendations of the appointed "expert" and indeed, that the Court should not "abdicate" its role in favour of an assessor's recommendations (adopted in *K.M.N.* at para. 53). Rather, as quoted in *M.F.W.* at para. 22:

The court must not abdicate its role in favour of the recommendations made Regardless of the information that goes to the report writer, the court ultimately has the discretion to review the background information presented in the report, carry out an independent assessment based on the evidence at trial, and come to a different conclusion as to the best interests of the child.

[Citations and emphasis omitted.]

- [131] I have already mentioned that much of the statements provided to Ms. McNeely were not put in evidence at this trial and tested through the trial process. This includes particularly statements from both SM and Ms. Sawdon. I do not place any weight on such statements, given that they were untested before this Court, and to a degree, were contrary to the facts that I have found based on the trial evidence. To that extent, there are serious concerns about the reliability of Ms. McNeely's conclusions arising from those statements: *Fotsch v. Begin*, 2015 BCSC 227 at para. 208, *aff'd* 2015 BCCA 403.

- [132] In general, I have placed little weight on Ms. McNeely's report and particularly her recommendations. In doing so, I would again reiterate that the lack of balance in her report was largely not of her doing, but arose by reason of the fact that JM did not participate. That said, it resulted in a skewed analysis based on one side of the story.
- [133] In addition, Ms. McNeely's analysis was largely based on speculation, arising from a generalization of what research has shown or what SM's counsel refers to as the "social science". Ms. McNeely's recommendations are based on the research mentioned in Barendregt in that she speculates that the Children are being harmed by JM's behaviors in relation to SM, leading to her further speculation that this arises, at least in part, by reason of JM's "potential" mental health issues. In short, Ms. McNeely and SM's counsel argue that it is notoriously difficult to prove indirect harm to children via a parent; effectively, they concede that no such evidence is before the Court. However, they continue with this flawed logic to suggest that, simply as a matter of caution, the Court should infer that such is taking place and put measures in place to address the "potential" issue.
- [134] I do not accept the path that Ms. McNeely and SM's counsel suggest that this Court take. I do not propose to decide this case on the basis of generalizations arising from the research. I am to judge this case based on this family and the evidence put before the Court at this trial.
- [135] As stated in *M.W. v. N.L.M.W.*, 2021 BCSC 1273 [M.W.] at para. 108, the court should be careful before labelling conduct as family violence where there is no evidence that the children have suffered or are suffering any physical or emotional harm, directly or indirectly.
- [136] I do not accept, as Ms. McNeely apparently does, that JM's behavior generally was a pattern of behavior to exert power or "coercive control" over SM as constituting family violence. In my view, the conflicts between the parties were more situational and driven by JM's sense of aggrievement over what he perceived were past wrongs by SM. Those conflicts have also abated over the years, which is understandable as time has sorted out many of the issues between the parties, including co-parenting issues.
- [137] I accept that demeaning remarks to SM in front of the Children can constitute emotional harm: *C.L.M. v. M.J.S.*, 2017 BCSC 799 [C.L.M.] at paras. 361-364, citing *D.N.L. v. C.N.S.*, 2014 BCSC 1417 at paras. 71-75 and other decisions.
- [138] While the Children have been present for some of these conflicts, even assuming they can be described as family violence, there is no evidence that the Children were harmed by it, emotionally or otherwise: *C.L.M.* at para. 365. For example, there is no evidence of the Children exhibited behaviors consistent with being traumatized by those behaviors, other than SM's evidence and Ms. McNeely's interview results, as I have discussed (and rejected) above.

- [139] As did Associate Judge Krentz in *C.M.P. v. D.J.P.*, 2024 BCSC 931 at para. 46, citing *C.L.M.*, I do not find that JM's inappropriate behaviours reach the level of family violence anticipated in the legislation to justify the extreme remedy sought by SM. After considering all of the evidence, as said, I am not satisfied that SM has shown that JM's behaviors have harmed the Children; nor am I satisfied that they have impacted his ability to parent the Children: *L.B. v. D.F.*, 2024 BCSC 2027 at paras. 27 and 41.
- [140] It must be kept in mind that JM moved to Invermere in October 2021 given his commitment to the Children and his desire to co-parent with SM. I accept that a commitment to parenting does not necessarily equate to providing appropriate and safe parenting while in that parent's care. However, JM has been parenting the Children for a significant period of time now - over three and a half years - and by all accounts the Children are well adjusted and thriving in both homes. Absolutely no issues in respect of the Children are indicated by the evidence, save for SM's brief, vague and self-serving statements and Ms. McNeely's thumbnail assessment based on conflicting statements by the Children, which I have not accepted.
- [141] That is not to say that the Children cannot benefit from further counselling to give them an outlet for any issues that may arise in their lives, including in relation to either parent and the parenting regime. In that regard, both parties agree that counselling should be provided.
- [142] Ms. McNeely's speculation - or "working theory" - about JM's mental health status is equally suspect. I acknowledge that the Court may act on evidence strongly suggesting mental health issues that may result in harm to children, which may result in measures being put in place to address those concerns. See for example, *J.A. v. K.A.*, 2024 BCSC 1195 at paras. 214, 223-229.
- [143] The court in *Rosen v. Bromfield*, 2016 ONSC 4033 was faced with a similar factual scenario involving contested parenting issues. The court ordered that the father would have sole custody and the mother would have supervised access:
- [1] The court is tasked with rendering a decision on the custody and access of the parties' five-year-old son. It must do so in the best interests of the son, carefully considering the evidentiary record before it. The evidence demonstrates the love between the mother and her son and the desire of the son to spend meaningful time with his mother. It is a relationship that is properly supported and encouraged in the son's best interests. The evidence further demonstrates, however, that the mother suffers from a psychiatric illness for which she has refused recommended treatment. The court cannot ignore this fact when assessing the son's best interests in the context of custody and access. Unless and until there is objective evidence sufficiently refuting the mother's diagnosis or objective evidence establishing that the illness is being treated as recommended, the court has no choice, in the best interests of the son, but to award custody to the father, with supervised access to the mother.

