

CANADA / JUDGMENT

Tsui v. Chow

2025 BCSC 14

COURT

Supreme Court of British Columbia

DECIDED

6 January 2025

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2025 BCSC 14 Tsui v. Chow

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Tsui v. Chow,

2025 BCSC 14

Date: 20250106

Docket: E230194

Registry: Vancouver

Between:

Ching Tsui

Claimant

And

Stephen Marcellus Chow

Respondent

Corrected Judgment: The text of the judgment was corrected at paragraph 52 on January 13, 2025.

Before: Associate Judge Bilawich

Reasons for Judgment

Counsel for the Claimant:

J. Wong

N. Toor A/S

Counsel for the Respondent:

H. Chiu

Place and Date of Hearing:

Vancouver, B.C.

November 28-29, 2024

Place and Date of Judgment:

Vancouver, B.C.

January 6, 2025

Introduction

- [1] This is a high-conflict family action. Before me are three applications, which were heard over the course of two days.
- [2] By application filed August 21, 2023, the claimant seeks orders that:
- a) The respondent pay her interim child support for their son, M. ("M."), retroactive to June 1, 2023;
 - b) The respondent pay her interim spousal support, retroactive to June 1, 2023;
 - c) The respondent pay M.'s s. 7 special and extraordinary expenses, retroactive to June 1, 2023;
 - d) Leave to apply to review the interim support arrangements after the respondent has complied with the document production orders sought; and
 - e) The respondent produce the documents listed in Schedule "A" to the application, consisting of 15 categories of documents.
- [3] The respondent opposes all of the relief sought.
- [4] By application filed November 14, 2024, the claimant seeks an order that the respondent produce additional documents listed in Schedule "A" to the application, consisting of four categories of documents. The respondent gives qualified consent to producing certain items but opposes others.
- [5] By application filed November 15, 2024, the respondent seeks orders that:
- a) The parties continue to be joint guardians of M.;
 - b) The parties both be able to exercise s. 41 Family Law Act ("FLA"), S.B.C. 2011, c 25 parenting responsibilities for M.;
 - c) Starting January 6, 2025, the parties share parenting of M., on an alternating week-on/week-off schedule, with transitions on Monday mornings;

- d) Child support be paid in accordance with ss. 3 and 9 [shared parenting] of the Federal Child Support Guidelines ("Guidelines"), SOR/97-175;
- e) The parties share M.'s special and extraordinary expenses in proportion to their respective incomes, and the claimant have an income imputed to her, pursuant to ss. 7 and 19 of the Guidelines;
- f) The property at [address redacted] Royal Avenue, North Vancouver, BC (the "North Van Property") be sold, with the parties sharing joint conduct of sale;
- g) A debt he says he owes to Yuan Yuan Jia in the sum of \$850,000, plus contract interest of \$38,250 per year, pursuant a loan agreement dated July 20, 2019, be paid from the proceeds of sale of the North Van Property, on a without prejudice basis;
- h) If the HK Property (defined below) sells before the North Van Property, a sum equal to 50% of the net proceeds of sale from the HK Property be paid out to the claimant from the net proceeds of sale of the North Van Property, which will be accounted for in the final division of property, and the balance of the net proceeds of sale from the North Van Property, if any, be held in trust by respondent's counsel, pending further court order or agreement of the parties;
- i) The consent property restraining order made by Justice Tammen on May 9, 2023 be varied to allow the respondent to sell the property at 2B, BLK3, 530 Sai Sha Road, Hong Kong (the "HK Property"). He seeks sole conduct of the sale, but proposes terms:
 - i. That he be required to provide the claimant copies of all documents related to the sale; and
 - ii. Providing that the claimant is at liberty to argue at trial that the HK Property should have been sold at a higher price;
- j) The proceeds of sale from the HK Property be used to pay out the following, without prejudice to the claimant's ability to argue at trial that they are not family debts:
 - i. Two HSBC mortgages registered on title to the HK Property, the first in the sum of HKD 3,688,845.83 and the second in the sum of HKD 1,106,249.02 (both as at November 11, 2024); and
 - ii. To pay a debt he says he owes to his parents, in the sum of HKD 2,700,000, plus contract interest, pursuant to a loan agreement dated August 6, 2014.
- [6] The claimant consents to the parties sharing joint guardianship and s. 41 FLA parenting responsibilities in respect of M., but opposes the balance of the relief sought.

Background

- [7] The claimant is 56 years of age. She is a citizen of Hong Kong, but has been residing in Canada on a visitor's visa since August 2020. She says she has never worked outside the home during the parties' relationship. She does not have legal status to work in Canada. She has a daughter from a prior marriage, who is an independent adult who resides in the United States of America.
- [8] The respondent is 53 years of age. He was born in China, but immigrated to Canada with his parents when he was in his teens. He has Canadian citizenship, but has been living and working in Hong Kong as Director of Field Application Engineering with Xilinx Hong Kong Limited. The level of income he initially disclosed equates to roughly CAD \$418,000 per year (gross). One of the issues before me is whether this should be grossed up for the purposes of calculating his support obligations, due to Hong Kong having a substantially lower rate of income tax than does BC.
- [9] The respondent recently announced that he had resigned from his employment in Hong Kong, with his last day being December 31, 2024. He said he was in the process of relocating to Vancouver. He has not yet secured new employment here and says his income is now \$0. The claimant alleges that the respondent has an infant child from a relationship with a woman who lives in China. He does not address this point in his material.
- [10] The parties have a son, M., who is 15 years of age; soon turning 16. He was born in and initially grew up primarily in Hong Kong. In August 2020, he and the claimant relocated to North Vancouver, where he has been attending high school. He has Hong Kong and Canadian citizenship, the latter due to the respondent having Canadian citizenship, but since August 2020, M. has been attending school in North Vancouver as a foreign student rather than as a domestic student.
- [11] The parties have a complex relationship history, much of which is in dispute.
- [12] The parties met in Vancouver in 2001. At the time, the claimant was visiting Canada under a visitor's visa. They married for the first time on August 9, 2003, in Vancouver. The respondent alleges the marriage was intended to help the claimant get permanent resident status, but soon after she changed her mind. The claimant disputes this.
- [13] On June 24, 2004, the parties started a joint family proceeding in the Vancouver registry of this court. The parties were divorced by order made December 7, 2004, with the divorce taking effect on January 7, 2005. The claimant deposed that she had no knowledge or recollection of this divorce and suggests she was tricked into signing the divorce documents.

