

CANADA / JUDGMENT

T.M.H. v. P.J.H.

2020 BCSC 804

COURT

Supreme Court of British Columbia

DECIDED

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2020 BCSC 804 T.M.H. v. P.J.H.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

T.M.H. v. P.J.H.,

2020 BCSC 804

Date: 20200601

Docket: E050418

Registry: New Westminster

Between:

T. M. H.

Claimant

And:

P. J. H.

Respondent

Before: The Honourable Madam Justice Adair

Reasons for Judgment

Counsel for the Claimant:

Y. Leibovitz

The Respondent appearing in person:

P. J. H.

Place and Date of Trial:

New Westminster, B.C.

March 2-6, 9-10, 2020

Place and Date of Judgment:

New Westminster, B.C.

June 1, 2020

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 1. Introduction
 - [1] This is a high-conflict family law case, with the conflict centred on the parties' three children. There have been many court applications, appearances and orders prior to the trial.
 - [2] In these reasons, I will refer to the claimant-mother (who now uses her maiden name) as "Ms. D." I will refer to the respondent-father as "Mr. H."
 - [3] Ms. D is now seeking:
 - (a) an order for divorce, to which the respondent agrees;
 - (b) an order under the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.), that she have sole custody of the parties' children;
 - (c) orders under the Family Law Act, S.B.C. 2011, c. 25, that she have sole guardianship, that all parental responsibilities be allocated to her, that she determine Mr. H's parenting time, and that any parenting time for Mr. H be supervised;

- (d) orders that Mr. H pay retroactive and ongoing child support, based on an income of \$80,000 imputed to him under the Federal Child Support Guidelines, less any amounts paid, and orders concerning payment of s. 7 expenses, both ongoing and retroactive;
 - (e) conduct orders under the Family Law Act, including an order pursuant to s. 221, that Mr. H be enjoined from filing any court applications without first seeking leave of the court.
- [4] Mr. H filed a counterclaim in which he sought spousal support and various orders respecting the parties' children, as well as orders concerning property division. As I will describe below, prior to trial, consent orders were pronounced dealing with most property issues. Then, at the beginning of the trial, Mr. H advised that he was not pursuing any of the remaining claims in his counterclaim (specifically spousal support), apart from the claims relating to the parties' children. He opposed the orders sought in that regard by Ms. D. His remaining property claims were formally dismissed by consent order pronounced March 3, 2020.
- [5] I will first comment briefly on the proceedings at trial, before reviewing the evidence. I will then set out my discussion and analysis on the specific issues before me.
2. Brief comments on the proceedings at trial
- [6] The trial was unusual in that Mr. H, who was representing himself, chose to attend only intermittently. When the case was called on the first day of trial, Mr. H applied for an adjournment, arguing that the trial should not proceed without a report under s. 211 of the Family Law Act. In these Reasons, I will discuss why there was no s. 211 report for the trial. The application for the adjournment was opposed, and in the result, I dismissed it. Mr. H left the courtroom shortly thereafter and did not return that day. The trial proceeded with Ms. D's case, and she was called as the first witness. Mr. H attended very briefly the morning of the second day, when he handed up an F8 financial statement he swore on March 2, 2020. Mr. H did not attend at all the third day (March 4).
- [7] However, Mr. H returned to the courtroom on March 5 (the fourth day of trial) and remained for the full day. Ms. D was still giving her evidence-in-chief. Mr. H also attended court on March 6. When Ms. D's examination-in-chief concluded toward the end of the morning, he began his cross-examination, which continued for the balance of the day. My impression of the cross-examination was that it was thoughtful and had purpose. I have certainly heard worse cross-examinations conducted by lawyers. In response to my inquiry at the end of the court day, Mr. H indicated that he might be calling some witnesses for his case, but would be brief. Mr. H had not filed any trial brief in advance of the trial, as the Supreme Court Family Rules required him to do.
- [8] Mr. H continued with his cross-examination of Ms. D on March 9. Ms. D's only other witness, her current partner, who I will refer to as Mr. M, was then called and gave his evidence-in-chief. Mr. H then cross-examined him. After Mr. M was excused as a witness, Mr. Leibovitz then read in some questions and answers given by Mr. H on his examination for discovery,

as part of Ms. D's case. Mr. H did not stay for this, citing work commitments. Before Mr. H left for the day, I asked him whether or not he would be calling a case. He said that he would not be, but indicated that he planned to make submissions.

- [9] On the morning of the final day of trial, Mr. H again attended in court. However, he left the courtroom when an evidentiary ruling went against him near the close of the claimant's case. He did not return. He called no evidence and made no submissions.
- [10] Just before the close of Ms. D's case, three large collections of documents were admitted into evidence, with limits on their admissibility and use. None of these documents were, on their own, admitted as proof of the truth of facts stated in them.
- [11] Exhibit 8 is 176 pages and is a paper copy of text messages between Ms. D and Mr. H covering the period January 7, 2016 to February 13, 2020. In their evidence at trial, both Ms. D and Mr. M described how the collection was created in the format presented at trial. Both were cross-examined on the collection and how original text messages came to be in the format in Exhibit 8. At trial, Mr. H objected to the collection being admitted into evidence, on the basis that original records had not been obtained from the service provider. However, other than Mr. H's suspicions, there was nothing to suggest that production of the original records would have been of any benefit to anyone in terms of showing the text communications sent and received on the dates indicated. Since Mr. H did not testify, there was no evidence to the contrary to contradict the evidence given by Ms. D and Mr. M concerning the accuracy of what was shown in the paper record and the explanation of how it was created from the original records. During her evidence-in-chief, and her cross-examination, Ms. D was taken to a number of the messages in this collection.
- [12] When I overruled Mr. H's objection to this collection being admitted into evidence, Mr. H became angry, left the courtroom and did not return.
- [13] Exhibit 9 is a printed copy of 617 pages of e-mail messages that Ms. D and Mr. H began exchanging around mid-July 2016 and up to February 8, 2020. It was admitted into evidence as prima facie proof of e-mail messages sent and received on the dates indicated, sent by the person indicated to the person indicated, subject to evidence to the contrary. Again, at trial, Ms. D was taken to a number of these messages.
- [14] A paper copy of a 332-page collection of communications between Mr. Leibovitz (including members of his office) and Mr. H, covering the period beginning January 17, 2018 to February 19, 2020, was entered into evidence as Exhibit 10. Like Exhibit 9, Exhibit 10 was admitted as prima facie proof of communications sent and received on the dates indicated, sent by the person indicated to the person indicated, subject to evidence to the contrary. Despite its volume, this collection did not include copies of documents filed with the court. Ms. D testified that she received copies of the communications in this collection, and she was taken to a number of pages during her evidence.

3. Review of the evidence

- [15] I am going to review the evidence in some detail. So far as custody and parenting of the children are concerned, past conduct is not to be taken into consideration unless it is relevant to a parent's ability to act as a parent for a child and to the extent that it is relevant to a determination of what is in the best interests of a child. I have concluded that Mr. H's past conduct, illustrated in both his communications with Ms. D and her counsel after this litigation was filed, and in the court proceedings, provides valuable insight into Mr. H's personality, his ability to deal with stress, his ability to prioritize the needs of his family - and specifically his children - over his own wants, his ability to address the children's need for stability in their lives, and his ability to exercise parental responsibilities.
- [16] Ms. D was born in May 1971, and is now 49. She is currently employed as a special education teacher at an elementary school in the Lower Mainland.
- [17] Mr. H was born in August 1965, and is now 54.
- [18] Ms. D and Mr. H lived in the same neighbourhood in Surrey in the 1980s. According to Ms. H, they met one another in February 1988, and they began living together in December 1988. They were married in August 1993. They are parents of three children. Their oldest child, a daughter ("TPK") was born in January 2005 and is now 15. Their middle child, a son ("PKM"), was born in January 2008, and is now 12. Their youngest child, a son ("CPH"), was born in December 2010, and is now 9.
- [19] Apart from her maternity leaves, Ms. D has spent very little time since her late teens out of the paid workforce. She took a maternity leave in connection with the birth of each of the children. In more recent years, she has taken leaves from work because of the stress of dealing with family issues and this litigation.
- [20] On the other hand, Mr. H's employment and work history is sketchy at best. I have concluded that is not because Mr. H has no history, but because he chose not to explain and describe that history at trial. There is virtually no reliable evidence concerning his income in the five or six years before the parties separated in January 2016, and (as I will describe below) no reliable evidence concerning his income after separation. Based on the evidence presented at trial, Mr. H earned income after the parties separated, and, based on his evidence concerning his expenses, earned considerable income. However, he received it in cash.
- [21] Based on Ms. D's evidence, there were warning signs early on that her relationship with Mr. H was going to be difficult, stressful and challenging. She described how, throughout the time the parties were together, he controlled the finances for both of them, was very secretive about his and the family's financial affairs, and got upset when she spent money. Ms. D described how, after the parties separated, she discovered a large bag filled with documents hidden in the basement of the former family home. Mail addressed to her, and cheques payable to her, were among the documents in the bag.

- [22] Ms. D described Mr. H's behaviour toward her, even early in the relationship and marriage, as controlling. His control extended to matters such as the length of her hair, whether she could wear makeup, the type of deodorant she could use and her clothing. She described him as "dictating everything." She said that when she tried to oppose what he wanted, he would badger and bully her, and she would give up. Ms. D recalled that, when she was pregnant with TPK, she tried to get Mr. H to sit down with her and choose a name for the baby. She recalled that he told her she could pick the name if it was a girl. However, Mr. H then changed his mind when he did not like Ms. D's choice, and their daughter was given a different name. This incident illustrated a pattern in the relationship, where Mr. H would offer to let Ms. D decide something, but then, when he did not agree with her decision, he would withdraw his approval and argue with her until he got his way.
- [23] Ms. D began working as a teacher in 1995. She completed her Bachelor's degree in 1996, and then finished her teaching degree. She then moved into teaching in the elementary school system. Ms. D completed her Master's degree in 2002.
- [24] As Ms. D recalled, two weeks after TPK was born, she was interviewed for a vice-principal's position. She was then hired as a school vice-principal in July 2005.
- [25] However, as Ms. D recalled, around this time, Mr. H told her that he was involved in illegal sales of drugs (marihuana), and he was running an illegal grow-op out of a commercial property they owned (the "Shop"). Mr. H ignored her protests, and, according to Ms. D, this was a typical feature of the parties' relationship. In addition, Mr. H told her that he was trading on the stock market, and, as Ms. D recalled, he would be trading in the morning when she was getting ready to go to work. Although Mr. H insisted on controlling the family finances, he was financially irresponsible and ran up large balances on a credit card issued to Ms. D.
- [26] According to Ms. D, she was the parent who looked after all of TPK's medical appointments, vaccinations, play groups and play dates.
- [27] As Ms. D recalled, after PKM was born in January 2008, she was struggling to look after both TPK and a newborn. She explained that she was diagnosed with post-partum depression and was prescribed medication. However, as Ms. D recalled, Mr. H told her that she should not be taking medication and that what she needed was exercise and to see a naturopath. That is what happened.
- [28] As Ms. D recalled, she was alone much of the time with the children. She described Mr. H as working long hours. However, she did not really know what he was doing. She recalled that once Mr. H arrived home with a duffle bag full of cash. She never knew what his income was. According to Ms. D, Mr. H always did the income tax filings for the two of them. When she would ask to see things, he would tell her, "no, don't worry, just sign," and he always seemed to be in a hurry. She did as he asked.

- [29] In the fall of 2010, TPK started kindergarten at the elementary school where Ms. D was vice-principal. Ms. D was then pregnant with CPH, who was born at the end of December.
- [30] Ms. D explained that she again took maternity leave when CPH was born, and was on leave from December 2010 to August 2011. She explained that she did not want to have to return to work, but Mr. H told her that she had to go back. That is what she did.
- [31] How Mr. H was earning an income at this time, and what it was, is unknown. Indeed, there is no reliable evidence concerning Mr. H's actual income at any relevant time. There is no evidence that, at any time during the marriage, or since separation, Mr. H ever paid income tax. However, Mr. H has skills as a carpenter, renovator and welder, and, using those skills, was paid, almost always in cash, for his work.
- [32] Moreover, although, based on the evidence, Mr. H does not have any advanced education, my impression is that he is very intelligent. I find support for this in his written communications with both Ms. D and with Mr. Leibovitz, for example. While the positions he takes are often unreasonable, argumentative and counterproductive, he is articulate and has no problem expressing himself. However, his determination to get his own way, and his self-absorption, very seriously clouds his judgment, including, sadly, with respect to what is in the best interests of the parties' children.
- [33] There is some evidence, from Ms. D and from the F8 financial statement sworn by Mr. H in June 2016, that, beginning in late 2010 and for several years after that, Mr. H was trading on the stock market, and had a number of trading accounts. Stock trading was consuming more and more of his life, in an unhealthy, obsessive way. Based on the evidence at trial, I conclude that Mr. H was making and then losing large sums of money, in the hundreds of thousands of dollars. He was also incurring debts in (at least) the tens of thousands of dollars. He kept all of this hidden from Ms. D during the time the parties were together, and, after the parties separated, Ms. D was left to try to sort out and find a way to pay significant debts. That is what she did. There was no reliable evidence that any income or money Mr. H received or earned before the parties separated was used to support the family.
- [34] Ms. D described how in 2012 and 2013, she was working full-time and also looking after the children. According to Ms. D, she did all the grocery shopping and all the housework. She was the parent who organized and took the children to activities. She was the parent who put the children to bed. She was the parent who met with the children's teachers. Although she was working full-time, her school schedule also provided her with long breaks during the summer, for example.
- [35] As Ms. D recalled, in 2013, PKM was having difficulties with his speech, which was hard to understand. He was about to start kindergarten and needed help. As Ms. D recalled, she asked Mr. H to look after getting PKM the help he needed, and she provided Mr. H with information about people to contact. However, Mr. H never contacted anyone. Ms. D then followed up herself with the speech pathologist at her school. According to Ms. D, PKM was assessed as having moderate to severe delays. Ms. D did daily therapy with him during the

summer, so that he was ready to start kindergarten in the fall.

- [36] Ms. D explained that there is a history of mental illness in Mr. H's immediate family. In September 2013, Mr. H appeared to deteriorate mentally. If there was a trigger, Mr. H chose not to explain it at trial. However, it appears to have been related to significant financial losses Mr. H was sustaining on the stock market. Ms. D recalled that one day she came home from work to find Mr. H with all of the children upstairs in the house in a bedroom with all the blinds drawn. She recalled that things got worse in October. Mr. H was telling her they needed to move, that people were after him. As she recalled, he was barricading doors to the house. One night, after the children were in bed, he called the police.
- [37] Ms. D recalled a very strange series of events in mid-October. Mr. H asked her to go to a mall with the children and stay there until he called her, which she did. When Mr. H called, he was out front in a van. As she recalled, he rushed her and the children into the van and began driving erratically. They ended up at the Tsawwassen ferry terminal, and got on a ferry to Victoria. As Ms. D recalled, the family stayed the night at a hotel in Victoria. She recalled that Mr. H was crying and upset. The next day, the family ended up at a motel near Parksville. Ms. D recalled that Mr. H was not making sense. She told him that he needed to see a doctor and that it was dangerous for him to drive. According to Ms. D, the family then went to another motel for three more nights. Finally, she told Mr. H that she was not going to continue and was going to take the children back home.
- [38] The family then returned to the Lower Mainland. As Ms. D recalled, she told Mr. H that she wanted them to go home. However, he wanted to go to Stanley Park, and drove them there. As Ms. D recalled, as they drove around Stanley Park, everyone was crying, including Mr. H. She recalled that Mr. H parked the van, opened the door and ran into the bushes. She then drove back to the mall, where they had started and where the family truck was still parked. She contacted her brother-in-law, who I will refer to as "BM," and he took Ms. D and the children to his home.
- [39] Ms. D explained how, with help from a friend, Mr. H was admitted into the psychiatric ward at Surrey Memorial Hospital. As Ms. D recalled, he was there about 10 or 12 days, and she visited him many times. She was at a loss about what to do, and she said that she knew Mr. H needed her support. Ms. D explained that she was also desperate to hold the family together.
- [40] Beginning in mid-October 2013, Ms. D took a leave from her job. She did not return to work until the beginning of March 2014. She also began counselling in November 2013.
- [41] While Mr. H was in hospital, Ms. D was learning about things Mr. H had kept hidden from her. She learned that she was seven years behind in filing her taxes. Mail arrived showing a very high balance on a credit card that she thought Mr. H had paid down. Ms. D arranged to get a line of credit to pay off the credit card debt.