[144] Here, there is absolutely no evidence of JM suffering any mental health issues, beyond Ms. McNeely's speculation. In particular, having observed JM in Court for many days, I make no such finding and have no such concerns.

[145] In any event, even if JM had mental health issues (which I have not found to be the case as proven or even giving rise to concerns), the best interest analysis requires a child-centered approach in terms of whether any mental health issues are negatively affecting the Children and/or compromising his ability to co-parent.

[146] I will now address SM's request for supervised parenting by JM, supported by Ms. McNeely for the sake of "erring on the side of caution".

[147] In *F.K. v. M.K.*, 2010 BCSC 563 [F.K.] at para. 147, Justice Griffin, as she then was, described the significance of an order that requires supervised parenting:

In *V.S.J. v. L.J.G.*, [2004] O.T.C. 460 (S.C.J.), the court found that an order for supervised access, like termination of access, requires evidence of exceptional circumstances as it is just one small step away from a complete termination of the parent-child relationship: at para. 1.

[Emphasis added.]

[148] In *M.H. v. A.M.*, 2016 BCSC 1664 at para. 132, Justice Skolrood, as he then was, summarized certain factors taken from para. 147 of *F.K.* that can be considered when determining whether parenting time should be terminated or supervised. Those factors are:

1. Long term harassment and harmful behaviours towards the custodial parent causing that parent and the child stress and or fear
2. History of violence; unpredictable, uncontrollable behaviour; alcohol, drug abuse which has been witnessed by the child and/or presents a risk to the child's safety and well being
3. Ongoing severe denigration of the other parent
4. Lack of relationship or attachment between noncustodial parent and child
5. Neglect or abuse to a child on the access visits
6. Older children's wishes and preferences to terminate [parenting time].

[149] As Justice Power stated in *J.A. v. K.A.*, 2024 BCSC 681, clear and exceptional circumstances are required to be proven before supervision will be imposed:

[70] The law is that parenting time is the right of the child: *J.B.D.K. v. T.A.B.*, 2017 BCSC 1186 at para. 132. In *Pellegrini v. Tkach*, 2023 SKCA 85, the Saskatchewan Court of Appeal dealt with a family law issue involving a father who had experienced mental health issues and was self-represented at trial. Madam Justice Drennan, writing for the Court, stressed that parenting time is the right of the child, not the parent, and that any analysis of the best of interests of the child should be centred on the child itself: at para. 22. The court in *Pellegrini* also confirmed that supervised parenting time is to be confined to clear and exceptional

circumstances, and it is not intended to be a long term measure: at para. 16.

- [150] Curiously, Ms. McNeely states that JM would "benefit" from supervised parenting, without any explanation as to what "benefit" would arise. I frankly see none, either to him or the Children.
- [151] Equally suspect in relation to Ms. McNeely's report is her suggestion that the Court would "benefit" from JM undergoing a forensic psychiatric examination. I fail to see how any such benefit might arise, when no mental health issues are apparent to the Court. In particular, her suggestion that this Court would abdicate to this forensic psychiatrist its responsibility to determine what is in the Children's best interests is untenable (para. 350b).
- [152] I also have serious concerns about this Court's jurisdiction to compel JM to undergo such an assessment. SM relies on s. 224(1)(b) of the FLA which provides that the court may grant an order to:
- (b) require one or more parties or, without the consent of the child's guardian, a child, to attend counselling, specified services or programs.
- [153] In Ontario, the family law legislation provides explicit authority to order such an assessment: see *A.C.V.P. v. A.M.T.*, 2019 ONSC 1559 at paras. 293-298; *aff'd* 2022 ONCA 283 at paras. 25-27. In that case, there was evidence of issues that raised concerns before the Court.
- [154] In Alberta, no such provision is found in the provincial legislation, as was noted in *M.G. v. C.G.*, 2022 ABPC 178. In that case, the court found that there were exceptional circumstances justifying supervised parenting by the father. At paras. 36-38, the court was not convinced that it could require that such an assessment be completed.
- [155] SM's counsel was unable to refer to any authority from this Court that interprets s. 224(1)(b) in manner she suggests. She refers to the Provincial Court decision of *J.J.A. v. K.A.C. aka K.A.A.*, 2017 BCPC 127. In that case, the Court ordered the mother to undergo a psychiatric assessment (para. 27) and, arising from the trial, she was ordered to undergo further psychiatric assessment (paras. 285 and 310(12)). Despite alluding to s. 224(1)(b), there is no analysis of the legal basis upon which such relief was granted.
- [156] In my view, a plain reading of s. 224(1)(b) is that it is focussed on counselling and participation in other like "services" and "programs" akin to counselling, such as, for example, reunification programs. I see nothing in that plain reading that would ground this Court's jurisdiction to compel a party to undergo a psychiatric assessment.
- [157] Having said that, I accept that, if evidence is presented to raise concerns before the Court, this Court has jurisdiction to implement a parenting regime to address those concerns, pending being satisfied that any concerns do not impact on that person's parenting ability. In that event, it remains within the purview of the affected parent to address those concerns or not, including by choosing to undertake an assessment and present the