- [14] The parties disagree regarding their relationship and living arrangements after the divorce. The claimant says the parties continued living in a marriage-like relationship from 2003 onward, residing in several different locations. The respondent says he lived alone in two locations in China between 2006 and 2010, while the claimant was living in Hong Kong. He says they had an "on and off" relationship.
- [15] Their son, M., was born in Hong Kong in early 2009. The parties agree that from February 2010, they were living together in Hong Kong. They married a second time on February 26, 2010, in Coquitlam, BC. The claimant says she thought they renewing their vows in the presence of the respondent's parents. After the second marriage, they continued living in Hong Kong.
- [16] In 2012 or 2013, apparently after a nanny left their employ, the parties sent M. to Vancouver to temporarily live with his paternal grandparents. The claimant says she travelled to BC several times during this period to spend time with M.
- [17] In late 2014, the respondent purchased the HK Property. It is registered in his sole name. M. returned to Hong Kong to live with them. Between 2014 and early 2020, M. attended kindergarten and elementary school at a private school in Hong Kong.
- [18] In 2019, the respondent purchased the North Van Property. It is registered in his sole name. The reason for the purchase is disputed. The respondent says he bought it as an investment and intended to rent it out, even having identified specific intended tenants. His plan was frustrated by the onset of the COVID-19 pandemic, which caused the intended tenants to change their mind. The claimant says the respondent never told her that he intended to rent out the property, and to the best of her knowledge it never was.
- [19] The claimant says that since 2016, the parties have spent 1-2 months each summer in Vancouver. The enrolled M. in a variety of summer programs at St. George's School, a private school, during these visits.
- [20] Due to severe COVID-19 restrictions which paused in person attendance in Hong Kong schools and relatively severe restrictions in Hong Kong generally, in August 2020, the parties decided that the claimant and M. would relocate to the lower mainland of BC so M. could attend school here. The respondent remained in Hong Kong, but visited Vancouver from time to time. The parties disagree about whether the relocation was intended to be permanent (claimant) or temporary (respondent). In *Tsui v. Chow*, 2024 BCSC 1291 (the "Reasons") at para. 24, Justice Giaschi preferred the respondent's evidence on this point and concluded that initially it was supposed to be temporary.
- [21] Since August 2020, the claimant and M. have occupied the North Van Property and M. has attended a local secondary school. As M. is classified as a foreign student, the parties have been obliged to pay tuition, which has been substantial; most recently, roughly \$16,000 per year. They have also been required to arrange medical insurance for him, because he did not have BC Medical Services Plan coverage.

- [22] The respondent says the parties separated in December 2020. In her original notice of family claim, the claimant pled that they had separated in May 2021, and confirmed this in one of her early affidavits. She later said this had been an error and that they actually separated in January 2023.
- [23] The respondent deposed that in December 2022, the parties decided it was time for M. to return to Hong Kong, due to relaxation of COVID-19 restrictions. The respondent applied to enroll M. in the 2023-2024 school year at the Canadian International School of Hong Kong. Reference letters were obtained from teachers at his North Vancouver school, he took part in a Zoom interview and M. was ultimately accepted. In April 2023, the respondent paid a substantial deposit.
- [24] The claimant deposed that the parties always intended that M. would pursue his high school education in the Vancouver area. She said they paid deposits for schools in both Vancouver and Hong Kong, to keep their options open. She did not tender any evidence confirming a deposit had been paid for a Vancouver area school at that time. The respondent acknowledges they had discussed other possible schools, but says they only ever applied to the one in Hong Kong.
- [25] Justice Giaschi preferred the respondent's evidence regarding their discussions and decisions about M. returning to Hong Kong for the 2023-2024 school year, which was scheduled to start on August 15, 2023: see Reasons at paras. 36 and 38.
- [26] The claimant and M. did not return to Hong Kong and chose instead to remain in Vancouver.

History of Proceedings

- [27] On January 23, 2023, the claimant filed her notice of family claim.
- [28] On January 24, 2023, the claimant filed a without notice application for an asset restraining order pursuant to s. 91 of the Family Law Act ("FLA"), which was granted by Justice Chan, expiring after 14 days. On February 7, 2023, March 9, 2023, orders were made by consent, temporarily extending the asset restraining order. On May 9, 2023, Justice Tammen made an order by consent extending it again, but without any expiry date.
- [29] Also on January 24, 2023, claimant filed an F8 financial statement deposing that her income was \$0 and her total annual expenses were \$113,020.
- [30] On June 10, 2023, the claimant learned that the respondent had terminated her TD supplemental credit card. The respondent says he lost his TD credit card and reported it to the bank, which cancelled both his primary and the claimant's supplemental card.
- [31] On July 20, 2023, respondent's counsel wrote to claimant's counsel regarding various issues, one of which was a suggestion that the respondent was considering relocating to Vancouver.

Out of the best interests of [M.], under the current circumstances that Ms. Tsui has not been making good judgment call and planning for [M.], Mr. Chow will consider alternate job opportunities, including jobs in the Vancouver Lower Mainland, to ensure [M.'s] well-being. As Ms. Tsui well knows, due to prior Covid-19 restrictions, Mr. Chow was unable to spend as much time with [M.] as he wanted to because he was residing in Hong Kong while [M.] was here with her. As such, Mr. Chow does not want to lose out on further parenting time with [M.], especially since he is growing up so fast. You will no doubt agree that it is in [M.'s] best interest to have maximum contact with both of his parents.

[32] On July 26, 2023, the claimant learned that the respondent had cancelled the roaming services on her cellular telephone, effectively preventing her from carrying out transactions associated with the bank she uses in Hong Kong. She requires her Hong Kong telephone number to access two-step verification, which is required for almost all of her banking transactions. She says she cannot change the number without physically attending at the bank branch in Hong Kong. The respondent says that the claimant was in Hong Kong in August 2023 and could have attended at the branch then to address this issue.

[33] On July 31, 2023, claimant's counsel replied to the July 20, 2023 letter. With regard to the respondent's possible move to Vancouver:

Even if Mr. Chow changes his residence to Vancouver, it does not follow that he's going to have more parenting time than is currently existing. As I am sure you are aware, status quo governs interim parenting matters.