- [42] As Ms. D recalled, after Mr. H was released from hospital, he continued to have problems. He did not appear to be taking the medication prescribed for him. He refused all offers of help.
- [43] As Ms. D recalled, in December 2013, Mr. H told her that he had lost \$100,000 trading on the stock market, which upset her a great deal. She recalled that Mr. H told her that she and the children would be better off without him. She recalled that Mr. H wanted to go to the children's school to say goodbye to them, but Ms. D said no. Mr. H then created a video on an iPad, saying goodbye to the children. This has come to be known as the "suicide video."
- [44] Unfortunately, Mr. H suffered another breakdown. He threatened to kill himself and, on December 30, 2013, ended up back in hospital.
- [45] However, by the spring of 2014, as Ms. D recalled, Mr. H was doing much better. He began seeing a counsellor and a psychiatrist. Ms. D and Mr. H sold their house and a neighbouring property they owned. They purchased a new home around the end of February 2015.
- [46] Ms. D recalled how things were at this time. She described Mr. H as being aloof with the children. She recalled that he would speak to them in a loud voice, essentially telling them not to bother him because he was busy. Once CPH told Ms. D that Mr. H was at home crying. As Ms. D recalled, Mr. H would raise his voice to her and argue with her. She described herself as shutting down in response to this.
- [47] According to Ms. D, in the summer of 2015, the family went on a road trip to Disneyland. She recalled that Mr. H would not allow her to drive. However, she recalled that he was driving erratically and got a speeding ticket. She recalled, more alarmingly, that Mr. H was trading stocks while driving, using a large laptop which he balanced on the front-seat armrest. As Ms. D recalled, when she asked him to stop, he would not listen to her. He had not listened to her when she asked him a few months earlier to stop trading and concentrate on family. As Ms. D recalled, when the family reached their destination - Disneyland - Mr. H continued trading, with the blinds drawn in the place the family was staying. Ms. D took the children to the beach. Mr. H would only join them after the markets closed at 1:00 p.m.
- [48] Ms. D recalled that, on December 1, 2015, she received a message on LinkedIn from an old friend, Mr. M. Ms. D described Mr. M as her first love, before she met Mr. H. Ms. D and Mr. M had had no contact with one another since the late 1980s, until the December 1 message. Ms. D and Mr. M arranged to meet for coffee on December 4, 2015.
- [49] As Ms. D described, while they were together, Mr. H displayed a jealous and possessive streak as far as she was concerned, as well as being controlling. He was resentful and difficult when she spent time with friends, to the point that it was something she rarely did. He was overtly suspicious of male co-workers at her school.
- [50] In the evening on January 1, 2016, after the children were in bed, Ms. D told Mr. H that she wanted a separation. As she recalled, Mr. H argued with her before he left the house, saying he was never coming back. However, he came back the next morning, and entered the

house through the door to a basement suite. As Ms. D recalled, when she and the children came downstairs, he said to all of them that "Mummy wants a divorce," "Mummy doesn't want to try, and won't go to counselling." Ms. D recalled that Mr. H was crying and the children were crying. As she recalled, this behaviour went on for some days. She told him to stop, and that he should not be talking like this in front of the children. However, Mr. H did not stop. He was unable - or unwilling - to restrain himself from acting out in front of the children.

- [51] After January 1, both Ms. D and Mr. H remained in the family home. The temporary arrangement was that Mr. H was to occupy the basement, and Ms. D and the children would be upstairs. However, according to Ms. D, Mr. H would come into her area unannounced. She recalled that, once, Mr. H woke her up at 3 a.m. insisting that they talk, and proceeded to yell at her for three hours. Ms. D recalled him threatening to tell the children things, such as that Ms. D was leaving to go and live with another man, which was not true. On the one hand, he described her as his safety net. On the other, he threatened to hire a private investigator to watch her, and to take the children out of school.
- [52] As Ms. D recalled, when she checked her bank account on January 7, 2016, all the money had been withdrawn. She was very concerned about what Mr. H would do, since he had the children's passports, and she called the police. The money from her account was eventually returned. However, as Ms. D recalled, she was very scared to be in the same house with Mr. H. She recalled that Mr. H was yelling at her in front of the children, and the children were crying. As Ms. D recalled, she talked to Mr. H about leaving the house, but he refused to leave. She described Mr. H as unpredictable; sometimes he was very angry, sometimes he was very nice towards her. Although there was a lock on her bedroom door, at least twice she came out of the shower to find him in her bedroom. According to Ms. D, Mr. H claimed that she was having an affair, which was not true. He called her a "horrible vile monster" in front of their sons.
- [53] Because Ms. D was afraid to be in the house when Mr. H was there, she sometimes stayed with friends. Ms. D explained that she felt Mr. H was using the children to control her, essentially to prevent her from leaving him. He would not leave the house so that she could spend time there alone with the children after she came home from work. Text messages from early February show the two of them arguing about parenting time, and that Mr. H was very reluctant to accept that the marriage was over.
- [54] On February 12, 2016, Ms. D picked up the children at the family home for what had been pre-planned parenting time that weekend. Mr. H had plans to visit his niece and had gone to Victoria. Later that evening, Ms. D and the children went to a transition house. On February 14, 2016, Ms. D sent Mr. H a text message, telling him that she and the children were safe, and asking him to follow along with the legal process. Mr. H then went missing for a brief period, leading Ms. D to contact police, who were able to locate him.

- [55] Because of the stress of the family situation, Ms. D took a leave of absence from work from February 12 to December 2016.
- [56] Ms. D's notice of family claim was filed on February 19, 2016. The same day, Ms. D made a without notice application for an order under s. 91 of the Family Law Act, enjoining Mr. H from dealing with any family assets. That order expired on February 24, 2016.
- [57] On February 24, 2016, a number of orders were pronounced on application by Ms. D. These included a protection order restraining Mr. H from communicating with Ms. D, either directly or indirectly, except by email or text. Mr. H was also restrained from attending at any location where Ms. D might be present, and specifically the former family home ("5850"), her workplace, and the children's school and preschool. A further order provided that Ms. D have exclusive occupancy of 5850, which was to be the primary residence of the children. The orders provided further that Mr. H could apply to set aside or vary the terms on four days' notice.
- [58] Ms. D and the children remained at the transition house for a month. After leaving the transition house, Ms. D and the children stayed with Mr. M and his son, while Mr. M prepared 5850 in accordance with the safety plan recommended by the transition house. Ms. D explained that she was concerned about her safety, and that of the children. Mr. M set up an alarm system and security cameras at 5850.
- [59] Ms. D and the children moved back into 5850 on April 1, 2016. Mr. M explained that, while he was looking after getting the security upgrades done to 5850, he received notice from his landlord that the property he was renting was to be sold. Ms. D did not feel safe at 5850, and, as the basement suite in the house was now vacant, there was room for Mr. M and his son. They moved in at the end of April.
- [60] On May 20, 2016, Mr. H (through a lawyer) filed a response to family claim. There, Mr. H asserted that Ms. D was living with the children at 5850 with Mr. M, whom Mr. H described as Ms. D's "boyfriend." Apart from Mr. H's suspicions, there was, at the time, no basis in fact for Mr. H's claim, and there was no need (other than petty vindictiveness) to mention it in the court document.
- [61] The idea that, at the time Ms. D and Mr. H separated, she was having an affair with Mr. M was not a point that Mr. H chose to pursue when he cross-examined Ms. D and Mr. M at trial. Since these matters were irrelevant to the remaining issues in this case, Mr. H showed good judgment in not pursuing them on cross-examination. However, Mr. H's belief that Ms. D and Mr. M had been having an affair before he and Ms. D separated, that Mr. M stole Ms. D away from him and broke up his marriage and his family, has been unshakeable. He has shown himself to be extremely jealous, and, despite the passage of time, intent on making Ms. D suffer for what he perceives as her betrayal of him. Mr. H has been unable to see how much his behaviour has negatively affected and hurt his children.

- [62] In his response to family claim, Mr. H disagreed with all of the orders sought by Ms. D in her notice of family claim, apart from a divorce.
- [63] On May 25, 2016, Mr. H (again through a lawyer) filed a counterclaim. The only grounds for divorce stated were that the parties had lived separate and apart since January 1, 2016. However, he repeated the assertion that Mr. M was Ms. D's "boyfriend." With respect to the parties' children, Mr. H sought an order that he and Ms. D have joint custody and joint guardianship, and that the children's primary residence be with him. With respect to parenting time, he sought an order that Ms. D have "generous" parenting time or, in the alternative, that they have equal parenting time. Mr. H asked for orders that Ms. D pay both child support (including a contribution toward expenses under s. 7 of the Guidelines) and spousal support. Mr. H also sought orders concerning family property and debts. Mr. H sought an unequal division of family property and debt, asserting (among other things) that he had remained "predominantly out of the workforce to care for" the children and had "assisted the Claimant's personal career objectives." He also asserted that he had been the primary caregiver for the children throughout the marriage, and required reapportionment "as a result of having the primary obligation to provide for" the children and to attain economic self-sufficiency. As I note later in these reasons, the idea that he had been the children's primary caregiver became a theme in Mr. H's notices of application, as if repeating it made it true. It was not.
- [64] A notice of judicial case conference was filed on June 7, 2016, scheduling a judicial case conference for July 7, 2016. Shortly after the notice was filed, Ms. D filed a notice of intention to act in person.
- [65] However, before the judicial case conference, Mr. H (through his lawyer) filed a notice of application on June 29, 2016 (the "June 29 NA"), for a July 13, 2016 hearing date. In the notice of application, Mr. H sought 14 substantive orders and an order for special costs. Among the orders sought by Mr. H were:
- (a) that the orders pronounced on February 24, 2016 be set aside;
 - (b) that the children's primary residence be with him and that Ms. D have "generous" parenting time, or alternatively, that he and Ms. D have equal parenting time;
 - (c) a conduct order directed only at Ms. D;
 - (d) an order imputing a Guidelines income to Ms. D, and that she pay spousal support, retroactive to January 1, 2016 in the sum of \$2,425 per month (assuming no shared parenting) and child support of \$2,072 per month;
 - (e) an order that Ms. D reimburse Mr. H for "the expenses incurred by him for professionally supervised parenting time" with the children;
 - (f) an order that Ms. D pay occupational rent; and

- (g) an order that Ms. D pay a fine of not more than \$5,000 "for failing to provide the relevant documents and information within her possession or control."
- [66] At the judicial case conference on July 7, 2016, both Ms. D and Mr. H were represented by counsel. Mr. Justice Blok (who presided) ordered that the parties were to exchange a list of documents within 30 days from the date of the order, and they were released from the JCC program.
- [67] In advance of the judicial case conference, and as he was required to do under the Supreme Court Family Rules and based on the claims made in the notice of family claim and his counterclaim, Mr. H swore an F8 financial statement, which was filed June 29, 2016. In this financial statement, Mr. H stated that he was self-employed as a "welder/carpenter." He stated that he had no income. However, he presented a budget with total annual expenses of over \$119,000. After rent or mortgage, the largest single monthly expense item was described as "Other (supervised visits)" at \$1,906.
- [68] At this point, I will observe that the financial picture presented by Mr. H in his F8 financial statement, his assertion that he had no income, and the income reported in the tax returns attached to his financial statement, are neither credible nor reliable. His actual income is known only to Mr. H, and he has chosen to keep it hidden from both Ms. D and from the court (and, no doubt, from the Canada Revenue Agency). I conclude that, based on the contents of Mr. H's June 29 NA, he was aware that there were potentially serious consequences where a party to a family law case failed to make the financial disclosure required, and that one of those consequences was that the court would impute income to that party. Indeed, his lawyer advanced precisely that argument in the June 29 NA, citing sections 16-21 and 23 of the Guidelines.
- [69] Based on the content of the June 29 NA, I conclude that Mr. H also must have known that, in the context of a family law claim and especially in relation to children, a parent's conduct mattered. In the June 29 NA, he asked specifically to have the court punish Ms. D for her conduct. The June 29 NA is not the last time that Mr. H asked for such orders against Ms. D. However, despite knowing that a parent's conduct mattered, Mr. H was unable to restrain and manage his own conduct, even when the court had ordered he must do so.
- [70] Mr. H's application was heard on July 13, 2016 by Master Keighley. The entered order reflects that both parties attended the hearing, that Mr. H was represented by counsel at the hearing, and that Mr. M (who is not a lawyer) appeared as Ms. D's agent. Among the orders made by the Master were that (and I paraphrase):
- (a) the protection order pronounced February 24, 2016 was varied so that the parties could contact one another by text message "solely for the purpose of facilitating parenting time . . . as ordered";

- (b) until further court order, beginning July 7, 2016, Mr. H would have three unsupervised two-hour visits with the children, every Monday and Wednesday from 5:00 p.m. to 7:00 p.m. and every Saturday from 11:00 a.m. to 1:00 p.m., unless otherwise agreed;
 - (c) Mr. H would take all medications as prescribed;
 - (d) during his parenting time, Mr. H would keep a fully charged and functioning cell phone, provide his cell phone number to Ms. D and not remove the children from the Lower Mainland;
 - (e) either party could apply to have the terms of the parenting time reviewed after September 30, 2016;
 - (f) the balance of Mr. H's application was adjourned generally; and
 - (g) costs were in the cause.
- [71] Ms. D raised the matter of the hidden documents in text messages she exchanged with Mr. H in early August 2016, at a point when Ms. D was trying to get information from Mr. H about his trading accounts. In one of the texts sent on August 8, 2016, Ms. D said: "Do you even remember hiding that stuff? Why?" Mr. H responded: "Yes I remember. I may have thought that you would not come back to me if you found that paper work." From this I conclude that Mr. H recognized what he had been doing was harmful to his family, and he feared having to face the consequences of his behaviour. Rather than confess, seek forgiveness and accept help to change his behaviour, his solution was to hide, and keep what he was doing secret.
- [72] Mr. H filed a notice of intention to act in person on August 16, 2016.
- [73] By the fall of 2016, the parties, who were now both representing themselves, were communicating with one another on major matters through e-mail, although for a period in October and November, Mr. H was sending Ms. D handwritten communications. The protection order that had been pronounced on February 24, 2016, prohibiting Mr. H from attending at any location where Ms. D might be present, was still in place, as was the order restricting the means by which Mr. H could communicate with Ms. D.
- [74] However, there is evidence that Mr. H's perspective on the end of his marriage had shifted, at least temporarily. In his communications, Mr. H was much less self-centred and more willing to listen to Ms. D's views on what needed to be done to move matters forward. In two of his handwritten communications, Mr. H wrote to Ms. D that "I would like you to know that you have a strong voice with me." Mr. H expressed what appears to be sincere regret over his past behaviour. He was less combative and more conciliatory. He expressed a willingness to work together with Ms. D to lessen the impact on the children.
- [75] Several times in these communications, Mr. H expressed his strong wish that the two boys be put back in gymnastics, and said that he would pay for gymnastics for all three children. In a communication in early November 2016, Mr. H wrote [all sic]:

You and the kids will never be in financial jeopardy as long as I am around. I will do what ever it takes to support both you and the kids. I will always do the right thing.