findings to the Court. If that does not occur, then the affected party is left with the original conclusions of the Court. The relief sought by SM goes well beyond this type of relief.

- [158] As I have said, the Children have been in JM's care half of their lives since October 2021. In my view, moving to supervised parenting would not be in their best interests.
- [159] Although JM has acted inappropriately at times since separation, I consider that supervised parenting is not appropriate or supportable. In my view, there are other mechanisms that will assist the parties in co-parenting into the future that are less severe, more beneficial to the parties and less disruptive to the Children: *M.P.D. v. C.R.D.*, 2017 BCSC 397 at paras. 52-53; *M.W.* at para. 109.
- [160] In particular, I am satisfied that JM has received the message and appreciates that his unilateral disruption of the parenting schedule is not to be tolerated as it is not in the best interests of the Children. Again, I acknowledge that JM has felt hard done by in respect of his lost parenting time with CAM in the spring/summer of 2023. However, that situation arose and I accept that SM's cautious approach was understandable; however, SM should have obtained a court order to amend the parenting arrangement while the investigation was underway in light of JM's disagreement as time went on. JM could equally have applied for compensatory parenting time (s. 61(2)(c) of the FLA), but he did not. In addition, JM could have requested compensatory parenting time at this trial, but he did not. I would strongly suggest to JM that he should put this experience, however difficult it was for him, behind him, and move on, for the sake of the Children.
- [161] To assist JM in addressing these issues, I am prepared to order that he engage in counselling for at least six sessions, pursuant to s. 224(1)(b) of the FLA. In doing so, I acknowledge that he has previously engaged in counselling, although the continuing conflicts must still be addressed.
- [162] In conclusion, I am not satisfied that it is in the best interests of the Children to grant SM sole decision making authority. In that regard, I have allocated some of those responsibilities to SM in my specific order below.
- [163] I conclude, with some hesitation, that JM should be equally involved in the major decisions relating to the Children. I appreciate that the communication between the parties to this time has been fraught with conflict; however, I consider that, at least at this time and for the foreseeable future, the appointment of a parenting coordinator will assist the parties in that respect and provide a grounding for a better cooperative relationship between the parents. Both parties have well exhibited the need to act in the best interests of the Children, and I am hopeful that the parties, particularly JM, will put the post-separation conflict and this trial behind them and move to a better path.
- [164] I also reject Ms. McNeely's recommendation and opinion that, even without supervision, JM's parenting time should be reduced substantially to only some weekends per month. In para. 350c, she refers to this being appropriate by reason of JM being unable to participate

in the Children's education, his aggressive behaviors (presumably in relation to SM) and his unwillingness to communicate. She also mentions SM being able to facilitate extracurricular activities more easily, but it is clear that JM is doing that with SM's agreement.

- [165] Ms. McNeely's rationale appears driven more as a "correcting" response to JM's behaviors, rather than focussed on the best interests of the Children, which is the proper analysis. As was stated in *Pellegrini v. Tkach*, 2023 SKCA 85, cited above, the court disapproved of the "corrective behavior" approach now urged by Ms. McNeely:
- [22] the trial judge's parenting order was a punitive measure of sorts, designed to address Mr. Pellegrini's conduct in relation to Ms. Tkach (primarily at exchanges). This is clear from the trial judge's comment that the "restrictions" on Mr. Pellegrini's parenting time "are a function only of his own actions" (at para 62). Not only did the trial judge appear to sparingly parcel out the amount of Mr. Pellegrini's parenting time to chasten him for his behavior during the exchanges, but he also failed to consider the central issue at play, being that parenting time is the right of a child. Thus, the analysis of best interests is a child-centered one, focused on the child's rights, not the parent's (see *A.O. v T.E.*, 2016 SKCA 148 at paras 75-77, 88 RFL (7th) 34). A best interests analysis focused on the child's needs was lacking here, as the trial judge formulated the parenting order as some sort of corrective measure in relation to Mr. Pellegrini's confrontations with Ms. Tkach. Consequently, there is no indication in the trial judge's reasons as to how this restrictive parenting time accords with the child's best interests.
- [166] I am satisfied that it is in the best interests of the Children that the co-parenting regime that has been in place for years should continue. To facilitate that arrangement, and reduce the conflict between the parties, I have made some specific orders in that respect, as set out in the Summary of Orders section. In particular, I am ordering that:
- a) Exchanges will continue to be made at the RCMP detachment in Invermere; and
 - b) Conduct orders be continued, as both parties agree.
- [167] There has been considerable conflict between the parties concerning the video access that was ordered in the Wilkinson Order. JM accuses SM of deliberately sabotaging the quality and time of his video calls with the Children. To some degree, their young ages have not allowed quality time to be spent this way, although I acknowledge that SM appears to have made only minimal effort to assist them. Both parties seem to be resiled to the point of not seeking an order in relation to such calls. However, given that the Children are now older, I order that a parent may seek such video access, hopefully with better success.
- [168] Pursuant to s. 15 of the FLA, the parties agree to engage a parenting coordinator (PC). I agree that the PC will be of great assistance to the parties in smoothing over and resolving any conflicts regarding parenting issues, like the ones experienced in the past.