Regarding Mr. Chow's proposed change to his employment, our position is that he is at liberty to take up any alternative employment provided that the family's lifestyle will remain unchanged.

If Mr. Chow voluntarily resigns from his current employment before securing comparable alternative employment, or that he takes up employment where remuneration is inferior to his current earnings, then our position is such that his support obligations would remain as if he's earning income in his current employment.

[34] On August 1, 2023, the respondent filed an F8 financial statement, indicating that his income was \$418,026 and that his annual expenses were \$687,276, based on him paying expenses for households in Hong Kong and Vancouver. Under anticipated changes, he stated:

For the best interests of [M.], so that he can have maximum contact with both of his parents, I am considering ceasing my employment in Hong Kong and obtaining employment in the Vancouver Lower Mainland. I do not know whether I will be able to find employment in the Vancouver Lower Mainland and if I am able to find employment, I doubt that the income will be equivalent to my current income. As such, I anticipate that my income will decrease significantly if I cease my employment in Hong Kong. Also, income tax rates in Hong Kong are lower than in Canada and as such, the "net dollars" retained by me in Hong Kong is higher than if I was working and paying income tax in Canada.

Based on the current level of expenses, especially the expenses being incurred by Ms. Tsui, I am unable to pay for all the daily household and living expenses associated with maintaining a home in Hong Kong and in the Vancouver Lower Mainland on my income alone. I anticipate I will need to encroach on my savings and/or will continue to incur debt (re: HSBC loan) in order to pay all expenses.

- [35] On August 7, 2023, the claimant arranged for a locksmith to help her gain access to the HK Property at a time when the respondent was away. She departed with a large suitcase, the contents of which are unclear and disputed. The respondent alleges she stole some of his work documents, personal documents and personal correspondence. He reported the break-in to the police. The claimant says she only retrieved her personal belongings and did not want to enter the home when the respondent was present.
- [36] On August 8, 2023, the parties remotely attended a judicial case conference ("JCC"). An order was made releasing them from the JCC program. On the same day, the respondent filed a jurisdictional response in this action, disputing that this court had jurisdiction over him and M. or alternatively submitting that the court should decline to exercise jurisdiction.
- [37] On August 12, 2023, the claimant and M. returned to Vancouver from a lengthy trip. M. noticed that the license plate on the vehicle the claimant was using here had been removed. The claimant says she called the respondent's mother, who told her that while they were away, the respondent's father had entered the North Van Property and removed the plate. This left the claimant and M. without a vehicle.
- [38] The vehicle is registered in the name of the respondent's father. The claimant alleges that when it was first purchased, it was registered in the respondent's name, but shortly afterwards he transferred ownership to his father. The respondent disputes this. The respondent says the claimant told his parents that she and M. would not be in Vancouver from mid-July to the end of August 2023, so they had changed the policy to "storage only" in order to save money. In November 2023, the respondent's father provided an affidavit in which he stated that he was not comfortable allowing the claimant to use his vehicle because she did not have a valid international driver's license and was driving his vehicle after consuming alcohol, even after he asked her not to do so. He did not specify when this allegedly occurred. The claimant says she does have a valid international driver's license and denies she has ever operated the vehicle while under the influence.
- [39] On August 21, 2023, the claimant filed her application seeking interim child and spousal support and production of documents. This is the first of three applications before me. That same day, the respondent filed a petition for divorce with the District Court of the Hong Kong Special Administrative Region Matrimonial Causes No. 9588 of 2023. He sought orders for divorce, custody, maintenance and property division.

- [40] On September 14, 2023, the respondent filed an application in this action, seeking an order under the Hague Convention on the Civil Aspects of International Child Abduction, 25 October 1980, 1343 U.N.T.S. 22514 [the "Hague Convention"] that M. be returned to Hong Kong and challenging this court's jurisdiction or asking it decline to exercise jurisdiction.
- [41] On September 15, 2023, the claimant filed an amended notice of family claim, adding a claim for divorce.
- [42] On September 29, 2023, the claimant filed an application response to the respondent's September 14, 2023 application.
- [43] On October 5, 2023, Justice Groves adjourned both applications, ordered that a Views of the Child Report be prepared and providing that this was without prejudice to the respondent's position on jurisdiction. He also ordered, on an interim and without prejudice basis, that the respondent continue to pay the household expenses with respect to the North Van Property and pay the claimant child support of \$3,500 per month, starting September 1, 2023, and continuing until the court adjudicated the respondent's Hague Convention and jurisdiction application.
- [44] On October 19, 2023, Master Lam of the Family Court Registry in Hong Kong gave directions for the Hong Kong proceeding, including that Ms. Tsui make an application regarding the appropriate forum, if so advised, within 28 days. She subsequently sought and was granted a 14-day extension of time to make that application. Her application was set for hearing on November 23, 2023. This was later moved to December 4, 2023. See Reasons at paras. 51-53.
- [45] On November 20, 2023, an "Evaluative Views of the Children Report" authored by Nooshin Morgan was filed in this action. She reported that M. had unequivocally expressed a strong preference for continuing to reside in Canada over returning to Hong Kong. His reasons were multifaceted and based on perceived opportunities and a stable living environment here. She was of the view that M. had made this decision on his own, and that he had a mature understanding of his situation and insight into the dynamics between his parents. He had a closer bond to the claimant and indicated he wanted more time with the respondent. He also valued the respondent's guidance with respect to a potential eventual career path in engineering.
- [46] The hearing of the respondent's September 14, 2023 application proceeded before Giaschi J. on November 22-23, 2023, December 12, 2023, February 15, 2024 and March 13, 2024. On July 18, 2024, he issued his Reasons. He concluded that, notwithstanding that the move in August 2020 was initially intended to be temporary, by August 15, 2023, BC had become the focal point of M.'s life and his habitual residence. See Reasons at para. 89:
- [89] Considering all of the above facts and circumstances, I am of the view that, notwithstanding the move in August 2020 was intended to be temporary, by August 15, 2023, British Columbia was the focal point of M.'s life and his habitual residence. It follows from this that M. is not to be returned to Hong Kong.