[76] As a result, in November, Ms. D and Mr. H were able to agree on the terms of several final court orders, which went by consent.

[77] A final consent order was pronounced on November 2, 2016 whereby Ms. D retained sole ownership of three motor vehicles and Mr. H assigned all his rights to two of them to Ms. D. By a further term of this order, Ms. D retained "sole ownership on a final basis, free from any claims" by Mr. H of 5850.

[78] On November 10, 2016, Ms. D and Mr. H exchanged e-mail about Mr. H assuming responsibility for a number of debts, and payment terms. At the time, Mr. H indicated that he wanted to "under promise and over deliver." Ultimately, a final consent order was pronounced on November 10, 2016 (the "November 10 Order"), whereby Mr. H:

- (a) assumed sole responsibility for a number of debts, which were declared not to be family debts, totalling \$78,724.58, and agreed to indemnify Ms. D in respect of them; and
- (b) agreed to pay Ms. D \$1,000 per month as ongoing debt repayment, for the first 6 months following pronouncement of the order, and to pay her a minimum of \$1,500 per month, commencing May 20, 2017, until the full amount was repaid.

[79] However, as of trial, Mr. H had not made any of these payments.

[80] On November 15, 2016, the court pronounced orders requiring production of a number of documents by Mr. H, including documents relating to trading accounts, and notes and clinical records from Mr. H's health care providers beginning in the fall of 2013. A term of the July 13, 2016 order was also varied so that the parties were allowed to contact one another by e-mail concerning issues other than parenting time relating to the family law case.

[81] Another final consent order was pronounced on November 21, 2016 whereby Mr. H waived all rights to Ms. D's teacher's pension plan and her Canada Pension Plan, which were to remain Ms. D's sole property.

[82] By order pronounced December 6, 2016, the protection order pronounced on February 24, 2016 and varied on July 13, 2016 was extended to December 6, 2017.

[83] During this period, Mr. H was exercising his parenting time, in accordance with court orders. There is nothing in the evidence to suggest any difficulties in that respect.

- [84] However, by April 2017, the parties' post-separation relationship had deteriorated. As property matters had largely been dealt with through the final orders pronounced in November 2016, the main focus was now matters relating to the parties' children. Instead of conciliatory and constructive, Mr. H's communications became demanding and unreasonable, and, occasionally, threatening, especially when he did not get what he wanted. The parties' relationship has never recovered.
- [85] On April 18, 2017, Mr. H filed a notice of application seeking (among other things) an order that he and Ms. D have equal custody of the children, increased parenting time for himself, and the appointment of a parenting co-ordinator. Ms. D opposed his application.
- [86] Mr. H's application was heard by Madam Justice Gerow on April 21, 2017. Among other things, Gerow J. ordered (the "Gerow Order"):
- (a) preparation of a report under s. 211 of the Family Law Act, with the parties to determine how to finance the cost of the report;
 - (b) for Mr. H, increased (over what was ordered on July 13, 2016) interim parenting time on Saturdays, or as agreed between the parties, between 10:00 a.m. and 5:00 p.m.;
 - (c) that the parties attend the course "Parenting After Separation";
 - (d) that the parties were to correspond by one e-mail per week on Saturdays, and the other party would respond within 24 hours, including if any subsequent response was required;
 - (e) the parties were permitted to communicate by text message regarding visits with the children;
 - (f) neither party would discuss any conflict, parenting issues or the other parent with the children;
 - (g) neither party was to set court matters unilaterally. They were to text the other party with a notice of intention and available court dates, and to expect a response within 24 hours; and
 - (h) the parties were to set the action for trial as soon as possible.
- [87] Madam Justice Gerow also seized herself of matters relating to the Gerow Order.
- [88] Ms. D completed the Parenting after Separation course. The documentary evidence discloses that she repeatedly asked Mr. H whether he had done the same. There is no evidence that Mr. H ever completed this course.
- [89] In e-mail exchanged at the end of May 2017, Mr. H was aggressive, belligerent, hostile and sarcastic. He insisted, without any foundation whatsoever, that Mr. M was sending e-mail communications using Ms. D's name and e-mail account. As late as January 2020, Mr. H was continuing to assert that Mr. M was drafting Ms. D's e-mail.

[90] Ms. D's unchallenged evidence is that she personally drafted all of her communications to Mr. H. I accept her evidence and find that those are the facts.

[91] Mr. H was obsessed (again, without any foundation) with the idea that Ms. D was being controlled by Mr. M.

[92] Mr. H's response to an e-mail sent by Ms. D on May 27 illustrates Mr. H's outrage and inability to control himself when frustrated [all sic; Mr. M's first name redacted]:

I am not able to respond to this email as I would be breaching a court order not to communicate through a third party. [Mr. M] stay the F##K out of my affairs.

[93] Ms. D responded:

As with all my emails, that email was from me. As per court order, please respond to my questions and suggestions within 24 hours of delivery.

Thank you[.]

[94] Within about 15 minutes, Mr. H responded [all sic; Ms. D's and Mr. M's first names redacted]:

[Ms. D] if this is in fact you. You have never been up on a Saturday morning at 6 am in your life, except when you were working as a waitress.

[Mr. M] has been controlling this whole situation from what I suspect at least the middle of 2015 and probably longer and I am sick of this piece of shit interfering in mine and my kids life.

[95] Ms. D responded, explaining that she had used available technology to schedule an e-mail she had composed the previous evening to be sent at 6:00 a.m. on May 27.

[96] Mr. H responded within 30 minutes and said in part [all sic; Ms. D's and Mr. M's first names redacted]:

[Ms. D] I no longer believe anything you say as you have been captured under a spell of that piece of shit [Mr. M]. You and that piece of garbage have both lied and continue to lie. . . . These are both our kids and I DO NOT want that piece of garbage left alone with then . . .

[97] The Gerow Order included a term requiring the preparation of a s. 211 report, and obligating the parties to determine how to finance the report. In an e-mail Mr. H sent to Ms. D on May 28, 2017, Mr. H said in part [all sic; Mr. M's first name redacted]:

I will not agree to any of your ideas for paying for the s. 211 report. I will agree that [Mr. M] and [Mr. M] alone should pay for the 211 report.

[98] In the same e-mail, Mr. H asserted that Mr. M was no longer to be left alone with the parties' children. He expressed the view that a court hearing needed to be set as soon as possible, on the basis that there was a "child safety" issue.

[99] Mr. H's proposal that Mr. M pay for the report was ridiculous. Moreover, apart from Mr. H's personal antipathy toward Mr. M, there has never been any foundation for his suspicions that Mr. M's presence created any form of child safety issue.

[100] Mr. H followed up with another e-mail on May 29, where he said [all sic]:

If you are not going to respond to me then I will set a hearing with the judge without you. I have given you many chances to give me a times when you are available with no response. I am concerned for the safety of our children and will proceed without you if I don't hear from you by 3 pm today.

[101] Despite the threat, Mr. H did not follow through. However, this, too, became part of a pattern in his dealings with Ms. D. I find that his threats were intentional, and designed to try to intimidate and bully Ms. D into doing what Mr. H wanted.

[102] Ms. D and Mr. H exchanged a series of e-mail on June 3, June 4 and June 5 2017, beginning with an e-mail from Ms. D.

[103] One of the matters raised in Ms. D's e-mail was setting the action for trial (a term of the Gerow Order). Ms. D advised that she had reserved a trial date for a 10-day trial beginning November 27, 2017, based on Mr. H's view that five days would be insufficient. She asked Mr. H to confirm that the day was acceptable and also asked if he would contribute to the filing fee for filing the notice of trial. With respect to preparation of the s. 211 report, Ms. D put forward the names of three individuals as potential report authors, and included some information about timing and costs. She asked Mr. H to explain his reasons for rejecting her suggestions for paying for the s. 211 report to be completed. Ms. D also mentioned payment of fees for TPK to attend gymnastics, and asked Mr. H whether he would be contributing.

[104] In this e-mail, Ms. D also asked Mr. H to send along payment of child support for May, which had not been paid. Payment of child support became another major point of contention between Ms. D and Mr. H. Ms. D wanted to have child support payments made in a "traceable" way, so that there would be a record of the timing and amount of each payment, and asked Mr. H many times to do this. However, Mr. H adamantly refused, insisting that he would only pay in cash. He accused (again, without any foundation) Mr. M of stealing a cash support payment, and, later, inappropriately involved TPK in transporting cash.

[105] In Mr. H's response to Ms. D's June 3 e-mail, he continued to persist in his ridiculous position that Mr. M should pay for the s. 211 report, saying [all sic; Mr. M's and Ms. D's first names redacted]:

As I stated in my last email [Mr. M] and [Mr. M] alone can pay for the section 211 report as he is the person controlling all of your negative actions as well as forcing you to lie to the court to manipulate the whole situation well before we were even separated.

I now believe that all are [our?] conversations through email have been [Mr. M] controlling you so he can have everything that is important in my life taken from me so he is able to have it all for himself.

...

[Ms. D] I don't put any blame on you for what is going on, you are under the spell of this very evil thing that has invaded your life as well as the kids and my life. I do forgive you for every thing you have said and done none of this is your fault.

I don't have any expectations of our situation getting any better as [Mr. M] would never allow that to happen.

[106] In my view, Mr. H's response demonstrates a disturbing lack of respect for Ms. D and her ability to think for herself. He belittles her and insults her intelligence, and concludes (falsely) that because he no longer can control her and get her to do what he wants with respect to the children, she must be in the control of another man.

[107] In her response sent on June 4, Ms. D asked Mr. H to explain what his child safety concerns were, and (among other things) said:

It is very important that you help move the Section 211 forward as this is what will help any child safety concerns each of us have. It is also important to have the trial move forward as well. Please address these in a constructive and cooperative manner.

Please be cooperative and answer my emails - past and present. I plead with you on this. I just want us to be able to move forward.

[108] That evening, Mr. H sent a lengthy e-mail to Ms. D. The tone is angry, accusatory and disrespectful. Mr. H repeated his suspicions about how the separation came about in January 2016, and that Mr. M was involved. He implied that Ms. D continued to act under the control of Mr. M, who he asserted would never let Ms. D and him work things out between the two of them. He claimed that he gave money for child support to Mr. M and accused Mr. M of stealing it. He did not explain his child safety concerns. He did not respond to Ms. D's questions about securing a trial date and sharing the cost of filing the notice of trial. With respect to payment of the s. 211 report, Mr. H said [all sic; Mr. M's first name redacted]:

I like the idea of [Mr. M] paying for the section 211 report as I think it is time for him to step up and stop all the manipulation of our situation.

[109] In the context of Mr. H's e-mail, his closing words, "Goodnight [Ms. D]. Have a good day at work tomorrow," are sarcastic and obnoxious.

[110] Ms. D responded later that evening, again asking Mr. H to respond to her questions. She reminded Mr. H that Mr. M had been facilitating picking up and dropping off the children in connection with Mr. H's parenting time, something that was necessary because of the protection order still in place. Ms. D told Mr. H that, given Mr. H's accusations against Mr. M, this would stop, and asked him to let her know who would now be dropping off the children at her home at the end of parenting time, and picking them up on weekends.

[111] Mr. H responded early in the morning on June 5, threatening a court application. His message read in part [all sic; Mr. M's first name redacted]:

With the level to which [Mr. M] has now moved this situation we need to get before a judge to seek guidance. . . .

There seems no level to which [Mr. M] is willing to take this to.

Please give me your times and dates so we are able to get before a judge to make some orders to deal with both of our concerns that [Mr. M] has now created. It is not acceptable for him to steal the kids money and say that I now threatened him in some way.

Please respond right away because I will not accept this situation as it stands.

[112] Again, Mr. H's closing words, "Have a good day [Ms. D]", are contemptuous and sarcastic, given the content of his message.

[113] Continuing themes can be seen in the parties' e-mail communications for the remainder of June and into July 2017. One theme was Mr. H's very deep hostility toward Mr. M (whom Mr. H referred to as "garbage") and his entrenched belief that Ms. D was acting under his control. A second theme was Ms. D's requests that child support payments be made by Mr. H in a traceable way, which Mr. H absolutely refused to do, insisting that he would do things "the way I want" and using his daughter as a courier for cash. A third theme was Mr. H's rejection of a reasonable proposal by Ms. D to arrange for payment of the s. 211 report and his insistence that the parties must borrow a large sum (over \$100,000) to pay for both the report and legal expenses. A fourth theme was Mr. H's frequent threats of court applications, without providing specifics.

[114] Although Ms. D had explained to Mr. H why she did not feel able to borrow more than \$20,000 to fund preparation of the s. 211 report, Mr. H ignored her concerns. In an e-mail message dated July 2, 2017, Mr. H complained about the terms of a consent order Ms. D had sent over, and said:

I don't need the consent order [f]or 20 thousand. I need it for 160 thousand for the 211 report as well as the lawyers for the two of us.

[115] In an e-mail sent July 8, Mr. H complained that the order Ms. D had sent to him was "useless," and that he needed an order for \$170,000 "so we can both get lawyers as well as pay for the s. 211 report."

[116] I am going to pause to make several observations.

[117] First, preparation of the s. 211 report had been ordered by the court, and the report was designed specifically to provide the court with expert opinion evidence concerning the parties' children. However, Mr. H's unreasonable demands and intransigence concerning funding the report prevented that from happening. While Mr. H had abandoned his insistence that Mr. M pay for the report, he completely ignored Ms. D's legitimate concerns that her financial resources were limited, and she could not afford to borrow more than what was needed to pay for the s. 211 report. As of July 2017, Mr. H had not paid anything owing by him under the terms of the November 10 Order. Rather than accept what Ms. D proposed, and only borrow what was needed for preparation of the s. 211 report, to allow that to move forward, Mr. H stubbornly insisted on getting his way. This has also been a pattern.

[118] The acrimony continued into August, with Mr. H threatening another court application, without giving details about the nature of the application.

[119] However, in September 2017, there were some more positive signs. At the beginning of the month, Ms. D sent an e-mail message to Mr. H saying that she would consider mediation to move the process forward. On September 9, Ms. D sent a message to Mr. H that she was investigating possible mediators and costs, and Mr. H responded that he would pay for the mediation. However, Mr. H was impatient and thought Ms. D was taking too long. In an e-mail message dated September 24, 2017, he said:

I really don't think you really want mediation. If you did want this over with you would have made it a priority. It only takes a few minutes to make a phone call and set up an appointment.

[120] However, Mr. H's impatience was unfair and unjustified. It did not appear to occur to him that, in September, Ms. D would be busy with work commitments at the start of a new school year. There is no evidence that he took on any of the responsibility for moving forward with mediation, to relieve Ms. D from some of that burden, or spent the "few minutes" to make a phone call or set up an appointment. Mr. H's inability - or unwillingness - to see matters from anyone's perspective other than his own is also part of a pattern.

[121] Then, on September 25, 2017, Mr. H sent the following message to Ms. D, again threatening a court application [all sic]:

Please don't bother with finding out about mediation it will just be another waste of money. We will need to get before a judge to get some orders on how we will proceed.

[122] On September 30, 2017, Ms. D sent a lengthy e-mail to Mr. H, explaining why she had not been able to move forward more quickly with looking at mediation. At trial, Ms. D testified that what she reported to Mr. H in this message was true. In her message, she mentioned numerous obligations at her school that had taken up her time. There was a flood at 5850. Ms. D had also had her own serious health concerns. A mass was found in her breast following a mammogram, and surgery was being recommended for her. She told Mr. H

that, to reduce her stress, her doctor had recommended that she not read any messages from Mr. H except on Saturdays (the day they were to be sent pursuant to the Gerow Order).