- [169] Despite some reservations regarding JM arising from his earlier behaviors, I am satisfied that JM has become more self-aware of his actions and behaviors and has realized that, if further conflicts continue to arise by reason of those actions and behaviors, changes may be necessary regarding both parental responsibilities and parenting time. JM agrees that it is in the best interests of the Children that he remain in their lives.
- [170] SM proposes that that the appointment of the PC be a minimum of two years. SM also proposes that, if the parties are unable to agree on a PC, that she be granted liberty to select a PC.
- [171] At the conclusion of the trial, I asked both parties to provide their selection of a PC. SM proposed Greg Lilles or Nancy Matechuk. JM proposed Mark Smith, Neale Taverner or Nancy Matechuk as a third choice.
- [172] I direct the parties to select the following person as the PC, which of course will depend on financial arrangements and their availability, in this order: Nancy Matechuk, Mark Smith, Greg Lilles and Neale Naverne. If the parties continue to have difficulty in arranging a PC, SM has liberty to select the PC, which I consider is the most expeditious way to proceed, given the need to put this assistance in place as soon as possible.
- [173] SM has proposed the following as the mandate of the PC:
- building consensus between the parties, including, but not limited to, by
- (i) Monitoring communication to ensure it conforms with the court orders in place;
 - (ii) Issuing recommendations and/or proposed protocols that the Parenting Coordinator believes would be in the best interest of the Children including assisting the parties with minor changes to the parenting arrangement and parenting exchanges from time to time for the accommodation of holidays and special events and travel that are determined to be in the best interests of the Children; and
 - (ii) Issuing recommendations and/or proposed protocols around travel and the provision of the passport for the children and if necessary making determinations on that issue.
- [174] I consider the above mandate is reasonable in the circumstances.

CHILD SUPPORT

- [175] As set above, for some years now, JM has been paying child support for the Children in accordance with the JCC Order, as amended by the Masuhara Order.
- [176] In November 2024, SM obtained full time employment and is now earning \$132,000 per year in Guideline income. JM's Guideline income for 2025 is \$176,538. As such, the set-off amount given the shared parenting is \$553 (\$2,438 less \$1,885).

- [177] The above net amount will be effective as of November 2024 and the parties will adjust any previous payments accordingly.
- [178] Any s. 7 expenses will be shared in accordance with their respective income, with SM bearing 43% and JM bearing 57%, subject to any recovery under insurance.
- [179] The parties will exchange their tax returns every year in the usual fashion and make any necessary adjustments for the upcoming year.
- [180] At certain points throughout the trial, JM advanced the argument that income should be imputed to SM based on his argument that she should have increased her work (beyond her part-time position at Core Consulting) well before November 2024.
- [181] After reviewing the evidence, I do not consider that SM was intentionally underemployed prior to November 2024. She was working part-time while also juggling child care issues, while restricted to some degree by having to accommodate JM's work schedule. Only in the fall 2024, when CAM started kindergarten did she have a clear path to full employment, which she took.
- [182] In any event, JM did not press the imputation of income argument to any great deal in his final argument or in his draft final order.

FAMILY PROPERTY / DEBT DIVISION

- [183] There are some contested issues to be addressed regarding property division, although the parties largely agree on the outcome.

General Principles of Family Property / Debt Division

- [184] Presumptively, a right to an equal division of family property arises on the separation date, and each spouse is equally responsible for family debt: FLA, s. 81(b). Family property is determined under the FLA in accordance with Part 5, Division 2, which provides that family property includes all property owned by either spouse on the separation date: FLA, s. 84(1)(a). Both parties claim excluded property under s. 85 of the FLA.
- [185] Subject to a contrary court order, family property and family debt are valued on the date of trial and the value is the fair market value at that time: FLA, s. 87(b).