- [47] He went on to say that even if he had determined that M.'s habitual residence was Hong Kong, he nevertheless would have determined that M. should not be returned: See Reasons at para. 90:
- [90] Given my conclusion that M.'s habitual residence immediately before August 15, 2023 was British Columbia, it is not necessary to address whether there are any exceptions that apply. However, if I had determined the habitual residence was Hong Kong, I would nevertheless have determined that he should not be returned based on his age and maturity and his objection to being returned.
- [48] He found that Ms. Morgan's report was very compelling: See Reasons at para. 100:
- [100] I find that Ms. Morgan's report to be very compelling. I agree with her assessment that M. displays a "mature perspective" and that his objections to returning to Hong Kong are, for the most part, based on thoughtful considerations. If necessary, I would have given effect to his objections and refused to order his return to Hong Kong.
- [49] On July 26, 2024, the respondent became obliged to pay the claimant's costs of the Hong Kong proceeding. The parties have not yet been able to resolve the quantum of costs. The claimant is seeking HKD 400,000, which is roughly equivalent to CAD \$70,000.
- [50] On July 31, 2024, the claimant rescheduled her August 21, 2023 application for hearing on August 20, 2024. She characterized the application as urgent, because M.'s foreign student tuition had to be paid before he could be re-enrolled for the 2024-2025 school year.
- [51] On August 9, 2024, the respondent prepared a letter resigning from his position with his Hong Kong employer.
- [52] On August 19, 2024, the respondent affirmed his affidavit #7, in which he deposed that he was seeking an adjournment of the August 20, 2024 hearing, that he was in the process of moving to Vancouver, and there was no urgency to have the claimant's application heard because he was scheduled to arrive in Vancouver on September 4, 2024 and would re-register M. as a domestic student on September 5, 2024. By doing so, M. would no longer be required to pay foreign student tuition. At paras. 4 and 6:
4. I am seeking an adjournment of the hearing in respect to support because my financial circumstances will change significantly within the next two months. Since Mr. Justice Giaschi dismissed my application to have [M.] return to Hong Kong to attend school and reside on July 18, 2024, I have decided to move to the Vancouver Lower Mainland ("Vancouver") so that I can have parenting time with [M.] because I have had virtually no parenting time with him in the last year and no parenting time at all since June 2, 2024. My son is my priority. As such, I have submitted my letter of resignation to my employer and I am taking steps to move to Vancouver. I anticipate that the process for me to move to Vancouver will take approximately two months because I will have to take all steps necessary for my permanent move from Hong Kong to Vancouver.

6. I am an engineer. I will take all steps necessary to find employment in Vancouver; however, I do not know when I will find employment and what my salary will be once I find employment. I do know; however, that may sound early in Vancouver will not be anywhere near the salary that I was paid in Hong Kong based on my experience in the industry. Further, according to the website of Indeed.com, the average salary for an engineer in Vancouver, B.C. Canada is \$94,297 per year, updated to July 28, 2024.
- [53] The respondent attaches a copy of his August 9, 2024 resignation letter, addressed to "HR Manager, Xilinx Hong Kong Limited". He stated that he had submitted it to his employer, but did not identify a specific individual to whom it had been submitted.
- [54] On August 20, 2024, Associate Judge Robertson pronounced a consent order providing that the support order of Justice Groves made October 5, 2023 was varied to extend it until the claimant's application of August 21, 2023 was determined. It also included an order that the parties would exchange updated financial statements with all attachments by September 30, 2024. Also on this date, the respondent apparently cancelled the travel arrangements for his previously disclosed trip to Vancouver.
- [55] On August 27, 2024, the respondent paid M.'s foreign student tuition. Because this had been left so late, M. was not able to enroll in his preferred classes and had to settle for a less desirable and less convenient schedule, as well as miss out on being able to enroll in an extra-curricular swimming program he had been attending. Also on August 27, 2024, the respondent filed an amended application response to the August 21, 2023 application and a response to family claim.
- [56] On September 27, 2024, the claimant filed a second F8 financial statement in which she deposed that her income remained \$0 and her total annual expenses were \$125,070.
- [57] On September 27, 2024, the respondent swore an updated F8 financial statement in which he deposed that his income was now \$0 and his total annual expenses were \$318,861. Under "anticipated changes", he stated:

Since Mr. Justice Giaschi dismissed my application to have [M.] returned to Hong Kong to attend school and reside on July 18, 2024, I have decided to resign from my employment in Hong Kong and move to the Vancouver Lower Mainland ("Vancouver") so that I can have parenting time with [M.] because I have had very limited parenting time with him in the past few years. I believe, based on my interactions with [M.], that the claimant has painted me in a very negative light to [M.] and as such, I feel that I will lose my son completely if I do not move to Vancouver and spend a lot of time with him so that I can salvage our relationship.

On August 9, 2024, I submitted my letter of resignation to my employer in Hong Kong. I plan on moving to Vancouver on or about end of October 2024.

Although I have been applying for employment positions in Vancouver since or about August 9, 2024, I have been unable to secure employment in Vancouver. I will continue to apply for employment positions in Vancouver; but in the interim, pending me obtaining employment, I will not have an income.

[58] The respondent's second financial statement did not include all appropriate attachments, contrary the terms of the consent order of Robertson, A.J.

[59] On October 17, 2024, the claimant filed a notice of trial, setting the trial date for April 13, 2026, for 15 days.

[60] On November 14, 2024, the respondent affirmed an affidavit #9 in which he stated that:

- a) He had submitted his letter of resignation to his employer in Hong Kong on August 9, 2024, but stayed until November 15, 2024, in order to train his replacement.
- b) His final day of employment with his employer in Hong Kong was December 31, 2024, as a result of unused vacation balance in 2024. His employer had allowed him to leverage the period between November 15, 2024 and December 31, 2024 for relocation back to Vancouver;
- c) He was permanently moving back to Vancouver on January 2, 2025, at which time he would complete the necessary paperwork to declare himself a resident of British Columbia;
- d) Since he submitted his letter of resignation on August 9, 2024, he had applied for 11 jobs in Vancouver and had two interviews.

[61] Also on November 15, 2024, the respondent filed his application for shared parenting of M. and sale of the North Van and HK Properties, amongst other relief. This is the third application I am asked to decide.

[62] The hearing of the three applications proceeded before me on November 28-29, 2024.