[123] To his credit, in an e-mail message he sent to Ms. D on September 30, Mr. H expressed sincere sympathy and compassion on hearing Ms. D's news. He also said that he was prepared to mediate issues concerning the children, although he added that what he wanted was to have the children "half the time."

[124] On October 28, 2017, Ms. D sent a long e-mail message to Mr. H concerning a number of topics. She reported on what she had learned from the mediators she had contacted about the potential costs, hearing dates, and process, including the possibility of doing a combined mediation/arbitration. She expressed several concerns, including her strong feeling that the court-ordered s. 211 report needed to be completed, and her view that the cost should be paid through a second mortgage on the Shop. She expressed a concern about receiving regular, predictable child support. Ms. D posed two specific questions to Mr. H: first, would he agree that the s. 211 report be paid for with proceeds of a second mortgage on the Shop; and, second, would he agree that the 2nd mortgage on 5850 be paid from the proceeds of sale of the Shop, when sold. Ms. D expressed the view that, if they could come to agreement on those two things, then they could come to agreement on other outstanding matters and mediation would be possible. However, she expressed a fear that they would spend "a lot of time, money, tears, frustration, and stress" to go through mediation with the possibility it would not be successful.

[125] Mr. H responded later that day. He described what he had tried to do in the last few months as a "wasted effort," and described what Ms. D had set out in her e-mail as "nothing different in any way from what [was] your position from the start." He offered her "one more week" to think about things, and said that, if she was not interested in the extra time, to

please give me dates so we can get in front of a judge and have some orders made so we can just get all of this over with. If we are going to trial I will require a lot of disclosure items from you.

[126] Mr. H concluded his message by saying [all sic]:

It was also in the court order that you reply to my emails within twenty four hours so. Please follow the directions of the court.

[127] Ms. D responded on October 29, and said in part [all sic]:

What you say the kids want is only a part of determining changes to visitation. I have no ability to make an assessment on most factors involved with visitation and I am not able to negotiate without fully understanding the circumstances. The courts are in the same position so, that is why a 211 has been ordered. Regardless of mediation or court, this will be a requirement. You claim my position has not changed and in this specific item, you are correct. I have the same opinion and position as the court - more information is needed. So, this is where we can show our ability to work together to resolve issues. Selecting someone and arranging to how we will pay for a 211 report would be a perfect way to try to cooperate together and in the process

rebuilding trust.

[128] Mr. H responded later that evening. His e-mail was accusatory and threatening. He returned to his theme that Ms. D was being controlled by Mr. M, whom Mr. H referred to as "that thing," and "it." Despite his earlier promotion of the idea that \$170,000 should be borrowed through a second mortgage on the Shop, Mr. H now rejected the idea of borrowing any amount to pay for the s. 211 report, on the basis of what he claimed he was told by others about the ability to borrow with the Shop as security. He observed that [all sic]:

[I]t would be faster and cheaper to go to court and let a judge hear from you and me and decide all of the outstanding issues. It will be interesting to hear the stories you will tell.

[129] Ms. D retained Mr. Leibovitz as her legal counsel in December 2017. Ms. D explained that, even though she was now represented by Mr. Leibovitz, to keep her legal expenses down, she generally prepared the material (especially the affidavits) for court applications.

[130] Moreover, at trial, Ms. D explained that she wished, where possible, to continue to deal with Mr. H directly, within the parameters of the Gerow Order, to try to control and manage her legal expenses. She repeatedly requested that Mr. H deal with her directly, rather than contacting Mr. Leibovitz. At trial, Ms. D explained that legal expenses, together with all of the other debt she had had to manage (without any contribution from Mr. H), were a huge source of stress for her. She told Mr. H as much when asking him to deal with her directly. However, Mr. H regularly ignored Ms. D's requests. According to Ms. D, Mr. H's refusal to communicate with her, rather than through Mr. Leibovitz, also created a great deal of stress and frustration for her.

[131] Mr. H's attitude can be seen in communications he sent to Mr. Leibovitz in early 2018.

[132] On January 22, 2018, Mr. H sent an e-mail message to Mr. Leibovitz that read in part [all sic]:

I would also like to respond to your suggestion that I retain counsel I have limited income and have made the decision that supporting my children financially is most important.

...

I will only be contacting you for all issues related to the children and all other matters from now moving forward. I would ask you to have your client only communicate with me though your office unless it is during my visitation with the children we can text with each other.

[133] In February 2018, Mr. H sent a number of communications to Mr. Leibovitz, demanding his "available dates" for the hearing of a court application, and threatening to set a hearing down unilaterally if Mr. Leibovitz did not respond by Mr. H's deadline. Despite Mr. Leibovitz's requests that Mr. H tell him about the nature of the application Mr. H intended to bring, he did not do so.

[134] On February 24, 2018, Mr. H sent an e-mail to Ms. D, which read [all sic]:

So you are able to have a better idea how to budget your finances. I will be given you a thousand dollars for the next month. This amount will increase to twelve hundred dollars the following month April 1st and to fourteen hundred dollars a month starting May 1st. I will also continue to pay for the kids gymnastics as well as clothes and shoes. All the monthly payments will be paid in four equal weekly payments and given to you every Saturday.

[135] However, the last child support payment Mr. H made was \$100 in cash on February 24, 2018. He has not paid any child support since.

[136] In December 2017, Ms. D had a lump removed from her breast. She explained that she decided at the end of February 2018 to leave her job as a school principal, because the children needed her more. She explained that she then moved to a position as a teacher. As a result of the change, her annual salary was cut by about \$20,000.

[137] In the latter part of March, Mr. H exchanged e-mail with Mr. Leibovitz's office advising that he wanted to book a one-day hearing on June 5, 2018, which he said [all sic] "will deal with all your clients conduct in this case." Otherwise, he did not provide details.

[138] On March 27, 2018, Mr. H filed a notice of application for a hearing on April 5, 2018. Mr. H sought orders that Ms. D produce seven different categories of documents. One of the categories was "all text messages and phone logs" between Ms. D's phone number and Mr. H's phone number between January 1 and April 1, 2016. I note that there is no evidence that Mr. H ever produced the corresponding documents on his side. Another category of documents was Ms. D's medical records from January 2008. The "Factual Basis" was five paragraphs, and set out only very basic information about the parties (for example, when they married and separated, the children's names and birthdates). There were no facts stated based on which any of the orders sought by Mr. H might have been justified. The "Legal Basis" stated only: "Family Law Act."

[139] Mr. H's application came on for hearing before Master Caldwell on April 5, 2018. It was adjourned generally, and Mr. H was ordered to pay Ms. D's costs thrown away in the sum of \$1,000 in any event of the cause.

[140] The same day, Mr. H sent a text message to Ms. D, advising her of his new phone number, in case the children wished to call him.

[141] However, the following day, Mr. H sent this text message to Ms. D [all sic]:

I will no longer have any contact with the kids tell them what ever you want i am changing my phone number after this text.

[142] Mr. H contacted TPK directly by e-mail on April 7. His message to her said [all sic]:

Hi Baby girl. Daddy loves you and the boys. We wont be seeing each other for visits anymore. Sorry baby girl I will not lie to you.

[143] TPK messaged back, and asked Mr. H why they would not see Mr. H on visits. Mr. H sent the following message back to his daughter [all sic]:

I don't want to get into to much detail as probably both our emails are being watched by you know who. If you and the boys want to come and live with me that will be your choice you can all make that choice and I will respect each of your choices. I am not going to let ANYONE ever again tell when I can see MY kids and when I cant this is NEVER going to happen ever again. This is not your moms fault we all know who is at fault. I want to be with you and the boys and you know where I live I will be here if you guys want to come and live with me but that is a choice you and the boys will make. I love you baby girl and please tell the boys I love them as well. I miss you all so much.

[144] On April 8, 2018, Mr. H sent another message to his daughter [all sic]:

Sorry baby girl I went to bed early and didn't see your email till this morning. If you and the boys want to come and live with me that is what I want also but this will be your choice now I cant make this choice for you and the boys I will respect both your choice as well as the boys. Please understand this is your choice as well as the boys NOBODY can tell you were you can live, with me or your mom. I would NEVER tell you or the boys that you cant live with your mom if that is your choice. I just want you to understand that this is your and your brothers choice NOBODY can tell you other wise. I just want us to be together if you guys want. Like I said in my last email to you NOBODY is ever again tell me when I can see MY own children EVER. I love you all more than you will ever know and I miss you all very much. Please bring the boys into your room and read this email to them. I LOVE YOU [TPK] I LOVE YOU [PKM]. I LOVE YOU [CPH].

[145] In my opinion, this message is extremely manipulative, emotionally abusive and a breach of trust. It is designed to put pressure on TPK and use her as a vehicle to communicate an inappropriate message to her brothers. It directly involved her in adult matters, contrary to the terms of the Gerow Order.

[146] On April 9, 2018, Mr. H sent another communication to TPK, which said [all sic]:

I have contact a place were you can talk to a lawyer if you want. Do you want the phone number.

[147] TPK responded that she did not want the phone number.

[148] At trial, Ms. D explained how she learned about these communications between Mr. H and TPK. According to Ms. D, after she received Mr. H's April 6 text message, she told the children what it said, and that she did not know whether Mr. H would change his mind. TPK then sent Mr. H a message on April 7. Ms. D explained that, when TPK received the first message from Mr. H on April 7, she came to Ms. D, concerned, crying and upset. TPK came to Ms. D again after she received the second and third e-mail messages from Mr. H. Again, TPK was crying, upset and confused. The communication on April 9 was one of a number from Mr. H to TPK on "Google Hangouts." Ms. D explained that TPK came to her when she received the communication from Mr. H.

- [149] Ms. D explained that she was very concerned over Mr. H's conduct. There was a court order in place - the Gerow Order - whereby neither party was to discuss any conflict, parenting issues or the other parent with the children. She considered that Mr. H was no longer following the court order and was putting the children - especially TPK - in the middle of the adult conflict. The messages had had a significant emotional impact on TPK. Ms. D explained that she was concerned about Mr. H's stability and unpredictability, and about how he was going to act when with the children, especially if he was unsupervised. She concluded that if Mr. H wanted parenting time, it needed to be supervised, because he was not following the Gerow Order.
- [150] As a result, on April 10, 2018, Ms. D sent text messages to Mr. H, telling him that TPK had shown her the messages Mr. H had sent her the day before, and that as a result of his behaviour, Ms. D wanted supervised parenting time, at Mr. H's expense. Mr. H's response was "I will see you in court."
- [151] The same day, Mr. H sent an e-mail to Mr. Leibovitz stating his intention to file a without-notice application concerning parenting time.
- [152] Mr. H filed a notice of application on April 27, 2018, for a hearing on May 10, 2018. The orders sought by Mr. H were [all sic]:
1. Enforcement of existing parental visitation court order.
 2. An order for increased visitation for the respondent to include weekend visitation from Friday at 2:30 pm till Sunday evening at 7:00 pm every other weekend as well as every Saturday from 10 am to 6 pm and Tuesday and Thursday from 2:30 pm until 7:00 pm.
 3. An order that the cost of the section 211 report be shared equally between the Claimant and the Respondent.
 2. Conduct order for [Mr. M] to refrain from talking about the respondent [Mr. H] of any family law matters to the three children
 3. Conduct order for the Claimant to refrain from discussing family court matters with the three children
 4. A order for parenting coordinator to help relieve the stress of the Respondent and the Claimant in dealing with matters related to visitation issues.
- [153] "Part 2: Factual Basis" said: "Section 61 of the Family Law Act." There was nothing under "Part 3: Legal Basis."
- [154] The whole of the notice of application failed fundamentally to comply with the requirements under the Supreme Court Family Rules.

[155] Mr. H's application came on for hearing before Mr. Justice Verhoeven, who ordered that it be adjourned generally. Verhoeven J. also made orders in the event that Mr. H wished to reset the matter for hearing, and in the event that Ms. D wished to bring her own application.

[156] On May 23, 2018, Mr. H filed a new notice of application returnable on June 5, 2018. In this notice of application, Mr. H sought the following orders [all sic]:

- 1 The Court to find the Claimant of contempt of court and impose the maximum fine.
- 2 An order for increased visitation for the respondent to include weekend visitation from Friday at 2:30 pm till Sunday evening at 7:00 pm every other weekend as well as every Saturday from 10 am to 6pm and Tuesday and Thursday from 2:30 pm till 7:00 pm.
- 3 An order that the cost of the section 211 report be shared equally between the Claimant and the Respondent. The Doctor to perform the section 211 report to be Dr. Larry Krywaniuk
- 4 Conduct order for the Claimant to refrain from discussing family court matters with the three children as well as ensuring the Claimant's boyfriend [Mr. M] refrains from taking with the three children about court matters as well as making disparaging remarks about the Respondent.
- 5 A order for parenting coordinator to help relieve the stress of the Respondent and the Claimant in dealing with matters related to visitation issues
- 6 An order for the Respondent to have make up visitation time with the three children due to the Claimant's actions. The time to be made up on Sundays from 9 am to 7 pm until all time has been made up.
- 7 In-term Joint custody and the Respondent named as a guardian.
- 8 An order for the Claimant to produce the Apple iPad that belongs to the [redacted] School District that was used to video the Alleged " SUICIDE VIDEO " so the Respondent can verify what is on this video.

Mr. H also sought costs.

[157] In the "Factual Basis," Mr. H did not mention any of his communications with TPK in April, which had triggered the termination of his unsupervised parenting time. However, he asserted that "Since Mr. Leibovitz has been on this file it has made matters exponentially worse."

[158] Ms. D filed her own notice of application on May 24, 2018, and sought:

- (a) an order varying the July 13, 2016 order and the Gerow Order such that Mr. H's parenting time be supervised by a professional supervisor paid for by Mr. H;
- (b) an order that Mr. H not bring on any further applications without first seeking leave for each such contemplated application; and

- (c) an order that a Judge or Master be seized of all interlocutory applications except for urgent applications if that Judge or Master was not available.

[159] The matters came on for hearing before Mr. Justice Blok on July 3 and 4, 2018. The entered order reflects that Mr. H withdrew his notice of application. Among other things, the Court ordered:

- (a) Mr. H's parenting time be supervised by [BM] or such other person as agreed to between the parties, with the supervisor to ensure that:
 - (i) Mr. H not discuss with the children any issues in dispute between the parties in the litigation;
 - (ii) Mr. H not discuss parenting arrangements with the children; and
 - (iii) the supervisor sign an acknowledgement of the terms of Mr. Justice Blok's order;
- (b) Ms. D's request for an order that Mr. H not bring on any further applications without first seeking leave for each such contemplated application was dismissed;
- (c) Mr. Justice Blok seized himself of all further interlocutory applications for six months, except for urgent applications where Mr. Justice Blok was not available; and
- (d) Ms. D was awarded costs in the cause.

[160] With respect to the s. 211 report that had been ordered by Madam Justice Gerow, Mr. Justice Blok directed that:

The Respondent reply within two week[s] of today's date by selecting either Dr. Nicole Aube, Dr. Rebecca England or Dr. Mary Korpach to be the author of the Section 211 Report previously ordered in this matter, or if he does not agree with any of the foregoing potential authors, he nominate three names of his own for the Claimant to select from.

[161] However, Mr. H did not avail himself of his supervised parenting time. He did not put forward his own nominees to prepare the s. 211 report.

[162] Instead, on September 6, 2018, Mr. H filed a notice of application returnable September 25, 2018, seeking the following orders [all sic]:

1. An order for the Respondent to have unsupervised visitation with his children.
2. An order for the Respondent to have an increased visitation time with the children on Monday and Thursday from 2:45 pm till 7 pm. To allow the Respondent to pick the children up from their schools.
3. An order to allow the children to attend counseling with the Respondent, three times a month for each child and for these counseling sections not to be on the Respondent's visitation days.