Family Assets / Debts

- [186] The family assets and debts that existed on the date of separation in June 2021 are few and not controversial. I find that the family assets and their values are:

- a) Family Home: In March 2022, the Family Home was sold, resulting in net sale proceeds of \$468,570. On September 4, 2024, the Douglas Order provided for an interim distribution of \$60,000 from the net sale proceeds and payment of Ms. McNeely's retainer. In addition, the Masuhara Order provided for the payment of lump sum spousal support to SM from the net sale proceeds. The amount of \$305,723 remains in trust at this time;
- b) Bank Accounts, Investment Accounts, Vehicles and Debts: the parties have exchanged documentation on all of these assets. Both agree to the allocated values set out in their draft orders, which recognize SM's claim to a portion of her QTrade account and a portion of JM's pension as excluded property. This results in a net asset valuation held by JM of \$183,174 and held by SM of \$105,720;
- c) Springdale Trailer: the parties agree that SM's excluded property of \$14,000 can be traced to the purchase of the Springdale Trailer. It was sold for \$20,500. The parties agree to equally share in the net proceeds after payment of SM's excluded claim;
- d) CPP Credits: Each party has accumulated CPP credits which can be shared; and
- e) RESP: the parties have established two RESP accounts for the Children. They agree that each will continue to administer the ones that each has already established.

JM's Excluded Property Claim

- [187] The only contested excluded property claim under s. 85(1)(a) of the FLA arises with respect to JM's claim for the monies paid on closing to purchase the Family Home.
- [188] JM seeks an order that the amount of \$51,315.32 he paid to purchase the Family Home be excluded.
- [189] SM disputes that JM paid this amount but she offers no real evidence as to where the monies came from. Her evidence on this issue is vague and, in my view, unreliable. At one point, she said that JM used the proceeds from the Townhouse to purchase an excavator (which JM says was purchased later, which I find as a fact happened). She also suggested that all monies to purchase the Family Home came from the builder's mortgage, which is not feasible and contrary to the documentation.
- [190] I accept JM's evidence that the deposit came from the sale of his Townhouse which realized equity paid to him of about \$84,553 on July 18, 2014. Only days later, on July 23, 2014, JM paid the amount due on the closing of the Family Home.
- [191] I acknowledge that the onus remains on JM to provide clear and cogent evidence in support of any exclusion claim. While JM has not produced any bank documentation that shows a direct correlation between the Townhouse net sale proceeds and the amount paid for the deposit, I am satisfied on a balance of probabilities that this in fact occurred. He is not required to trace monies through with great specificity in the circumstances: M.W. at para. 342.

[192] JM is entitled to claim \$51,315.32 as his excluded property.

Equal / Unequal Division of Family Home

[193] JM seeks an unequal division of the net proceeds arising from the sale of the Family Home pursuant to s. 95 of the FLA, contrary to SM's presumptive right to half of that equity under s. 81(b) of the FLA. JM seeks a 60/40 split in his favour.

[194] Section 95 of the FLA requires a finding of "significant unfairness" before unequal division can be ordered. Section 95 provides:

- (1) The Supreme Court may order an unequal division of family property or family debt, or both, if it would be significantly unfair to
 - (a) equally divide family property or family debt, or both, or
 - (b) divide family property as required under Part 6 [Pension Division].
- (2) For the purposes of subsection (1), the Supreme Court may consider one or more of the following:
 - (a) the duration of the relationship between the spouses;
 - (b) the terms of any agreement between the spouses, other than an agreement described in section 93 (1) [setting aside agreements respecting property division];
 - (c) a spouse's contribution to the career or career potential of the other spouse;
 - (d) whether family debt was incurred in the normal course of the relationship between the spouses;
 - (e) of the amount of family debt exceeds the value of family property, the ability of each spouse to pay a share of the family debt;
 - (f) whether a spouse, after the date of separation, caused a significant decrease or increase in the value of family property or family debt beyond market trends;
 - (g) the fact that a spouse, other than a spouse acting in good faith,
 - (i) substantially reduced the value of family property, or
 - (ii) disposed of, transferred or converted property that is or would have been family property, or exchanged property that is or would have been family property into another form, causing the other spouse's interest in the property or family property to be defeated or adversely affected;
 - (h) a tax liability that may be incurred by a spouse as a result of a transfer or sale of property or as a result of an order;
 - (i) any other factor, other than the consideration referred to in subsection (3), that may lead to significant unfairness.

(3) The Supreme Court may consider also the extent to which the financial means and earning capacity of a spouse have been affected by the responsibilities and other circumstances of the relationship between the spouses if, on making a determination respecting spousal support, the objectives of spousal support under section 161 [objectives of spousal support] have not been met.

[195] As discussed by Justice Butler (as he then was) in *Remmem v. Remmem*, 2014 BCSC 1552 at para. 44, the "significant unfairness" test requires more than just unfairness. He stated that it means "more than a regular impact - something weighty, meaningful, or compelling".

[196] As I understand it, JM's argument is largely based on his concern that he, and he alone, will have to face the potential of being called upon to remedy any defects in the Family Home, arising from the fact that he was an owner builder.

[197] In my view, this factor does not meet the higher threshold required to establish significant unfairness. I come to that conclusion after considering that JM is entitled to a remedy in relation to that potential liability via other means.