Parenting Arrangements

[63] Given that parenting arrangements may have implications on the appropriate level of support, I will address the parenting-related relief sought by the respondent first, despite this being the most recently filed application before me. The respondent applies for orders that:

- a) The parties continue to be joint guardians of M., pursuant to s. 39 of the FLA; and
- b) The parties both be able to exercise s. 41 FLA parenting responsibilities for M.

[64] The claimant consents to both of these items. I so order, by consent.

[65] The respondent applies for an interim order that, starting on January 6, 2025, the parties share parenting of M., on an alternating week-on / week-off schedule, with transitions on Monday mornings. The application is made pursuant to ss. 16.1, 16.2 and 16.6 of the Divorce Act ("D.A."), R.S.C. 1985, c. 3 (2nd Supp) and s. 42 of the FLA.

[66] Section 16 of the D.A. is as follows:

Best interests of child

16 (1) The court shall take into consideration only the best interests of the child of the marriage in making a parenting order or a contact order.

Primary consideration

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

Factors to be considered

- (3) In determining the best interests of the child, the court shall consider all factors related to the circumstances of the child, including
- (a) the child's needs, given the child's age and stage of development, such as the child's need for stability;
 - (b) the nature and strength of the child's relationship with each spouse, each of the child's siblings and grandparents and any other person who plays an important role in the child's life;
 - (c) each spouse's willingness to support the development and maintenance of the child's relationship with the other spouse;
 - (d) the history of care of the child;
 - (e) the child's views and preferences, giving due weight to the child's age and maturity, unless they cannot be ascertained;
 - (f) the child's cultural, linguistic, religious and spiritual upbringing and heritage, including Indigenous upbringing and heritage;
 - (g) any plans for the child's care;
 - (h) the ability and willingness of each person in respect of whom the order would apply to care for and meet the needs of the child;
 - (i) the ability and willingness of each person in respect of whom the order would apply to communicate and cooperate, in particular with one another, on matters affecting the child;

- (j) any family violence and its impact on, among other things,
 - (i) the ability and willingness of any person who engaged in the family violence to care for and meet the needs of the child, and
 - (ii) the appropriateness of making an order that would require persons in respect of whom the order would apply to cooperate on issues affecting the child; and
 - (k) any civil or criminal proceeding, order, condition, or measure that is relevant to the safety, security and well-being of the child.
- [67] Sub-section (4) addresses factors relating to family violence. Sub-section (6) provides that in allocating parenting time, the court shall give effect to the principle that a child should have as much time with each spouse as is consistent with the best interests of the child.
- [68] Section 37 of the FLA sets out factors the court must consider when making an order under Part 4 [Care of and Time with Children] of the FLA:

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 the person's 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 the person's 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.
- [69] Section 38 of the FLA addresses factors the court must consider when assessing family violence, for purposes of s. 37(2)(g) and (h).

Analysis

- [70] The respondent tendered evidence regarding his efforts in the past year or so to arrange parenting time with M. He believes the claimant has been actively frustrating his efforts to arrange significant parenting time with M. He points to several examples of the claimant not disclosing to him when and where M. is when he and the claimant have been in Hong Kong, most recently in and around July and August 2024. He says he has arranged travel to Vancouver for the purpose of having parenting time with M., only to find that the claimant has made last-minute plans to travel elsewhere with M. On recent occasions when M. and the respondent have been in Vancouver at the same time, the respondent's efforts to schedule meaningful parenting time have only yielded offers that they go out for lunch together. On one such occasion, the respondent says it was his understanding that the claimant was proposing to be at another table in the same restaurant while he and M. were having lunch together. This was not acceptable, so he cancelled the lunch. On another occasion, the respondent complains that he attempted to arrange additional time with M. following their lunch, but M. advised he could not accommodate the request because the claimant had arranged a hiking outing with him that afternoon. The respondent believes the claimant has been speaking negatively about him to M. and undermining M.'s desire to spend time with him. Even where the claimant is not in the vicinity, the respondent speculates that M. is aware of the claimant's wishes and feels compelled to respect them by minimizing his interactions with the respondent.
- [71] The respondent points to the Views of the Children Report, dated November 19, 2023, which describes M. as indicating he wants to spend more time with the respondent and wants guidance from him regarding a possible future career in engineering. He also emphasizes M.'s description of his father in the report. Some select passages include:

Communication Dynamics between the Parents:

Communication dynamics between [M.'s] parents seem strained, with significant disagreements affecting their relationship. [M.] mentions that his parents argue frequently, especially in the past year, attributing it partially to his father's extended absences due to work-related travel. The lack of communication and the father's infrequent visits have intensified the conflicts.

[M.] notes that his mother tends to escalate arguments, expressing her frustrations through yelling, while his father tends to remain silent and unresponsive, further exacerbating the situation. [M.] desires a more civilized and open communication style between his parents, hoping they can talk reasonably and avoid yelling.

M.'s Relationship with the Parents

In terms of relationship, [M.] feels closer to his Mother, as she has been the primary caregiver. However, he acknowledges the importance of having his father in his life, considering him a potential role model for pursuing a career in engineering. [M.] expresses a desire for a stronger bond with his father and emphasizes the significance of spending more time together.

Safety and Relationship Dynamics

In the realm of safety, it's evident that [M.] doesn't feel afraid of his father stating that he feels safe around him. There haven't been indications of physical violence, with the conflicts primarily manifesting through arguments and verbal exchanges. [M.] described a recent incident when his father wanted to retrieve his jacket from the house, and his mother resisted entry, leading to a brief argument between the parents.

The safety concerns seem more rooted in the emotional turbulence caused by the strained relationship between [M.'s] parents. The conflicts, frequent arguing, and the separation have introduced uncertainties into [M.'s] life. The impact on his daily routine, such as the recent loss of the family car and potential disruption in living conditions, may contribute to a sense of instability.

In navigating the complexities of his parent's separation, [M.] desires a return to normalcy, yearning for the days when his father can visit more often, and the family dynamics are less strained.