4. An order for a holiday visitation schedule as follows:
 - a) The Respondent to have the children on Christmas from 11:00 am till 9:00 pm.
 - (b) The Respondent to have a extra four hour visit with the children on their birthdays.
 - c) The Respondent to have a extra five hour visit on Thanksgiving.

[163] The "Factual Basis" was four short paragraphs. The first three set out basic information (date of marriage and separation, names and birthdates of children). The fourth said [all sic]: "The Respondent was the Primary care giver since their birth."

[164] This last statement - that Mr. H was the children's "primary" caregiver since their birth - became a repeated feature in subsequent notices of application filed by Mr. H. However, based on the evidence before me at trial, I find that his statement does not reflect the facts, and I find that Mr. H was not the children's primary caregiver at any time. At best, up until about 2012, Mr. H and Ms. D shared parental responsibilities, although not necessarily equally. Ms. D took maternity leave with the birth of each of the children, and, as a teacher, she had breaks during the school year and over the summer when she was not working and at home. I find that during those times, Ms. D was the children's primary caregiver. I find further that, as of about 2012 and thereafter, most of the childcare burden fell on Ms. D, even though she was also working outside the home. Her income as a vice-principal was the only stable income for the family, and the family's financial security depended on it. Mr. H's involvement in stock trading, and in activities that he has chosen not to disclose to the court, resulted in him becoming more and more disconnected from the day-to-day activities of his children and their care.

[165] Ms. D continued to send e-mail communications on Saturdays to Mr. H, based on the schedule set in the Gerow Order. On September 1, 2018, Ms. D's message informed Mr. H about the braces CPH needed and the new glasses PKM required. She informed him of the costs and the arrangements she had made to pay for amounts not covered by her extended health benefits. She asked Mr. H to provide some financial assistance toward the care of the children, since he had paid nothing since the end of February. She ended her message by asking that he respond directly to her, as she could not afford for him to respond to her e-mail messages through her lawyer.

[166] In her e-mail message sent on September 8, 2018, Ms. D provided a brief report on how PKM was adjusting to wearing his new glasses, and concerning an anticipated change in the counsellor for the two boys. She also said that any financial support Mr. H could provide for the children would be appreciated and was necessary.

[167] On September 25, 2018, the notice of application Mr. H filed on September 6 was heard by Mr. Justice Blok. All parts of it were dismissed. In addition, Mr. Justice Blok ordered that the author for the s. 211 report would be Dr. Korpach. Ms. D was awarded her costs in any event of the cause.

[168] On September 29, 2018, Ms. D sent an e-mail message to Mr. H, which began:

I understand you have emailed my counsel about your sister [L] being able to supervise visits with the kids. First of all, please direct all correspondence to me, not to my counsel. I cannot afford to have you emailing him things you should be communicating to me about. In April, 2017 we were ordered to email on Saturday's and respond within 24 hours. Please follow the terms of this order. My counsel will no longer be responding to you regarding child-related issues.

[169] Ms. D's message went on to explain her reasons why she would not agree to Mr. H's sister being the supervisor for his parenting time. Based on the evidence I heard at trial, Ms. D's reasons were legitimate and she had a good-faith basis to object to Mr. H's sister acting as his supervisor. Ms. D told Mr. H that she would like to help to facilitate Mr. H having some time with the children, and that she had been working hard to find some people who might be able to supervise. She named several individuals and provided Mr. H with a link to another service that she understood provided supervised access at no cost. She set out dates and times the following week for which she had found people to supervise Mr. H's parenting time.

[170] Mr. H's response on September 30 was angry and hostile [all sic]:

I do not trust you or any these people that you have suggested to be supervisors to see the children, I just see this as another attempt for you use these people to make more false accusations against me. This is my last email to ever and you can tell your scumbag lawyer I will not be responding to you or him any more. You have worked to make this happen you can be so proud of yourself. Please do not email any longer.

[171] Despite Mr. H's hostile response on September 30, on October 6, 2018, Ms. D sent an e-mail to him with some more information about possible sources to assist with supervised visitations. She also mentioned funding of the s. 211 report, now that the court had designated a report author, and asked Mr. H if he had any thoughts about how the cost (roughly estimated at \$20,000) could be funded.

[172] There is no evidence that, at this time, Mr. H reflected on his situation and how he might move forward with the supervised parenting time the court had ordered. This would have allowed him to spend time with his children, while making sure that the children were appropriately protected from adult matters and harmful conduct. The court had concluded that, in the children's best interests, Mr. H's parenting time needed to be supervised and made the order that it would be. The supervision was not to protect Mr. H; rather, it was to protect the children from inappropriate behaviour on his part. Instead of recognizing how damaging his behaviour had been, and moving forward in a constructive way to repair that damage, Mr. H was, unfortunately, focussed on getting his own way. I conclude that was more important to him than having parenting time with his children.

- [173] So, Mr. H continued to be very angry about his situation, saw himself as a victim and acted out accordingly. He completely rejected Ms. D's request that he not communicate with Mr. Leibovitz concerning issues relating to the children, and did not respond to e-mails she sent to him in October. Instead, he vented his anger and frustration in e-mail communications he sent to Mr. Leibovitz in October and into November 2018, insisting that he would never agree to supervised visitation.
- [174] Mr. H asserted that he had no money for the s. 211 report, and questioned (without any basis) the impartiality of Dr. Korpach, who had been appointed by the court to prepare the report. Mr. H asserted the view that Ms. D should be the one to pay for the s. 211 report.
- [175] In a letter dated November 21, 2018 that Mr. Leibovitz sent by e-mail to Mr. H, in response to an e-mail sent by Mr. H on November 20 concerning a mortgage renewal, Mr. Leibovitz asked Mr. H to please discuss matters directly with Ms. D, as he would not be the go-between. In his e-mail response, Mr. H threatened a court application "for direction as I will not talk, text or email with your client."
- [176] In an e-mail Mr. H sent to Mr. Leibovitz on November 24, 2018, Mr. H used an obscenity and was verbally abusive toward Mr. Leibovitz in the course of complaining that he had received "another unwanted email" from Ms. D.
- [177] Mr. H had no justification for carrying on as he did. His personal frustration at his situation did not give him licence to abuse Ms. D emotionally or Mr. Leibovitz verbally. His e-mail messages demonstrate that, when he is frustrated, angry, under personal stress, does not get his own way or feels a loss of control, he is unable or unwilling to control his behaviour. He is also unable to see beyond his own situation. He lashes out at those, like Ms. D and Mr. Leibovitz, whom he perceives to be the source of his misery. Mr. H's behaviour is the opposite of what the court would want to see from a parent wishing to move from supervised parenting time to unsupervised parenting time.
- [178] In December 2018, Mr. H sent e-mail messages to Mr. Leibovitz complaining about the new trial date set for March 2020 and threatening another court application. However, Mr. H had taken no steps to secure a trial date, after the trial did not proceed on the originally scheduled date in November 2017. He continued to complain that Ms. D was sending e-mail to him. At the end of December 2018, Mr. H sent an e-mail message to Mr. Leibovitz that he was cancelling a court date in January, and that Mr. Leibovitz should not contact him going forward as Mr. H was no longer going to communicate with him.
- [179] In January 2019, TPK told her mother that Mr. H had contacted her many times on "Google Hangouts." Ms. D explained that TPK came to her about messages from Mr. H asking TPK to call him, and they discussed what TPK felt comfortable doing. On January 26, Ms. D sent Mr. H an e-mail message that mentioned his calls to TPK on "Hangouts" and said that it was making TPK feel very uncomfortable. Ms. D asked him to please stop calling TPK until the two of them had communicated about the issue. Mr. H did not respond.

[180] Despite Mr. H's statement that he was no longer going to communicate with Mr. Leibovitz, he continued to do so, at least when it suited him. On February 10, 2019, Mr. H sent the following message to Mr. Leibovitz:

I would like your dates of availability for an application in February. I would like an update on the person you have had appointed to do the section 211 report, such as when they will start and if the Claimant has secured funding to pay for the report that she has demanded. If I do not receive a response to this email by Tuesday February 12 I will set an application date.

[181] Ms. D testified that she received copies of the e-mail communications Mr. H sent to Mr. Leibovitz. At trial, she described the very considerable stress his threats to go to court created for her, since she was the one who prepared material to respond. Because Mr. H rarely identified in his messages the nature of his intended court application, all Ms. D knew was that something was threatened, and Mr. H always had a short deadline for a response. In addition, Ms. D worried constantly about paying legal expenses, not only in connection with court applications but also resulting from Mr. H's refusal to deal with her directly, and worried that, because of the expense, she would lose 5850.

[182] I note that Mr. H was simply wrong about the s. 211 report, as he must have known. The report was not something that Ms. D had "demanded." Rather, it was something that the court had ordered, with a view to providing the court with expert evidence to assist the court to determine what arrangements were in the best interests of the parties' children. Mr. H was given the opportunity to put forward names for the report author, and was directed by the court to do that. However, there is no evidence he complied. Dr. Korpach was chosen by court order. It was not Ms. D's sole responsibility to find the funding to pay for the report, which Mr. H must have known but conveniently chose to ignore.

[183] Mr. H's position concerning the preparation of the s. 211 report continued to be obstructionist and completely unreasonable. Sadly, Mr. H appeared unable to connect the best interests of his children with completion of the s. 211 report.

[184] As of February 2019, Mr. H had not exercised any of his parenting time since April 2018. There is no evidence that, since September 2018, he had taken any steps to identify an appropriate supervisor.

[185] However, on June 3, 2019, Mr. H filed a notice of application. By then, he had gone for over a year without parenting time. His last child support payment was made in February 2018. He had not contributed anything to funding preparation of the s. 211 report, continuing to insist that Ms. D alone should pay. He had not paid Ms. D the amounts owing to her pursuant to the November 10 Order.

[186] In his notice of application, Mr. H asked for the following orders [all sic]:

1. An order for the Respondent to have unsupervised visitation with the children.

2. An order for the Claimant to pay for the section 211 report and for the report to be scheduled without any further delay.

[187] Apart from the basic information concerning dates the parties married and separated, the names and birthdates of the children, some facts concerning the consent orders made in the fall of 2016 and that Mr. H had had no contact with his sons and limited contact with his daughter since April 2018, the facts set out in the "Factual Basis" of Mr. H's notice of application have very little correspondence to, or support in, the evidence I heard at the trial.

[188] Ms. D (through Mr. Leibovitz) filed her own notice of application on June 10, 2019, seeking production of additional documents by Mr. H and authorization to request production from third parties directly.

[189] The two applications came on for hearing before Master Keighley on June 13, 2019. The court ordered that Mr. H's application be dismissed and that Ms. D's application be adjourned generally.

[190] After the June 13 order was pronounced, and for the first time since September 2018, Mr. H took some steps toward arranging supervision for his parenting time. However, the July 4, 2018 order required the parties to agree on a supervisor (if it was someone other than BM), and they could not agree.

[191] On August 13, 2019, Mr. H filed a notice of application asking for the following orders [all sic]:

1 An order for unsupervised visitation with my three children.

2 An order to have all visitation days that have been missed from August 3 2019 to August 21 2019 to be rescheduled to allow the children and myself to have our court ordered time together.

3 An order to allow phone access between my children and myself four days a week on the days I do not have visitation.

4 To have an order to have the children on Christmas day 2019 from 9 am to 9 pm to allow the children and myself to have a family visit.

5 An order to have an extra 3 hour visit with all three children on their birthdays.

6 An order to have the Claimant return the cell phone I had purchased as a Christmas /Birthday gift to our daughter [TPK].

7 An order to increase visitation on the Mondays and Wednesdays from 5pm to 7pm to Mondays and Wednesdays from 3pm to 7pm and allow the children to be picked up at school.

[192] The "Factual Basis" is very brief, totalling five paragraphs. Like previous notices of application, paragraphs 1-3 set out basic information about when the parties married and separated, and the names and birthdates of the children. In para. 4, Mr. H (as he had done in previous notices of application) asserted that he was "the primary care giver of all three children since their birth." In para. 5, Mr. H asserted [all sic]:

The Claimant on August 2 2019 fired our supervisor without any notice to the supervisor or the Respondent for the court order visitation that was to take place on August 3 2019.

[193] At trial, Mr. H did not offer any evidence to support this statement. The result is that Mr. H has failed to prove at trial what he asserted.

[194] Mr. H's application came on for hearing before Mr. Justice Blok on September 24, 2019. Mr. Justice Blok directed that:

- (a) within seven days, Mr. Leibovitz was to send Mr. H a proposal for a roster of potential supervisors for Mr. H's supervised parenting time;
- (b) Mr. H was to respond to the roster proposal within seven days of receipt;
- (c) if there were minor difficulties between the parties concerning the roster, they were at liberty to attend before Mr. Justice Blok prior to 10:00 a.m. to resolve those issues, provided the appearance would require no more than 30 minutes.

[195] Mr. Justice Blok also ordered that:

- (a) paras. 1, 2 and 3 of Mr. H's notice of application were dismissed;
- (b) paras. 4, 5, 6 and 7 of Mr. H's notice of application were adjourned generally; and
- (c) Mr. H pay Ms. D's costs of the application in any event of the cause.

[196] In short, for the third time, Mr. H's request that his parenting time be unsupervised was rejected by the court.

[197] Eventually, Mr. H and Ms. D agreed on supervision provided through a professional service provider, at Mr. H's cost. Mr. H resumed parenting time with PKM and CPH, but not with TPK.

[198] In her evidence, Ms. D explained that, at the end of July 2019, TPK decided that she no longer wanted to have parenting time with Mr. H. According to Ms. D, TPK told her that, during the parenting time, she felt she had to be the parent for PKM and CPH. According to Ms. D, TPK also told her that, over the years, Mr. H made her feel uncomfortable and was demanding. TPK told Ms. D that, after one occasion when she forgot to call Mr. H, he repeatedly made comments - essentially threats - about forgetting to pick her up. Ms. D explained that TPK remembers the disturbing events in the fall of 2013, and fears not knowing what Mr. H will do.

- [199] According to Ms. D, TPK is doing well. She was valedictorian at her elementary school graduation. As of trial, she was in Grade 9 and an "A" student.
- [200] As of trial, PKM was in Grade 6. Ms. D described him as doing very well, with a positive attitude, kind, caring and happy. CPH was in Grade 3. Ms. D described CPH as having behavioural challenges in the past, but said that counselling has helped him. His behaviour is now much better and he is able to self-regulate. According to Ms. D, CPH loves math and writing.
- [201] Ms. D explained that all children are interested in pursuing extra-curricular activities. However, that has been very difficult with the parenting time schedule.
- [202] According to Ms. D, the children's relationship with Mr. M is now very good, although it had been very challenging when Mr. H had unsupervised parenting time. Now, the children are happy to do things with Mr. M.
- [203] Ms. D explained that CPH goes on parenting time with Mr. H once a week, and he has reported numerous incidents that have made him not want to see his father. At trial, Ms. D described a recent incident CPH related to her when it was raining and CPH did not want to get out of the car. CPH told her that Mr. H pulled him from the car, upsetting him. CPH told her of an occasion at Mr. H's home when Mr. H put CPH in a headlock, again upsetting him. CPH was upset when he asked to come home early from a visit with his father, and Mr. H told him he could not leave early, and that he must either stay for the whole visit or there would be no visit at all.
- [204] CPH and PKM also told Ms. D that they had both given money to their father, essentially for safe-keeping. However, they told Ms. D that when they asked for it back, Mr. H refused, at one point claiming that they never gave him anything. According to Ms. D, when this happened, PKM came home in tears. According to Ms. D, CPH told her recently that he does not want to see Mr. H because "he stole from me," and that he is tired of his father lying to him.
- [205] According to Ms. D, PKM has also told her a number of times that he does not want to go on Mr. H's parenting time, although he does go. Ms. D explained that PKM told her that his father does not listen, and that he needed a break from spending time with Mr. H. It is overwhelming and too much for the boys to see Mr. H every weekend. Ms. D has offered Mr. H help to make the boys more comfortable during parenting time, but there is no indication Mr. H has been receptive.
- [206] As of trial, all children were attending counselling and had been for some time, although TPK took a break in 2019. Ms. D provided Mr. H with contact information for the children's counsellor. However, there is no evidence that Mr. H ever followed up with her.
- [207] On November 13, 2019, Mr. H sent an e-mail to Mr. Leibovitz requesting a number of documents, including "The signed contract for the section 211 report and the date it will be prepared by." Mr. H's position concerning preparation of the s. 211 report is baffling and

completely disconnected with reality. Although Mr. H had not filed an F8 financial statement since June 2016, despite being asked on a number of occasions by Mr. Leibovitz to do so, in his e-mail message, Mr. H demanded an updated F8 financial statement from Ms. D and one from Mr. M. Of course, Mr. M had no obligation to provide an F8 financial statement. An updated F8 financial statement from Mr. H was long overdue.