[198] JM also argues that he should recover \$12,922 from the sale proceeds from the Family Home, being expenses that he incurred from separation to the time of sale. He comes to that figure after tallying up costs from April 2021-March 2022 for the mortgage, BC Hydro, the 2021 property taxes and construction supplies he used to do further work on the Family Home.

[199] SM has indicated some willingness to share in these expenses, subject to her argument that, in return she should be paid the child support that she did not receive from March 2021-November 2021 when JM's payment began. In addition, she was paying for her own accommodations from the time of separation.

[200] I agree that the practical result is that the period from March 2021-October 2021 is a "wash" in the sense that the child support is offset by any amounts for Family House expenses for which SM would be liable.

[201] From October 2021, neither party was living in the Family Home, net expenses had to be paid to maintain it, while each was also paying for accommodation in Invermere.

[202] I agree that fairness demands that the parties should share in the following expenses for the five month period from November 2021 to the date of sale in March 2022, as follows:

Mortgage

\$8,275

BC Hydro

\$1,184

Property taxes

\$1,919

Construction Supplies

\$1,046

TOTAL

\$12,424

[203] Therefore, SM will pay JM the amount of \$6,212 from her half share of the net sale proceeds from the Family Home.

[204] Otherwise, the parties will equally divide the net sale proceeds from the Family Home. JM will also provide an equalization payment to SM in relation to the financial assets and debts, as above, in the amount of \$38,727 (half of \$77,454, the difference between the net assets of each party).

Liability Issue

[205] As stated above, JM undertook the building of the Family Home for himself and SM and their Children.

[206] Pursuant to the Homeowner Protection Act, S.B.C. 1998, c. 31 [HPA], JM was considered a "owner builder" under the definition in s. 1. Under s. 20 of the HPA, an owner builder, who obtains authorization under the legislation, is not required to obtain home warranty insurance.

[207] In accordance with s. 21 of the HPA, JM gave notice to the purchaser of the Family Home that the home is not covered by home warranty insurance.

[208] Pursuant to s. 23 of the HPA, an owner builder is deemed to provide statutory protections for the home. Those protections include (a) that the home is free from defects in materials and labour for at least 2 years; (b) that the building envelope is free from defects for at least 5 years; and, that the home is free from structural defects for at least 10 years.

[209] Given that the Family Home was first occupied in December 2016, the structural defect warranty is still in place until December 2026.

[210] JM is concerned that, if any structural issues arise in respect of the Family Home, he alone will face that liability, given that he was the owner builder who was on title.

[211] SM states that she is willing to agree to an order that, in the event JM is liable for a cost associated with the Family Home, she will be equally responsible for the cost of the repairs or liability. I accept that an order to that effect is a proper remedy in the circumstances to alleviate any risk that arises against JM, given that SM equally benefitted from the construction and sale of the Family Home.

SPOUSAL SUPPORT

- [212] In accordance with the Masuhara Order, JM has been paying spousal support to SM retroactive to March 2021 in the amount of \$1,413 per month.
- [213] I understand that payment of spousal support by JM ended in November 2024 when SM obtained full time employment.
- [214] Although SM initially sought to continue spousal support for a short period of time after November 2024, I am satisfied that it should have ended after a final payment in October 2024.
- [215] During the trial, there was some issue concerning the tax treatment of the spousal support that JM had paid to SM. It is my understanding that SM has now refiled her tax returns to reflect this income. Similarly, JM is at liberty to refile his returns to claim a deduction for the amounts paid.
- [216] Accordingly, no further order is therefore necessary to address this issue beyond confirming the termination date.

PROTECTION ORDER

- [217] SM seeks a protection order pursuant to s. 183 of the FLA prohibiting the respondent from attending at, or near her residence or workplace. In addition, SM seeks an order restraining JM from directly or indirectly communicating with her, save through Our Family Wizard or within the parenting coordination process.
- [218] JM is agreeable to such orders being granted.
- [219] I consider that such orders are appropriate in the circumstances.

SUMMARY OF ORDERS

- [220] The following orders are granted (with the usual preamble and the reference to the details of the Children):

Divorce Order

1. Subject to s. 12 of the DA, the claimant, SM, and the respondent, JM, who were married at Kelowna, BC on August 10, 2019, are divorced from each other, the divorce to take effect on the 31st day after the date of this order.