[72] Giaschi J. addressed a similar submission in his Reasons at para. 80:

[80] The respondent additionally stresses that M. has expressed a desire to spend more time with his father, who resides in Hong Kong. This is an important factor and one that I take into account. However, it is somewhat diminished by several other factors. First, the claimant, not the respondent, has clearly been the primary caregiver for M and she is currently residing in British Columbia, albeit on a visitor's visa. Second, it is apparent that frequent travel and extended stays in Vancouver have been a constant aspect of the family's life together. For example, during the two periods when M. lived in Vancouver with his grandparents, the parties travelled frequently to be with him. Given the propensity of the

parties to travel, M. and the respondent can spend more time together in Vancouver, although not as much time as they would have if M. returned to Hong Kong.

- [73] The respondent effectively seeks to go from a status quo which involves infrequent and relatively brief in person contact with M., to having full shared parenting. The application appears to have been prepared in a rushed manner. It does not go into the factual or legal depth regarding how the proposed arrangements would serve M.'s best interests, as one would expect when a party is seeking a material change in parenting arrangements. The application is framed as being made in anticipation of the respondent's move, rather than after the respondent has new living and work arrangements in place. This complicates efforts to assess whether and how it would serve M.'s best interests. The respondent says he intends to arrange suitable accommodation in North Vancouver, near M.'s school, but at the time of the hearing he had not actually secured a specific residence. He sets out ranges of anticipated rent which is charged in that area, which is frankly at levels he cannot afford, given his precipitous decision to resign from his employment with Xilinx and relocate here before securing new employment. It frankly seems more likely that he will end up living with his parents, at least until he secures new employment. When that happens, it is possible that he may have to live somewhere further afield. His circumstances are unsettled, due to his own recent and frankly impetuous decisions.
- [74] The respondent emphasizes what he perceives as interference or alienation by the claimant to frustrate his efforts to arrange parenting time both in Vancouver and Hong Kong as recently as July/August 2024. He relies on his decision to relocate, his statement that he intends to find a place to live that is in close proximity to M. and M.'s statements about wanting a better relationship with the respondent in the Views of the Children Report. That report was prepared a year ago, in the context of determining what M.'s views were regarding staying Vancouver versus returning to Hong Kong. While it does offer some insight into M.'s views regarding the respondent, the choices facing M. at that time are materially different than what M.'s views might be about changing his long-standing living arrangements. He is being asked to start to live 50% of the time with the respondent, at an as yet undetermined location. The report is of limited assistance when determining what day-to-day living arrangements are in M.'s best interests in the wake of the respondent's intended relocation.
- [75] More recent evidence regarding contact M. had with the respondent during the summer of 2024 offers some insight into the more recent dynamics between them. The claimant took M. on a roughly 6-week trip to Japan, Macau and locations in Europe as a reward for his excellent results in school. The respondent denies agreeing to fund the trip and took the position he would not pay for it. At some point during the trip, the claimant and M. were in the Hong Kong area. The respondent wanted to arrange parenting time with M. while he was there. M. had a text exchange with the respondent in which M. was urging the respondent to confirm he would pay foreign student tuition which had to be paid before M. could enroll for the first half of the 2024-2025 school year at his school in North Vancouver. The respondent

was non-responsive on that and asked where M. was at the time. M. was non-responsive about his specific location. He eventually told the respondent he was in Hong Kong, but did not disclose exactly where. This exchange highlights that there are clearly significant tensions between M. and the respondent which post-date the report.

- [76] The respondent blames M.'s unwillingness to disclose his location on the claimant, speculating she must have told M. not to do so, based on her irrational fear that the respondent might force M. to travel from Hong Kong to China, where it would be difficult to secure M.'s return. The respondent says there is no basis for such a concern. He simply wanted to spend time with M.
- [77] I am not persuaded that it would be in M.'s best interest to impose a sudden 50-50 shared parenting regime on him in anticipation of the respondent's intended relocation to Vancouver. M. will soon turn 16 years of age. He has been found to be mature for his age and to have good insight into his parents' separation dynamics. A year ago, he did express a desire to spend more time with the respondent. Once the respondent has actually relocated here and has his new living arrangements in place, the respondent can pursue a gradual increase in his parenting time, in consultation with M.
- [78] At this point, I do not have sufficient evidence with which to consider a specific lesser interim parenting schedule. That too is premature, given the unsettled nature of the respondent's current circumstances. M. is at an age and level of maturity where his wishes should be canvassed and given due consideration before any significant change is made to the current, longstanding parenting arrangement.
- [79] The respondent's application for interim shared parenting of M. is dismissed.

Determination of Parties' Guideline Incomes

Background / Position of the Parties

- [80] In her F8 financial statement dated January 24, 2023, the claimant deposed that her Guideline income was \$0. The same figure appears in her updated financial statement dated September 27, 2024. She has never worked outside the home during the parties' relationship, which she says lasted 20-years. She is currently in Canada on a visitor's visa and as such she does not have legal status to work here.
- [81] In his F8 financial statement dated July 31, 2023, the respondent deposed that his Guideline income is the equivalent of \$418,026. It is undisputed that he was paying all expenses for the parties' households in both North Vancouver and Hong Kong. In his updated F8 financial statement dated September 27, 2024, he deposed that his income was now, or as of December 31, 2024 would be \$0, based on him having voluntarily resigned from his job with Xilinx and his decision to relocate to Vancouver. As of the date of the hearing, he had not secured alternate employment.

- [82] Despite this proceeding having been pending for almost two years, the respondent has yet to produce a copy of any of his filed income tax returns and notices of assessment. While he can perhaps point to some delay caused by his application to return M. to Hong Kong, had he been successful, presumably he would also have been obliged to provide similar financial disclosure under the Hong Kong proceedings which he initiated.
- [83] It has been roughly six months since Giaschi J. dismissed the respondent's application to return M. to Hong Kong. He is in breach of Robertson A.J.'s consent order to provide an updated financial statement with full attachments by September 30, 2024. His failure to produce any "applicable income documents" [as defined in Rule 5-1 of the SCFR] or at least something confirming his level of income, is troubling, particularly when viewed in context with his precipitous and financially destructive decision to resign from his long-time employment in Hong Kong and relocate before securing new and ideally comparable employment. One of the submissions he made in his material was to the effect that now that he had resigned, it should not be necessary for him to produce documents relating to his income while in Hong Kong. This suggest he is intentionally resisting proper financial disclosure.
- [84] The claimant asks that the respondent's reported income be grossed up to reflect the fact that Hong Kong has a substantially lower rate of income tax than BC. She says its highest tax rate is 17%. The rates in BC, and on which the Guidelines' basic support tables are based, are substantially higher. She offered the following calculations:

Net income of base salary

$\$317,276.18 \times (1-17\%) = \$263,339.23$

Grossed Up

$\$460,366.00$

Basic Child Support

$\$3,777$ per month

Net self-declared income

$\$420,000.00 \times (1-17\%) = \$348,600.00$

Grossed Up

$\$643,723$

Basic Child Support

$\$5,207$ per month

- [85] The respondent argues that he is in the process of experiencing a material change in circumstances, due to his resignation and relocation. He has tendered in evidence a page taken from a job search website which suggests that the average income for engineers in the lower mainland of BC is \$95,067. He proposes that he be imputed as having that level of income, at least until he is successful in securing new employment.
- [86] Alternatively, the respondent says the claimant has not tendered any expert evidence regarding what the rate of income tax is in Hong Kong, so there is no evidentiary basis upon which the court can opt to gross up his former Hong Kong income figure for purposes of this application.
- [87] The respondent also argues that it is not reasonable that the claimant continues to make no financial contribution to M.'s or her own support. He asks that she be imputed as having income which is based on what she would be earning if she worked at a minimum wage job, on a full-time basis. He calculates this as follows: \$17.40 per hour x 40 hours per week x 48 weeks per year = \$33,400 per year.

Applicable Law

- [88] Section 19(1)(a) of the Guidelines allows the court to impute income to someone who is intentionally under-employed or unemployed:

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;
- [89] In *Shapiro v. Simpson*, 2016 BCSC 211 [Shapiro] at para. 173, the court noted that parents have a joint and ongoing obligation to provide reasonable and necessary support for children of the marriage:

173 Parents have a joint and ongoing legal obligation to provide reasonable and necessary support for children of the marriage. 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. See *Shapiro No. 1*, at para. 42 (citing *Vlek v. Graff*, 2013 BCSC 1906, at para. 34).

- [90] In *Marquez v. Zapiola*, 2013 BCCA 433 at paras. 36-38, the court of appeal summarized the principles applicable to imputation of income in cases of intentional under-employment or unemployment:

36 For the purposes of both child and spousal support, there is a broad judicial discretion to impute income to either or both spouses. However, the party seeking to have income imputed to the other spouse has the burden of establishing an evidentiary basis for such a finding.

37 The test for imputing income for intentional under-employment or unemployment is one of reasonableness, having regard to the parties' capacity to earn income in light of their age, education, health, work history and work availability. A spouse's capacity to earn income will include that person's ability to work or to be trained to work.

38 Although the legal foundation for awarding spousal support is different from that of child support, the test for imputing income for the purpose of fixing the quantum of support is similar. Again, the test is one of reasonableness, having regard to the same factors to be considered in imputing income for child support. However, the concept of "needs" for non-compensatory support also includes a consideration of the marital standard of living: "Means" has been interpreted to include all capital and other sources of income

[citations omitted]

[91] In *Shapiro* at para. 176, the court summarized the principles applicable to imputing income as follows:

- (a) there is a duty to seek employment where a parent is healthy and there is no reason why the parent cannot work;
- (b) when imputing income on the basis of intentional unemployment, a court must consider what is reasonable under the circumstances. The age, education, experience, skills and health of the parent are factors to be considered in addition to such matters as availability of work and other obligations;
- (c) a desire simply to stay home with a child is not sufficient to invoke the exception in s. 19(1)(a) of the Guidelines. A parent who chooses to work less than full-time must justify that choice by evidence of the needs of the children;
- (d) bad faith is not required, and a parent is intentionally under-employed if the parent chooses to earn less than he or she is capable of earning.

[92] A party seeking to impute income to the other bears the burden to establish an evidentiary basis for same: *MacCarthy v. MacCarthy*, 2015 BCCA 496 at para 35. Significant disputes regarding imputation of income are often best left to be resolved at trial, where parties can fully canvas their respective earning capacities and contested evidence can better be assessed: *Kouznetsova v. Kouznetsov*, 2014 BCCA 160 at para 45.

Analysis

[93] The respondent recently made the extraordinary decision to resign from his long-time employment in Hong Kong. His rationale for doing so is that he is unhappy with the amount of parenting time he has had with M. He believes the claimant is alienating him from M,

offering several examples. He also points to M.'s statements to the author of the Views of the Children Report, stating that he wants to have more contact with the respondent and hopes to get his advice and guidance regarding his possible future career path in engineering. The respondent says he is concerned that if he does not take decisive steps to try to re-establish a good relationship with M. now, he will lose him forever.

- [94] The evidence indicates that throughout their relationship, the respondent travelled frequently and for extended periods for his work. They disagree regarding the extent. The claimant suggests that the respondent was travelling as much as 11 months per year. The respondent estimates it was roughly 3 months per year. The analysis is complicated by the fact that both parties are less than forthcoming with each other regarding their travel and whereabouts from time to time. It is not necessary for me to resolve this issue for purposes of this application. Regardless of whose account one accepts, the parties have a history of engaging in an exceptional amount of air travel, both business and personal. This is referenced in Giaschi J.'s Reasons at para. 80, which are reproduced above.
- [95] The respondent argues he should be imputed as having income based on \$95,000, which he suggests is the average income for engineers in the Vancouver area. The evidence he has provided is simply a printout of the website page. There is nothing indicating how this figure was derived.
- [96] The respondent did not refer me to any authorities in which the court had concluded that a party's desire to improve a damaged or strained relationship with a teenage child took precedence over their duty to financially support that child and pay spousal support.
- [97] In my view, the respondent's decision to resign from his job and relocate to Vancouver without first having secured alternate employment was precipitous, unreasonable and indefensible. He had been making threats to this effect since mid 2023. His decision to do so in the wake of Giaschi J.'s decision has the appearance of being a punitive and impetuous reaction to having had his efforts to move the litigation and M. to Hong Kong denied. In the circumstances, I agree this is an appropriate case in which to impute to the respondent a level of income which is based on what he was earning in Hong Kong.
- [98] In his first financial statement stated dated July 31, 2023, the respondent disclosed that his base salary as at that date was HKD 1,866,330,450. The figure he used as his Guideline income was CAD \$418,026. The summary page he attached also references a sales incentive target of 34.39568%, but it does not indicate what if any bonus he earned or expected to earn. As previously noted, the respondent has thus far failed or refused to produce copies of any of his Hong Kong income tax returns and notices of assessment, despite having consented to an order which required him to do so by September 30, 2024. His second financial statement dated September 27, 2024 disclosed an income of \$0 and did not attach any summary of his 2024 year-to-date income, or copies of income tax returns and notices of assessment for previous years.