- [208] In a later e-mail to Mr. Leibovitz, Mr. H asserted that he was paying \$3,000 to \$4,000 a month "to see my boys." He repeated this same evidence on his discovery evidence read in at trial. Mr. H implied that Ms. D had money she could and should be using to pay the entire cost of the s. 211 report.
- [209] Mr. Leibovitz and Mr. H were back in court on January 7, 2020, on an application brought by Ms. D resulting from Mr. H's failure to attend his examination for discovery on November 27, 2019. Among other things, Master Keighley ordered that Mr. H attend to be examined on January 22, 2020. The Master also ordered that Mr. H pay Ms. D \$2,052.40 as costs thrown away and costs of the appearance on January 7, 2020, payable forthwith and in any event of the cause.
- [210] Mr. H was examined for discovery on January 22, 2020. However, he has not paid the costs ordered by Master Keighley.
- [211] A trial management conference, as required under the Supreme Court Family Rules, was held before Master Elwood on January 21, 2020. The trial brief filed on behalf of Ms. D disclosed that the orders she would be seeking at trial included: that she have sole custody, sole guardianship and sole parenting responsibilities for the children; that Mr. H's parenting time continue to be supervised by a supervisor chosen by her and be determined at Ms. D's discretion; that income be imputed to Mr. H for purposes of child support; retroactive and ongoing child support; security for child support; conduct orders; and special costs on the grounds that Mr. H had engaged in reprehensible conduct. Mr. H did not file a trial brief, and therefore communicated nothing about his case and whether he intended to present evidence at the trial.
- [212] A number of orders were made at the trial management conference. These included that Mr. H provide an updated financial statement to Ms. D on or before January 31, 2020. Mr. H did not do this. However, on March 2, 2020, Mr. H swore and filed a form of F8 financial statement, which was marked as Exhibit 4 at trial. Mr. H's F8 is obviously incomplete, and no attempt was made to complete it as required. I conclude that, instead of doing what he was required to do under the Supreme Court Family Rules and the Guidelines, and what he had been ordered to do by Master Elwood, Mr. H reported only what he felt like reporting, in the way he felt like reporting it.
- [213] On the Saturday after the trial management conference, Ms. D sent an e-mail message to Mr. H. In it, she asked him to stop sending her text messages unrelated to visitation, and, if he wanted to communicate about matters other than visitation, to do so by e-mail.

[214] Mr. H taunted her in his response, which read [all sic]:

Thank you for your email. If you have any question related to the family case please have your lawyer contact me.

4. Discussion and analysis

(a) Custody, parenting time and parenting responsibilities

[215] When parents cannot agree concerning what is in the best interests of their children, there is no alternative but to have the court make the decision. It is the court, not the children's parents, who decides what is in the children's best interests, and orders accordingly.

[216] Since this action was filed in 2016, all the orders made concerning the children have been interim orders. Interim orders are primarily designed to maintain the status quo and to provide short-term solutions until issues regarding the best interests of a child can be fully canvassed at trial. The forum to resolve issues concerning the best interests of children, especially where credibility is in issue, is a trial, not repeated interim applications with untested and often conflicting affidavit evidence. See *Fitzgibbon v. Fitzgibbon*, 2014 BCCA 403, at para. 22. It is most regrettable that this matter took so long to get to trial. Ms. D in fact took steps to set the action down for trial in November 2017, as required by the Gerow Order, and without any co-operation from Mr. H. However, Ms. D's health issues intervened. Although Mr. H complained to Mr. Leibovitz about the March 2020 trial date, there is no evidence that, after the November 2017 trial date was adjourned, he took any steps to obtain a new trial date. Instead, making sure there was a trial date was left up to Ms. D and her lawyer.

[217] Following the trial, final orders will now be made.

[218] Ms. D seeks an order under the Divorce Act that she have sole custody of the children. She also seeks orders under the Family Law Act that all parental responsibilities be allocated to her, and that Mr. H's parenting time be determined solely by her.

[219] In questions involving custody of or access to a child, the best interests of the child is not only the paramount consideration, but it is the only consideration: see the Divorce Act, s. 16(8). Past conduct of a person is not to be taken into consideration unless the conduct is relevant to the person's ability to act as a parent of the child: see the Divorce Act, s. 16(9). In addition, in making a custody order under the Divorce Act, the court must give effect to the principle that a child of the marriage should have as much contact with each parent as is consistent with the best interests of the child and, for that purpose, must take into consideration the willingness of the person for whom custody is sought to facilitate such contact: see s. 16(10).

[220] The Family Law Act takes the same approach. Section 37 of the Family Law Act mandates that the best interests of the child are the sole consideration for the court, and provides specifically:

Best interests of child

37 (1) In making an agreement or order under this Part respecting guardianship, parenting arrangements or contact with a child, the parties and the court must consider the best interests of the child only.

- (2) To determine what is in the best interests of a child, all of the child's needs and circumstances must be considered, including the following:
- (a) the child's health and emotional well-being;
 - (b) the child's views, unless it would be inappropriate to consider them;
 - (c) the nature and strength of the relationships between the child and significant persons in the child's life;
 - (d) the history of the child's care;
 - (e) the child's need for stability, given the child's age and stage of development;
 - (f) the ability of each person who is a guardian or seeks guardianship of the child, or who has or seeks parental responsibilities, parenting time or contact with the child, to exercise his or her responsibilities;
 - (g) the impact of any family violence on the child's safety, security or well-being, whether the family violence is directed toward the child or another family member;
 - (h) whether the actions of a person responsible for family violence indicate that the person may be impaired in his or her ability to care for the child and meet the child's needs;
 - (i) the appropriateness of an arrangement that would require the child's guardians to cooperate on issues affecting the child, including whether requiring cooperation would increase any risks to the safety, security or well-being of the child or other family members;
 - (j) any civil or criminal proceeding relevant to the child's safety, security or well-being.
- (3) An agreement or order is not in the best interests of a child unless it protects, to the greatest extent possible, the child's physical, psychological and emotional safety, security and well-being.
- (4) In making an order under this Part, a court may consider a person's conduct only if it substantially affects a factor set out in subsection (2), and only to the extent that it affects that factor.

[221] The considerations listed in s. 37(2) are the same as those that can be gleaned from a perusal of authorities under the Divorce Act.

- [222] Based on the evidence of Ms. D and Mr. M, the health and emotional well-being of the children are good, and the children have done very well in Ms. D's care. Ms. D has been diligent in shielding the children from adult matters. She has ensured that, through counselling, they have an outlet where they can talk privately about their feelings, thoughts, fears and experiences. TPK is doing very well in school. PKM and CPH are also doing well. CPH's behavioural issues have improved.
- [223] Given the ages of the children, it is appropriate to consider their views concerning parenting arrangements. The preferred method by far of obtaining the children's views would have been through the s. 211 report ordered by the Gerow Order. I find, however, that Mr. H repeatedly and consistently, and without any justification whatsoever, obstructed the preparation of that report. By doing so, Mr. H deprived the court of valuable evidence. It is most unfortunate that Mr. H could not see past his unyielding determination to get his own way, and modify his behaviour to, at least in this respect, act in the best interests of his children. Mr. H's reliance on the absence of a s. 211 report to request an adjournment of the trial was bitterly ironic.
- [224] TPK is now 15. She is sufficiently mature that, in my opinion, her views should be given considerable weight. TPK clearly expressed her views concerning parenting time with her father at the end of July 2019, when she decided that she no longer wished to have parenting time with Mr. H. TPK has communicated to Ms. D the discomfort she feels in having contact with her father, and her unhappiness about being placed in the position of a parent in relation to her brothers during Mr. H's parenting time. She has communicated to Mr. H that she prefers he not contact her about phone visits, but organize any of these through Ms. D. Her request is a reasonable one, to keep her out of adult matters, and so that she can be protected from emotional pressure by her father. She politely rebuffed Mr. H's overtures to spend some time with his sister and other family members.
- [225] From the written communications between TPK and Mr. H that are in evidence, where she has expressed very great affection for him, I have little doubt that making the decision not to spend time with her father was a very difficult one for TPK. However, TPK was the victim of Mr. H's emotional manipulation and abuse in April 2018, part of which involved an attempt to recruit her to persuade her brothers to do what Mr. H wanted. There is no evidence that Mr. H ever expressed sincere regret and apologized to TPK for his behaviour. Indeed, there is no evidence that he has ever seen anything wrong with what he did or how he behaved. I find that it would be reasonable for TPK to want to keep her distance from her father, to avoid that kind of pressure, manipulation, abuse and hurt going forward. Her wishes should be respected.
- [226] PKM and CPH, through Ms. D, have also expressed their views that, as of trial, the amount of parenting time with Mr. H is overwhelming and too much for them to cope with. They have communicated that the time with Mr. H is stressful and occasionally quite upsetting for them. I conclude from Ms. D's evidence about the two boys that they both feel Mr. H does not listen to them, is unsympathetic to their wants and needs, is too rigid and

inflexible in his dealings with them, and cannot be trusted or relied on. In my view, PKM's and CPH's feelings are grounded in reality. Mr. H's own words and dealings with Ms. D show him to be rigid, inflexible, intent on getting his own way, unwilling to listen and unsympathetic to her perspective. Mr. H's conduct is consistent with the views expressed by his sons. Mr. H's threat to CPH that, if CPH was not going to stay for the whole of the parenting time, then there would be nothing, is an example of Mr. H's insensitivity, and unwillingness to see a situation from any perspective other than his own.

- [227] All of the children have very strong relationships with Ms. D, and, despite Mr. H's early interference, they have also been able to form a good and positive relationship with Mr. M. Because Mr. H chose not to present any evidence at the trial, I have very little information based on which I could draw conclusions concerning the nature and strength of the children's relationships with either Mr. H or members of his extended family. My impression is that the two boys would like to have a relationship with their father, but, at this time, dealing with him is too stressful and uncomfortable for them to manage.
- [228] With respect to the history of care of the children, in my opinion, the evidence is overwhelming that Ms. D has been the primary caregiver for all of the children, and, especially since separation, she has shouldered the entire responsibility. This is not, as Mr. H might suggest, because Ms. D unjustifiably limited his parenting time. Rather, it is because Mr. H was either unwilling or unable (or both) to modify his behaviour so that increased parenting time for him could be considered as something that was in the best interests of his children. I note, for example, that, even though Mr. H was ordered by the court to do so, there is no evidence that he ever completed the Parenting after Separation course. The conclusion I draw is that Mr. H was not sufficiently motivated to do something that the court had determined was in the best interests of his children and could improve his ability to care for them. Instead, Mr. H preferred to give priority to his own wants and views.
- [229] The needs of the children for stability also overwhelmingly favour Ms. D. Since TPK was born, Ms. D provided whatever stability the family was able to enjoy, while Mr. H became more and more self-absorbed, and neglected family to pursue his own interests. Since the parties separated, Ms. D has worked very hard to ensure that the children benefit from a stable, secure environment and home life. I have no evidence that Mr. H took any steps toward that end. Ms. D has actively encouraged the children to maintain a relationship with their father. When supervised parenting was ordered, Ms. D took concrete steps to try to help Mr. H locate appropriate supervisors, and identified a number of individuals who were willing to assist. Rather than accept Ms. D's help, Mr. H went without any parenting time at all for many months. Such immature behaviour on the part of a parent is not compatible with fulfilling a child's need for stability.

- [230] I draw the same conclusion with respect to the ability of each of Ms. D and Mr. H to exercise her or his parental responsibilities and parenting time. Ms. D has demonstrated clearly that she understands and is fully capable of exercising all parental responsibilities in the children's best interest.
- [231] On the other hand, the evidence concerning Mr. H is inconclusive at best. His written communications in evidence, many of which I have discussed above, do not inspire any confidence that, when he is frustrated or under stress, he can manage and control his behaviour in a positive way. Instead, he acts out inappropriately. He has done that with his children during his parenting time, making uncalled for and hurtful threats. Mr. H's contacts with TPK and use of her as his courier for child support show, in my opinion, that he has no insight into the harm his behaviour caused to his daughter. In theory, Mr. H probably has the ability to exercise parental responsibilities appropriately. However, I do not have confidence that, in practice, and at this time, Mr. H would in fact exercise parental responsibilities in the best interests of his children. He chose not to present any evidence that would allow me to draw a conclusion in his favour, and, by his actions, prevented the court from having a s. 211 report.
- [232] In my view, Mr. H currently lacks the insight into his behaviour that would permit him to exercise his parental responsibilities and parenting time in the best interests of the children. I have concluded that he requires assistance and counselling from a properly qualified professional (a psychiatrist or a psychologist) in receipt of these Reasons to both address his behaviour and move forward as a parent. The immediate objects of the counselling would be to enable Mr. H to improve his parenting skills, and learn to manage and control the anger and destructive behaviours that have damaged his relationship with the children and impaired his ability to parent them in a manner consistent with their best interests. The longer term objects of the counselling would be to allow Mr. H to move toward rebuilding a positive relationship with the children, and, if the evidence supports it as being in the children's best interests, to move toward an increase in his parenting time and removal of supervision.

[233] I turn then to consider the impact of family violence.

[234] Section 38 of the Family Law Act provides that:

Assessing family violence

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

- (a) the nature and seriousness of the family violence;
- (b) how recently the family violence occurred;
- (c) the frequency of the family violence;

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

[235] "Family violence" is defined as follows [bold in original]:

"family violence" includes

...

- (d) psychological or emotional abuse of a family member, including
 - (i) intimidation, harassment, coercion or threats, including threats respecting other persons, pets or property,
 - (ii) unreasonable restrictions on, or prevention of, a family member's financial or personal autonomy,
- ..., and
- (e) in the case of a child, direct or indirect exposure to family violence;

[236] In closing submissions, Mr. Leibovitz argued that, among other things, Mr. H's litigation behaviour amounted to family violence. In support of his position, Mr. Leibovitz cited *Hokhold v. Gerbrandt*, 2014 BCSC 1875, particularly paras. 125 and following. I also note *C.L.M. v. M.J.S.*, 2017 BCSC 799, where, at para. 392, Donegan J. concluded that the self-represented claimant's litigation conduct was a form of emotional abuse and harassment that constituted family violence.

[237] Ms. D has had to contend with Mr. H's repeated threats of court applications when he did not get his way. Although Mr. H did not always follow through with his threats, they were designed to intimidate, harass and control Ms. D. Mr. H also made many court applications, including three in an attempt to obtain unsupervised (and, indeed, increased) parenting time. All were unsuccessful. After the first application was dismissed, it might have been expected that Mr. H would modify his behaviour with a view to building up a decent track-record to present to the court, that might have justified some relaxation of supervision of his parenting time. Mr. H never did that. Instead, Mr. H used parenting time as a means to bully and harass Ms. D. He repeatedly ignored her pleas to communicate with her directly

on matters concerning the children, rather than with Mr. Leibovitz. By doing so, Mr. H intentionally acted in a way that increased Ms. D's legal expenses, following through on his threat of a financial bloodbath. His conduct was also a serious violation of Ms. D's expressed boundaries for communication - another form of emotional abuse.