Parenting Responsibilities

2. The Claimant and the Respondent are guardians of the Children pursuant to s. 39(1) of the FLA.

3. Subject to the paragraphs below, the Claimant and the Respondent will equally share the decision-making responsibility with respect to the Children under s. 16.3 of the DA, as follows:
 - a) Making decisions respecting where the Children will reside;
 - b) Making decisions respecting the Children's education and participation in extracurricular activities, including the nature, extent and location;
 - c) Making decisions respecting the Children's cultural, linguistic, religious and spiritual upbringing and heritage;
 - d) Giving, refusing or withdrawing consent to medical, dental and other health-related treatments for the Children;
 - e) Giving, refusing, or withdrawing consent for the Children, if consent is required;
 - f) Receiving and responding to any notice that a parent or guardian is entitled or required by law to receive concerning the Children;
 - g) Requesting and receiving from third parties, including relating to the health, education or other information respecting the Children;
 - h) Subject to any applicable legislation,
 - i. Starting, defending, compromising or settling a proceeding relating to the Children; and
 - ii. Identifying, advancing and protecting the Children's legal and financial interests;
 - i) Exercising any other responsibilities reasonably necessary to nurture the Children's development.
4. The Claimant and the Respondent will continue to exercise decision making authority to make day-to-day decisions affecting the Children and have day-to-day care, control and supervision of the Children during their respective parenting time.
5. Notwithstanding the above, the parties are free to enrol the Children in counselling, provided that they will only be enrolled with one counsellor at a time in addition to the school counsellor. In the event of disagreement as to the choice of counsellor, the Claimant shall have the right to choose the counsellor, after informing the Respondent of that choice.
6. Each party will keep the other apprised as soon as possible of any major decisions made by him or her in exercising her parental responsibilities for the Children through Our Family Wizard or, in the event of an emergency, other communication means.

7. Each party will have the obligation to discuss with the other party any significant decisions that have to be made concerning the Children, including significant decisions about the health (except emergency decisions), education, religious instruction and general welfare of the Children, and an obligation to try to reach agreement on those decisions. In the event that the parties cannot reach agreement on a significant decision despite their best efforts, the parties are to refer the matter to the parenting coordinator to assist in that regard.
8. The parties will keep the other parent reasonably informed, through Our Family Wizard, of any appointments, educational or health matters, or the Children's schedule of events and activities.
9. The Claimant will continue to be solely responsible to apply for any passports for the Children, and will continue to hold the existing passports with respect to any future travel by either parent, subject to them being used by either parent, as will be arranged.

Parenting Arrangements

10. The Claimant and Respondent will equally share all parenting time with the Children, consistent with the week on/week off rotation that has been in place since late 2021.
11. Unless otherwise agreed by the parties, all parenting time exchanges will take place inside the RCMP detachment located at 4936 Althamer Road, Invermere, BC.
12. The parties are encouraged to discuss times when either parent would like to spend one-on-one time with one of the Children, by allowing the other child to remain in the care of the other parent.
13. The parties will ensure that the Children are made available to the other parent, regardless of whose parenting time, in circumstances of death, funeral, or extreme injury of a close family member to the parties.
14. The parties are encouraged to come to a mutually agreeable adjustment to the parenting schedule to allow each parent to have an extended period of holiday time to allow that parent to travel with the Children.
15. The parent with parenting time will also allow some reasonable access to the other parent not having parenting time on special occasions, such as Christmas Day, Halloween, Easter, Thanksgiving, Mothers' Day, Fathers' Day, the parties' birthdays and the Children's birthdays.
16. Upon request, the parent who has parenting time will allow and make reasonable efforts to facilitate reasonable video or phone access to the other parent to the Children.
17. The parties are at liberty to arrange such other parenting time as is agreed between the parties in writing.

18. Pursuant to s. 224(1)(b) of the FLA, the Respondent will engage in counselling for at least six sessions to address his relationship with the Claimant and their co-parenting of the Children to foster a more cooperative approach on his part.

Parenting Coordinator

19. Pursuant to s. 15 of the FLA, the parties shall forthwith retain a parenting coordinator (the "PC") from the British Columbia parenting coordination roster for a minimum of twenty-four months to assist in resolving any contested issues regarding parenting arrangements, with the costs to be shared equally between the parties with liberty to the PC to reallocate costs.
20. If the parties are unable to agree upon the choice of a parenting coordinator within one month's time (after exhausting the list of parenting coordinators identified in the reasons for judgment), the Claimant is at liberty to select the parenting coordinator.
21. The PC may assist the parties in the following manner by building consensus between the parties, including, but not limited to, by:
- i. Monitoring communication to ensure it conforms with the court orders in place;
 - ii. Issuing recommendations and/or proposed protocols that the PC believes would be in the best interest of the Children including assisting the parties with minor changes to the parenting arrangement and parenting exchanges from time to time for the accommodation of holidays and special events and travel that are determined to be in the best interests of the Children; and
 - iii. issuing recommendations and protocols related to travel and the provision of the passport for the children for that purpose and if necessary making determinations in relation to travel for the Children that is determined to be in the best interests of the Children.

Conduct Orders

22. Pursuant to ss. 225 and 227 of the FLA:
- a) The parties will:
 - i. put the best interests of the Children before their own interests;
 - ii. encourage the Children to have a good relationship with the other parent and speak to the Children about the other parent and that parent's partner in a positive and respectful manner; and
 - iii. make a real effort to maintain polite, respectful communications with each other, refraining from any negative or hostile criticism, communication or argument in front of the Children;
 - b) The parties will not:
 - i. question the Children about the other parent or time spent with the other parent beyond simple conversational questions;

- ii. discuss with the Children (or in the presence of any other child) any inappropriate adult, court or legal matters, including any mention of the sexual abuse allegations against the Respondent or the Claimant; or
- iii. blame, criticize or disparage the other parent to the Children; and
- c) Neither party will use physical force in any fashion to discipline the Children, while exercising their parenting time.
- 23. Pursuant to s. 183 of the FLA, the Respondent is prohibited from attending at, nearing or entering the Claimant's residence or workplace.
- 24. Pursuant to s. 183 of the FLA, the Respondent is restrained from either directly and/or indirectly communicating with, or attempting to communicate with the Claimant, save and except using the Our Family Wizard application and within the parenting coordination process. Any communications through Our Family Wizard by either party will be solely relating to the Children and will be conducted in a respectful manner.