[238] Mr. H never took any steps to modify his behaviour.

[239] In addition, there is the matter of Mr. H's emotional abuse and manipulation of TPK in the communications he sent to her in April 2018. His initial communication - that he would no longer be seeing her or her brothers any more - was very upsetting for TPK, who remembered the disturbing events in late 2013. The following communications placed TPK, who was then only 13, squarely in the middle of the adult matters, in breach of the Gerow Order. This was a serious breach of the trust a child is entitled to place in a parent.

[240] In my opinion, Mr. H's conduct constitutes family violence. It demonstrates Mr. H's inability to control himself, or modify his behaviour, when he is in pursuit of something that he wants and believes he is entitled to, and is not getting his way. This is a consistent pattern in Mr. H's dealings with Ms. D. He exposed TPK directly to emotional abuse. The children have been indirectly exposed to Mr. H's mistreatment of Ms. D in this litigation, including his financial abuse of her.

[241] Finally, the evidence shows beyond any doubt that an arrangement that would require the children's parents to co-operate on issues affecting the children would be neither practical nor appropriate.

[242] After considering all of these matters, I have concluded that it is in the best interests of the children that, under the Divorce Act, Ms. D have sole custody of the children, and I so order.

[243] Further, in addition to the rights and obligations that are inherent in an order for sole custody, I order that all parental responsibilities under s. 41 of the Family Law Act are allocated to Ms. D. These are as follows:

Parental responsibilities

41 For the purposes of this Part, parental responsibilities with respect to a child are as follows:

- (a) making day-to-day decisions affecting the child and having day-to-day care, control and supervision of the child;
- (b) making decisions respecting where the child will reside;
- (c) making decisions respecting with whom the child will live and associate;
- (d) making decisions respecting the child's education and participation in extracurricular activities, including the nature, extent and location;

- (e) making decisions respecting the child's cultural, linguistic, religious and spiritual upbringing and heritage, including, if the child is an aboriginal child, the child's aboriginal identity;
- (f) subject to section 17 of the Infants Act, giving, refusing or withdrawing consent to medical, dental and other health-related treatments for the child;
- (g) applying for a passport, licence, permit, benefit, privilege or other thing for the child;
- (h) giving, refusing or withdrawing consent for the child, if consent is required;
- (i) receiving and responding to any notice that a parent or guardian is entitled or required by law to receive;
- (j) requesting and receiving from third parties health, education or other information respecting the child;
- (k) subject to any applicable provincial legislation,
- (i) starting, defending, compromising or settling any proceeding relating to the child, and
- (ii) identifying, advancing and protecting the child's legal and financial interests;
- (l) exercising any other responsibilities reasonably necessary to nurture the child's development.

[244] I make no order respecting guardianship. Although Ms. D requested an order for sole guardianship, this was not pressed in closing submissions.

[245] I order further that the children's primary residence will remain with Ms. D.

[246] I then turn to parenting time for Mr. H, and the question of what arrangement is in the best interests of the children? Although I understand the reasons for Ms. D's request that Mr. H's parenting time be determined solely by her, I have concluded that the court needs to maintain some supervisory role.

[247] I note, in addition, that supervised parenting time is not intended to be in place long-term: see, for example, J.A.F. v. J.J.F., 2016 BCSC 300, at para. 110. The expectation is that either the supervised parent will be able to demonstrate to the court (and to the other parent) that supervision is no longer necessary in the best interests of the children and move to unsupervised parenting time, or parenting time will be terminated. Unfortunately, Mr. H did not take the opportunity to present evidence at trial that might have shown supervision of his parenting time was no longer required. In order for Mr. H to move to unsupervised parenting time, the court must be persuaded, through admissible evidence, that it is in the children's best interests. As yet, that has not happened.

[248] Given TPK's age and level of maturity, I have concluded that Mr. H's parenting time, including phone and on-line time, with TPK will be determined by TPK and in accordance with her wishes. Unless TPK and Ms. D conclude a different arrangement is more practical,

in the event that TPK wishes parenting time with Mr. H, she will advise Ms. D. Ms. D will then notify Mr. H by e-mail of the time offered and any conditions TPK has attached, and Mr. H will respond by the deadline, both in accordance with the communication protocol and schedule set out below (the "Protocol"). If, by the deadline, Mr. H does not accept the parenting time, the parenting time offered will be forfeit.

[249] With respect to PKM and CPH, and until further court order:

- (a) Mr. H's parenting time is suspended until Mr. H has filed with the court proof that he has completed the Parenting after Separation course;
- (b) phone and on-line parenting time (collectively, "Virtual Parenting Time") will be as determined by Ms. D;
- (c) beginning not earlier than July 15, 2020, and provided Mr. H has filed with the court proof that he has completed the Parenting after Separation course, Mr. H will have supervised parenting time ("Supervised Parenting Time") with PKM and CPH on alternate Saturdays, from 10:00 a.m. to 2:00 p.m., and on such other time or times as Ms. D may determine. The Supervised Parenting Time is to be supervised by a supervisor chosen by Ms. D and, where payment for supervision services is required, it will be paid for in advance by Mr. H;
- (d) each month, Ms. D will send to Mr. H, in accordance with the Protocol, a calendar showing the Supervised Parenting Time and supervisor(s) for the following month, and Mr. H will confirm his acceptance within 24 hours, in accordance with the Protocol. If Mr. H does not confirm his acceptance by the deadline, the parenting time offered for the following month will be forfeit;
- (e) the issue of Mr. H's parenting time (both Virtual and Supervised Parenting Time) with PKM and CPH will be subject to review (the "Review") on application by Mr. H. However, the Review cannot be scheduled any earlier than February 2021 and must be scheduled in consultation with Ms. D's counsel, or, if Ms. D is no longer represented by counsel, in consultation with Ms. D directly and in accordance with the Protocol;
- (f) further, the Review cannot occur or be set for hearing unless and until Mr. H has engaged in at least six months of regular professional counselling with a properly qualified expert (either a psychiatrist or psychologist) who is fully informed of and provided with a copy of these Reasons, and who will undertake to provide the Court, in connection with the Review and at Mr. H's expense, with an expert report that addresses (at a minimum) Mr. H's willingness and ability to satisfy the needs of PKM and CPH. I will be seized of the Review.

[250] These orders concerning Mr. H's parenting time for TPK, PKM and CPH replace all previous orders concerning his parenting time.

[251] With respect to communications between Ms. D and Mr. H, I order the Protocol will be as follows:

- (a) the parties may communicate with one another by one e-mail per week on Saturdays, and, if a response is required, the responding party will respond within 24 hours;
- (b) the parties' communications are to be limited to matters relating to the children (including child support), and must be concise and informative;
- (c) unless, in her judgment, circumstances require more frequent reporting, not more than once per month on a Saturday, Ms. D will communicate to Mr. H by e-mail any significant decisions she makes concerning any of the children;
- (d) except as set out in paras. (a) and (b), or in case of an emergency relating to any of the children, Mr. H will not communicate with Ms. D.

[252] I order further that, except as permitted in relation to arranging parenting time for TPK, neither parent will:

- (a) discuss any conflict, parenting issues or parenting arrangements with any of the children;
 - (b) question any of the children about the other parent or time spent with the other parent beyond simple conversational questions;
 - (c) discuss with any of the children any inappropriate adult, court or legal matters;
 - (d) speak disparagingly about the other parent or the other parent's family (including Mr. M) to the children or in their presence;
 - (e) allow any of the children access either to e-mail communications between the parents or to court documents created for or filed with the court in this action, including these Reasons.
- (b) Child support

[253] I turn then to child support and special or extraordinary expenses under s. 7 of the Guidelines.

[254] Child support is the right of the child, and it survives the breakdown of a marriage. Parents have a joint and ongoing legal obligation to support the children of the marriage, so that the children continue to benefit from the financial means of both parents just as they would if the parents were still together.

[255] Section 15.1(3) of the Divorce Act provides that the calculation of child support is governed by the Guidelines. In order to meet his or her child support obligation, each parent must earn what that parent is capable of earning within the specific context and circumstances of the family. This principle is reflected in s. 26.1(2) of the Divorce Act, which provides that the Guidelines are "based on the principle that spouses have a joint financial obligation to maintain the children of the marriage in accordance with their relative abilities to contribute to the performance of that obligation."

[256] Imputing income is the mechanism by which the court gives effect to the legal requirement that a parent must earn what the parent is capable of earning. In other words, when determining the child support obligation, the court considers not only the amount of income a parent actually earns, but the amount of income a parent could earn if working to capacity. Section 19 of the Guidelines states in part that:

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

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

...

(d) it appears that income has been diverted which would affect the level of child support to be determined under these Guidelines;

...

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

...

[257] Section 21(1) of the Guidelines sets out extensive requirements for the disclosure of information. Pursuant to s. 21(2), those requirements apply to a parent being asked to pay child support. The items listed in s. 21(1) are part of the disclosure required in an F8 financial statement.

[258] Where a parent fails to comply with the disclosure obligations in s. 21 of the Guidelines, the court may draw an adverse inference against that parent and impute income to that parent in such amount as the court considers appropriate: see Guidelines, s. 23.

[259] Section 5(1) of the Family Law Act also establishes legislated duty to disclose, as follows:

A party to a family law dispute must provide to the other party full and true information for the purpose of resolving a family law dispute.

[260] Here, Mr. H never provided the financial disclosure required. Among other things, this was just one of the reasons why his claim for spousal support was doomed to failure. His most complete F8 financial statement was the one sworn and filed in June 2016. However, although Mr. H attached income tax returns to that document, no notices of assessment were attached and the income reported in the returns is, in my view, completely unreliable.

- [261] Mr. H did not swear and file another F8 financial statement until March 2020. He had been asked many times to update his financial information, but, until March, never did. Even then, he did not meet the court-ordered deadline of January 31, 2020, and what Mr. H eventually filed was obviously incomplete, as I noted above.
- [262] In evidence Mr. H gave on his examination for discovery, and which was read into evidence at trial, Mr. H testified that, since 2016, he has only accepted cash for work he has done. He has not filed any income tax returns since he and Ms. D separated in January 2016. He does not make deposits to a bank account, but keeps everything in cash. The result is that only Mr. H knows what his income has been. He did not see fit to disclose that information either to Ms. D (as he was legally required to do), or to the court. Rather, Mr. H has kept his true income hidden.
- [263] In those circumstances, I find that Mr. H has failed to provide income information when he has been under a legal obligation to do so, and the information he has provided is incomplete, misleading and unreliable. Accordingly, I draw an adverse inference against Mr. H, and I have no other alternative but to impute income to Mr. H.
- [264] I turn then to the amount.
- [265] In the absence of proper financial disclosure, the court may look to other evidence, including circumstantial evidence, to impute income: see *Poursadeghian v. Hashemi-Dahaj*, 2010 BCCA 453, at para. 23.
- [266] In closing submissions, Mr. Leibovitz argued that annual income, for purposes of the Guidelines, in the sum of \$80,000 should be imputed to Mr. H. Mr. Leibovitz pointed to Mr. H's discovery evidence read in at trial that he spends \$3,000 to \$4,000 per month on visitation with his children. These are after-tax dollars. Based on Mr. H's March 2020 F8 financial statement, he pays rent. He has a motor vehicle. In Mr. Leibovitz's submission, it is, therefore, not unreasonable to say that Mr. H is incurring annual expenses in the range of between \$50,000 and \$60,000 in after-tax dollars. In that light, it is also reasonable to impute a before-tax annual income of \$80,000 to Mr. H. In Mr. Leibovitz's submission, that is the best that can be done on the limited information available.
- [267] I agree. I conclude that, on the information available, it is reasonable to impute an annual income of \$80,000 to Mr. H, for purposes of the Guidelines.
- [268] Based on a Guidelines income of \$80,000, the monthly basic child support payable for three children is \$1,619.
- [269] Accordingly, I order that, based on an imputed Guidelines income of \$80,000, Mr. H pay child support to Ms. D in the sum of \$1,619 per month, commencing on July 1, 2020 and continuing on the first day of each and every month thereafter for so long as the Children remain eligible for support or until further agreement of the parties or court order.
- [270] I turn then to s. 7 expenses.

- [271] In her F8 financial statement filed January 29, 2020, Ms. D disclosed a Guidelines income of \$84,748.
- [272] I order that commencing July 1, 2020, Mr. H pay to Ms. D his proportionate share (48.5%) of the Children's special or extraordinary expenses under s. 7 of the Guidelines. Payment by Mr. H shall be due within 14 days of being provided with either an invoice or a receipt for a s. 7 expense. Section 7 expenses shall include counselling and therapy expenses, and medical and dental expenses (including orthodontics and eyeglasses), in both cases, net of insurance coverage.
- [273] Ms. D is also seeking retroactive child support, including for s. 7 expenses for the children's counselling, retroactive to January 1, 2016. The notice of family claim filed in February 2016 included a claim for child support.
- [274] The leading case on retroactive support is D.B.S. v. S.R.G., 2006 SCC 37. Factors that the court will consider in exercising its discretion in making a retroactive child support order include: the circumstances surrounding the delay in applying; the payor parent's conduct; the child's or children's circumstances; and any hardship caused by a retroactive award. See D.B.S., at paras. 100-116, and para. 133. The parental obligation to support a child or children of the marriage, like the children's concomitant right to support, exists independently of any statute or court order: see D.B.S., at para. 54. An order for retroactive support is discretionary, but not exceptional: D.B.S., at paras. 5 and 97.
- [275] Until the end of February 2018, Mr. H paid some child support. According to Ms. D's evidence and calculations (which I accept as accurate), Mr. H paid child support as follows:

Year

Amount

2016 (beginning in October)

\$5,865.34

2017

\$15,476.94

2018 (last payment February 24, 2018)

\$1,250.00

Total:

\$22,592.28

[276] Virtually all payments were made in cash. For example, on August 14, 2017, after having received nothing since March 30, Ms. D received \$2,400 in \$100 bills. The child support paid in 2017 includes \$1,306.94 that Mr. H paid for the children's gymnastics and another expense (\$3,300) that Mr. H paid directly.

[277] Based on an imputed Guidelines income for Mr. H of \$80,000, and based on the child support tables in effect at the relevant time, Mr. H should have paid:

Year

Monthly amount

Annual amount

2016

\$1,577.00

\$18,924.00

2017

\$1,577.00 (11 months)

\$1,619.00 (1 month)

\$18,966.00

2018

\$1,619.00

\$19,428.00

2019

\$1,619.00

\$19,428.00

2020 (6 months)

\$1,619.00

\$9,714.00

Total

\$86,460.00

[278] The difference between the amount payable and the amount paid by Mr. H (eliminating cents) is \$63,868.