Child Support

- 25. The Claimant is found to be a resident of BC with Guideline income of \$132,000 for 2025.
- 26. The Respondent is found to be a resident of BC with Guideline income of \$176,538 for 2025.
- 27. Based on the above Guideline incomes, effective November 2024, and continuing on the first day of each month thereafter, the Respondent will pay to the Claimant the sum of \$553 for the support of the Children.
- 28. The parties will share s. 7 expenses, as defined in the Federal Child Support Guidelines, in proportion to their respective incomes with the current proportion being 57% payable by the Respondent and 43% payable by the Claimant.
- 29. For so long as child support is payable by the parties, they shall:
 - a) Exchange their respective income tax returns once per calendar year, before July 1; and
 - b) Make adjustments to the amount of child support and proportional sharing of the s. 7 expenses to be paid in accordance with the Federal Child Support Guidelines.

Property Division

- 30. The following is determined to be family property and family debt after accounting for the Claimant's \$25,000 excluded gift in the First Calgary chequing account ending 5157 and the Respondent's excluded portion of his Sunlife pension:

Property Division Chart

Respondent

Claimant

BANK ACCOUNTS

Respondent's RBC account 9824

\$8,529.75

Claimant's RBC account 8009

\$1,200.11

Claimant's RBC savings account 8017

\$5,260.55

INVESTMENT ACCOUNTS

Respondent's RBC RRSP 8941

\$29,834.74

Respondent's Sunlife pension and RRSP

\$184,191.78

Claimant's QTrade investment accounts

\$92,449.04

Claimant's RBC TFSA 0514

\$109.15

Claimant's First Calgary term deposit 5157

\$1,051.00

Claimant's First Calgary chequing account (5157)

\$5,290.04

Claimant's First Calgary common share dividend account 0015

\$300.32

Claimant's First Calgary common member share account 0023

\$60.00

VEHICLES

Respondent's F150 purchased pre-separation

\$18,500.00

DEBTS

Respondent's RBC Visa

-\$14,478.31

Respondent's RBC LOC

-\$43,403.96

Subtotal

\$183,174.00

\$105,720.21

31. The Respondent is entitled to excluded property of \$51,315.32 arising from the sale of his Townhouse and his payment from those funds for the purpose of paying monies due on closing for the purchase of the Family Home.
32. The net sale proceeds from the Family Home will be distributed equally between the parties, after having deducted the Respondent's excluded property claim and his claim for reimbursement of expenses relating to the Family Home of \$6,212.
33. The net sale proceeds from the sale of the Springdale trailer will be distributed equally between the parties, after having deducted the Claimant's excluded property claim of \$14,000.
34. The Respondent will make an equalization payment to the Claimant of \$38,727 in respect of the financial assets, vehicles and debts.
35. Each party is responsible for his or her own debts, unless otherwise ordered here.
36. The Claimant will be sole administrator of the RESP with QTrade for the benefit of the Children.
37. The Respondent will be the sole administrator of the RESP account with Sunlife for the benefit of the Children.
38. The Respondent's signature is dispensed with on any forms required to transfer the QTrade RESP into the Claimant's name which she will administer for the benefit of the Children.
39. The Claimant's signature is dispensed with on any forms required to transfer the Sunlife RESP into the Respondent's name which he will administer for the benefit of the Children.
40. Neither party will have an obligation to contribute to the RESP but will provide a record upon written request up to once per calendar year for their contributions to the RESP or any other RESP for the Children to the other party.

Spousal Support

41. The spousal support payable to the Claimant will terminate effective after October 2024.

Other Relief

42. If the Respondent is called upon to meet any financial obligation to a purchaser of the Family Home, arising from his liability as an owner builder, the Claimant shall be obligated to pay one-half of any such liability, in addition to half of any costs incurred by the Respondent is addressing any such claim.
43. If any such claim referred to the immediately preceeding paragraph arises, the Respondent will notify the Claimant immediately and provide copies of all relevant documentation.
44. All other relief sought in the Notice of Family Claim and Counterclaim are hereby dismissed.

COSTS

- [221] There has been somewhat divided success in respect of the relief granted at this trial, although JM has been largely successful in respect of the major issues regarding parenting of the Children. He has already effectively paid half of Ms. McNeely's expense from the net sale proceeds of the Family Home and I do not propose to change that obligation.
- [222] However, given the outcome of the parenting issues, SM will be responsible to pay any further expenses of Ms. McNeely arising from her attendance at the trial.
- [223] I decline to make any further costs award such that the parties will bear any further costs that they may have incurred.

"Fitzpatrick J."

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