- [279] In the period from 2016 to the end of 2019, Ms. D has also paid for counselling for the children as follows: 2016, \$3,654; 2017, \$5,155; 2018, \$2,940; and 2019, \$2,442. The total is \$14,191. These would qualify as s. 7 expenses.
- [280] I turn then to the factors relevant to retroactive support.
- [281] The background set out above shows that the parties were in court frequently in the four years since the notice of family claim was filed. Ms. D never sought an interim order for child support. However, despite requesting it, and Mr. H being ordered by the court to produce it, Ms. D never had proper financial disclosure from Mr. H. Beginning in 2017, Ms. D was bombarded with both Mr. H's threats that he would go to court if he did not get his way, and his court applications, which focussed on his parenting time. His court applications generally made sweeping and careless allegations, which then required a detailed response. In the fall of 2017, Ms. D had a very challenging health matter that she had to deal with. Ms. D had a responsible, demanding job and was the only stable source of income for her and the children.
- [282] Given the high-conflict litigation pursued by Mr. H beginning in 2017 and the emotional burden that placed on Ms. D, Mr. H's persistent refusal to disclose reliable information about his income, and Ms. D's other responsibilities and challenges during this time, I find that she had a reasonable excuse for the delay in applying for an order for child support.
- [283] There can be no doubt, and I find, that Mr. H engaged in blameworthy conduct. The most obvious example is his failure to make the financial disclosure he was (and continues to be) legally obligated to make. He clearly preferred his own interests in keeping his true financial picture and income secret, over his obligation to support his children financially. In my view, Mr. H also engaged in blameworthy conduct in relation to his supervised parenting time, which was the result of his misconduct. Based on Mr. H's own evidence, he preferred to incur very substantial monthly costs for supervised parenting time, when supervision arranged by Ms. D was available to him at no cost. Again, in my view, Mr. H preferred his own wants - to "protect" himself from Ms. D during his parenting time - over his financial obligations to his children. Mr. H's inexcusable refusal to honour Ms. D's repeated requests that he deal directly with her and not contact Mr. Leibovitz increased Ms. D's legal expenses unnecessarily, leaving less money available to her to support the children.
- [284] I do not have a great deal of evidence concerning the children's circumstances, although I do have some. Based on Ms. D's evidence, especially since Mr. H stopped paying child support at the end of February 2018, it has been a struggle for her financially to cover the children's expenses on her own.

[285] Hardship to the payor is a factor I must consider. However, because of the complete absence of reliable information about Mr. H's financial circumstances, I have little to go on with respect to this particular factor. I therefore consider it largely neutral. However, I acknowledge that Mr. H's financial obligations resulting from these Reasons (in addition to the November 10 Order) are substantial, and some hardship is almost inevitable.

[286] When I take a holistic view of the matter, I conclude that an award of retroactive child support is justified.

[287] With respect to basic child support, I fix the amount of retroactive support payable by Mr. H at \$50,000. I consider this to be a fair amount having regard to all of the circumstances. This amount will be paid by Mr. H to Ms. D in installments of \$1,500 per month commencing July 1, 2020 until fully paid. The balance owing can be paid in full at any time. There will be no interest on the amount outstanding from time to time.

[288] I turn then to the counselling expenses.

[289] Ms. D's Guidelines income beginning in 2016 is relevant to the proportion in which s. 7 expenses are shared, and it has varied from year to year:

Year

Ms. D's Guidelines income

Mr. H's Proportion for s. 7 expenses

2016

\$114,082

41%

2017

\$118,664

40%

2018

\$83,977

49%

2019

\$84,748

48.5%

[290] Based on Mr. H being responsible to contribute to the counselling expenses in these proportions, the retroactive s. 7 expenses owing by him total \$6,884.00

[291] Accordingly, I order that Mr. H pay Ms. D the sum of \$6,884.00 by July 31, 2020.

(c) Has Mr. H misused the court process?

[292] Ms. D seeks an order under s. 221 of the Family Law Act that Mr. H be prohibited from bringing on any court application against Ms. D: without first seeking leave of the court to do so; and without first posting security for costs of such application in the sum of no less than \$2,000, with such sum being paid into court.

[293] In Mr. Leibovitz's submission, the history of Mr. H's litigation conduct justifies such an order.

[294] In support of his submission, Mr. Leibovitz cites *Williams v. Williams*, 2015 BCSC 928. There, in the context of 15 years of litigation, and more than 21 court applications over the period beginning in 2010, the parties sought mutual orders under s. 221 against one another. In the result, Punnett J. ordered that both parties were prohibited from making further applications or continuing the proceeding without leave of the court for a period of five years. Any leave application was to be made before Punnett J., if he was available.

[295] Section 221 of the Family Law Act provides:

221 (1) A court may make an order prohibiting a party from making further applications or continuing a proceeding without leave of the court if satisfied that the party

(a) has made an application that is trivial,

(b) is conducting a proceeding in a manner that is a misuse of the court process, or

(c) is otherwise acting in a manner that frustrates or misuses the court process.

(2) If an order is made under subsection (1), the court may do one or more of the following:

(a) make the order apply

(i) for a specified period of time, or

(ii) until the party has complied with an order made under this Act;

(b) impose any terms and conditions respecting the granting of leave to make further applications or to continue a proceeding;

(c) require the party to pay

(i) the other party for all or part of the expenses reasonably and necessarily incurred as a result of the party's actions, including fees and expenses related to family dispute resolution,

(ii) an amount not exceeding \$5 000 to or for the benefit of the other party, or a spouse or child whose interests were affected by the party's actions, or

(iii) a fine not exceeding \$5 000.

[296] In my opinion, the background described above shows that Mr. H has conducted himself in this case in a manner that both frustrates and misuses the court process. He has deliberately used the court process to bully, harass and intimidate Ms. D, to abuse her emotionally, and to run up her legal expenses. His repeated, unsuccessful, applications to obtain unsupervised parenting time demonstrate an unwillingness to accept court orders. Mr. H's conduct in relation to the s. 211 report is particularly egregious. He has failed to comply with court orders, including orders to which he consented. He has failed to comply with his disclosure obligations. He has failed to pay costs the court has ordered him to pay.

[297] I have concluded that some check is necessary to curb Mr. H's conduct and manage his behaviour. Through his conduct, he has wasted both judicial resources, and depleted Ms. D's financial and emotional resources.

[298] I therefore order that:

- (a) except for the Review, the preconditions for which are set out above, for a period of 12 months from the date of these Reasons, Mr. H is prohibited from making further applications in this proceeding without first seeking leave of the court;
- (b) before seeking leave for the first time, Mr. H must file satisfactory proof with the court that he has paid to Ms. D the costs ordered by Master Caldwell on April 5, 2018 in the sum of \$1,000.00 and the costs ordered by Master Keighley on January 7, 2020 in the sum of \$2,053.40, and that there are no arrears of child support;
- (c) the request for leave must be initiated by completing the applicable form on the court's website ("Request to Appear Back Before a Specific Judge") with a copy to Ms. D (which shall be a permitted exception to the Protocol) or her counsel (if she is represented by counsel) and in such a fashion that the completed document is no more than three pages in length. The request for leave must contain a concise statement of the nature of the application Mr. H intends to make and the reason(s) why Mr. H says leave should be granted; and
- (d) unless I am not available, I am seized of any leave application.

[299] Mr. H should be aware that, pursuant to s. 221(2)(b), the court may impose terms and conditions respecting the granting of leave. Such terms could include, for example, the posting of security for costs, terms requiring strict compliance with the Supreme Court Family Rules, and directions concerning time limits and method of hearing.

(d) Divorce

[300] The parties are entitled to a divorce on the grounds that they have lived separate and apart for more than one year. Accordingly, subject to s. 12 of the Divorce Act, I order that the claimant and the respondent are divorced from each other, the divorce to take effect on the 31st day after the date of these Reasons.

(e) Costs

[301] Ms. D has been substantially successful and is entitled to her costs.

[302] In closing submissions, Mr. Leibovitz argued that Mr. H's conduct was such that an award of special costs in favour of Ms. D was justified. In support of his position, Mr. Leibovitz cited *C.L.M. v. M.J.S.*, 2017 BCSC 1517. There, in the context of high-conflict family litigation, Donegan J. ordered the claimant (who represented herself) to pay special costs. In the course of her Reasons, Donegan J. reviewed the legal principles that apply to special costs and also reviewed a number of family law cases where a party had been ordered to pay special costs. The threshold for awarding special costs is "reprehensible" conduct.

[303] Based on the history I have described above, and the factors discussed in the cases, I find that Mr. H has engaged in reprehensible conduct that justifies an order for special costs. Mr. H disobeyed court orders, including the November 10 Order to which he consented. His unreasonable and obstructionist tactics completely frustrated preparation of the s. 211 report that had been ordered in April 2017. He refused to make financial disclosure, despite his legal obligations to do so. He threatened Ms. D with court applications and deliberately, and despite her pleas not to, acted in a way that drove up her legal expenses, which threatened her financial well-being and that of the parties' children. Mr. H made unnecessary court applications, and failed to pay court-ordered costs. He made careless and irresponsible accusations against Mr. M and even against Dr. Korpach. He was consistently rude and insulting to Mr. Leibovitz and his staff, who, to their great credit, responded with patience and civility.

[304] Accordingly, I order that Ms. D's costs be assessed by the Registrar as special costs.

5. Summary and disposition

[305] In summary, I make the following orders:

- (a) subject to s. 12 of the Divorce Act, the claimant and the respondent are divorced from each other, the divorce to take effect on the 31st day after the date of these Reasons;
- (b) the terms of the final orders pronounced on November 2, 2016, November 10, 2016, November 21, 2016 and March 3, 2020 remain extant and in force;
- (c) pursuant to the Divorce Act, the claimant has sole custody of the children of the marriage, TPK, PKM and CPH (collectively, the "Children");
- (d) the primary residence of the Children will remain with the claimant;
- (e) the claimant alone has all parental responsibilities for the Children, including, without limitation: those responsibilities set out in s. 41 of the Family Law Act; and the ability to travel with the Children, apply for passports for the Children or sign any document in relation to the Children, without the need for the respondent's signature or the respondent's consent;

- (f) Mr. H's parenting time, including phone and on-line time, with TPK will be determined by TPK and in accordance with her wishes. Unless TPK and Ms. D conclude a different arrangement is more practical, in the event that TPK wishes parenting time with Mr. H, she will advise Ms. D. Ms. D will then notify Mr. H by e-mail of the time offered and any conditions TPK has attached, and Mr. H will respond by the deadline, both in accordance with the communication protocol and schedule set out below (the "Protocol"). If, by the deadline, Mr. H does not accept the parenting time, the parenting time offered will be forfeit;
- (g) with respect to PKM and CPH, and until further court order:
- (i) Mr. H's parenting time is suspended until Mr. H has filed with the court proof that he has completed the Parenting after Separation course;
- (ii) phone and on-line parenting time (collectively, "Virtual Parenting Time") will be as determined by Ms. D;
- (iii) beginning not earlier than July 15, 2020, and provided Mr. H has filed with the court proof that he has completed the Parenting after Separation course, Mr. H will have supervised parenting time ("Supervised Parenting Time") with PKM and CPH on alternate Saturdays, from 10:00 a.m. to 2:00 p.m., and on such other time or times as Ms. D may determine. The Supervised Parenting Time is to be supervised by a supervisor chosen by Ms. D and, where payment for supervision services is required, it will be paid for in advance by Mr. H;
- (iv) each month, Ms. D will send to Mr. H, in accordance with the Protocol, a calendar showing the Supervised Parenting Time and supervisor(s) for the following month, and Mr. H will confirm his acceptance within 24 hours, in accordance with the Protocol. If Mr. H does not confirm his acceptance by the deadline, the parenting time offered for the following month will be forfeit;
- (v) the issue of Mr. H's parenting time (both Virtual and Supervised Parenting Time) with PKM and CPH will be subject to review (the "Review") on application by Mr. H. However, the Review cannot be scheduled any earlier than February 2021 and must be scheduled in consultation with Ms. D's counsel, or, if Ms. D is no longer represented by counsel, in consultation with Ms. D directly and in accordance with the Protocol;
- (vi) further, the Review cannot occur or be set for hearing unless and until Mr. H has engaged in at least six months of regular professional counselling with a properly qualified expert (either a psychiatrist or psychologist) who is fully informed of and provided with a copy of these Reasons, and who will undertake to provide the Court, in connection with the Review and at Mr. H's expense, with an expert report that addresses (at a minimum) Mr. H's willingness and ability to satisfy the needs of PKM and CPH. I will be seized of the Review;
- (h) these orders concerning Mr. H's parenting time for TPK, PKM and CPH replace all previous orders concerning his parenting time;
- (i) with respect to communications between Ms. D and Mr. H, the Protocol is as follows:

- (i) the parties may communicate with one another by one e-mail per week on Saturdays, and, if a response is required, the responding party will respond within 24 hours;
- (ii) the parties' communications are to be limited to matters relating to the children (including child support), and must be concise and informative;
- (iii) unless, in her judgment, circumstances require more frequent reporting, not more than once per month on a Saturday, Ms. D will communicate to Mr. H by e-mail any significant decisions she makes concerning any of the Children; and
- (iv) except as set out in subparas. (i) and (ii), or in case of an emergency relating to any of the Children, Mr. H will not communicate with Ms. D;
- (j) except as permitted in relation to arranging parenting time for TPK, neither parent will:
 - (i) discuss any conflict, parenting issues or parenting arrangements with any of the Children;
 - (ii) question any of the Children about the other parent or time spent with the other parent beyond simple conversational questions;
 - (iii) discuss with any of the Children any inappropriate adult, court or legal matters;
 - (iv) speak disparagingly about the other parent or the other parent's family (including Mr. M) to the Children or in their presence;
- (v) allow any of the Children access either to e-mail communications between the parents or to court documents created for or filed with the court in this action, including these Reasons;
- (k) based on an imputed Guidelines income of \$80,000, Mr. H pay child support to Ms. D in the sum of \$1,619 per month, commencing on July 1, 2020 and continuing on the first day of each and every month thereafter for so long as the Children remain eligible for support or until further agreement of the parties or court order;
- (l) commencing July 1, 2020, Mr. H pay to Ms. D his proportionate share (48.5%) of the Children's special or extraordinary expenses under s. 7 of the Guidelines. Payment by Mr. H shall be due within 14 days of being provided with either an invoice or a receipt for a s. 7 expense. Section 7 expenses shall include counselling and therapy expenses, and medical and dental expenses (including orthodontics and eyeglasses), in both cases, net of insurance coverage;
- (m) retroactive basic child support payable by Mr. H to Ms. D is fixed at \$50,000 and shall be paid by Mr. H in installments of \$1,500 per month commencing July 1, 2020 until fully paid. The balance owing can be paid in full at any time. There will be no interest on the amount outstanding from time to time;
- (n) retroactive s. 7 expenses payable by Mr. H to Ms. D are fixed at \$6,884.00, and shall be paid in full by Mr. H by or before July 31, 2020;

- (o) with respect to any further applications Mr. H may wish to make in this action:
- (i) except for the Review, the preconditions for which are set out above, for a period of 12 months from the date of these Reasons, Mr. H is prohibited from making further applications in this proceeding without first seeking leave of the court;
- (ii) before seeking leave for the first time, Mr. H must file satisfactory proof with the court that he has paid to Ms. D the costs ordered by Master Caldwell on April 5, 2018 in the sum of \$1,000.00 and the costs ordered by Master Keighley on January 7, 2020 in the sum of \$2,053.40, and that there are no arrears of child support;
- (iii) the request for leave must be initiated by completing the applicable form on the court's website ("Request to Appear Back Before a Specific Judge") with a copy to Ms. D (which shall be a permitted exception to the Protocol) or her counsel (if she is represented by counsel) and in such a fashion that the completed document is no more than three pages in length. The request for leave must contain a concise statement of the nature of the application Mr. H intends to make and the reason(s) why Mr. H says leave should be granted; and
- (iv) unless I am not available, I am seized of any leave application;
- (p) all claims in Mr. H's counterclaim, including his claim for spousal support, are dismissed; and
- (q) Ms. D is entitled to costs payable by Mr. H, assessed as special costs.
- [306] In addition to the matters above on which I have seized myself, I will remain seized of any issue arising out of this Judgment for a period of 18 months from the date of the Judgment. As I am resident in Vancouver, any applications will be heard in Vancouver.
- [307] I am directing that Mr. Leibovitz prepare the formal order, and that Mr. H's approval as to the form of order is dispensed with. As the formal order results from reserved written reasons for judgment, the order will, in any event, come to me for final review, settlement (if necessary) and signature.

"Adair J."

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