[99] The claimant asks that the respondent's disclosed income be grossed up to reflect the fact that income tax rates in Hong Kong are substantially lower than those in Canada. The Guidelines table amounts are based on local income tax rates. She suggests the highest rate in Hong Kong is 17%. The respondent objected to any gross up based on differences in income tax rates, when the claimant has not tendered any expert evidence regarding the differing tax rates and differences in the bundle of services provided in Hong Kong compared to BC.

[100] Section 20 of the Guidelines addresses treatment of non-resident parties:

Non-resident

20 (1) Subject to subsection (2), where a spouse is a non-resident of Canada, the spouse's annual income is determined as though the spouse were a resident of Canada.

Non-resident taxed at higher rates

(2) If a spouse is a non-resident of Canada and resides in a country that has effective rates of income tax that are significantly higher than those applicable in the province in which the other spouse habitually resides, the spouse's annual income is the amount that the court determines to be appropriate taking those rates into consideration.

[101] In *Devathasan v. Devathasan*, 2019 BCSC 661, the court considered whether expert evidence was necessary when the court is exercising discretion to gross up a party's income based on differing income tax rates. At paras, 266-270:

266 In *Gonabady-Namadon v. Mohammadzadeh*, 2009 BCCA 448 at para. 36, Newbury J.A. stated:

36. When a non-resident payor's tax rate is significantly different than Canadian tax rates, the usual practice under ss. 19(1)(c) and 20 of the Guidelines is to convert his or her gross foreign income to Canadian dollars at a fair exchange rate, then look to the evidence of the applicable foreign tax rate to calculate his net income, and then determine what gross income would be required to yield the same net income at Canadian tax rates. Finally, it may be necessary to examine the "bundle of services" that both governments provide in exchange for the tax dollars paid. These matters are often the subject of expert evidence: *Patrick v. Patrick*, [1999] B.C.J. No. 1245 (S.C.) at paras. 12-19, *Ward v. Ward*, 2001 BCSC 847, 19 R.F.L. (5th) 232 at paras. 34-40, *Watson v. Watson*, 2006 BCSC 2006, [2006] B.C.J. No. 329 at paras. 22-29.

[Emphasis added.]

267 Dr. Devathasan relies on the sentences I have emphasized and objects to the tax gross-up because Ms. Daum has not examined the bundle of services provided by the Canadian and Singaporean governments. He points in particular to the absence of government funded health care in Singapore. On cross-examination, Ms. Daum acknowledged that she is an accountant, not an economist, and that she does not have the expertise to carry out a full review of what taxpayers get in exchange for their taxes in Singapore, as opposed to Canada. Nor did she attempt

to conduct such a review.

268 In *Gonabady-Namadon*, Newbury J.A. did not state that expert evidence concerning the bundle of services is necessarily required. In one of the cases she cites in the passage quoted above, *Patrick v. Patrick*, the trial judge concluded that a tax gross-up was appropriate without such evidence. In one of the others, *Ward v. Ward*, the trial judge found that he was unable to order a tax gross-up without expert evidence that the tax rate in the paying spouse's jurisdiction was significantly lower than in Canada. He commented, at para. 40:

Further, I have not been directed to any other factors which may need to be taken into account such as health care costs which provide a benefit to Canadians not shared by residents of the United States. Such evidence would be necessary to justify an appropriate level of judicial satisfaction that the mother lives in a country that has effective rates of income tax that are significantly lower than those in Canada. If I had some expert evidence supporting the father's thesis the result may be different. On the whole, I am persuaded by the mother's evidence and submissions that her tax rate is not significantly lower.

[Emphasis in original.]

269 In the third case, *Watson v. Watson*, the trial judge held that the issue of a tax gross-up was *res judicata* by virtue of a previous order in the case. He added, in obiter, that he had expert evidence that did not address the question of the bundle of services, and he agreed with the view expressed in *Ward* that the bundle of services is material.

270 In my view, these cases do not establish a legal rule that expert evidence from an economist who has conducted a "bundle of services" review is an essential foundation in this case for the exercise of my discretion under ss. 19(1)(c) and 20 of the FCS Guidelines. The FCS Guidelines direct me to consider the difference in effective rates of income tax. While a broader inquiry may inform the exercise of the court's discretion, it is not essential in every case: if it were, *Patrick* would be wrongly decided and *Newbury J.A.* would not have referred to it with apparent approval.

[102] On this application, the respondent has not yet produced copies of recent income tax returns or notices of assessment from which it might be possible to determine what income tax rate he paid. I also do not have any authoritative objective evidence regarding differences in the relevant income tax rates and related laws generally. The respondent did generally acknowledge that income tax rates are more favourable in Hong Kong, but did not quantify this. In *E.B.G. v. S.M.B.*, 2016 BCSC 2434, the court engaged in a relatively detailed assessment in order to arrive at an appropriate grossed up income figures for a respondent who worked in Hong Kong. There is nothing approaching that level of evidence available to me on this application.

[103] Based on the insufficiency of the evidence regarding the respondent's income generally, and the appropriate gross up amount for that level income, in my view it is appropriate that, for purposes of this application at least, that the respondent's Guidelines income be

based on the level of income that he disclosed in his first financial statement, when he was still employed in Hong Kong. I round this up to \$420,000. This is without prejudice to the claimant's ability to apply to retroactively adjust the amount of child and spousal support due to her once there is confirmation of the respondent's actual level of income was prior to his resignation (from all sources, not just employment). Had the respondent provided appropriate financial disclosure for this application, I would have imputed income to him based on his actual income, grossed up as appropriate.

- [104] The respondent asks that I impute income to the claimant based on what she could earn if she were to work full time at minimum wage, namely \$33,400 per year. As noted, the claimant has been staying in Canada on a visitor's visa and does not have legal status to work here. Respondent's counsel argued that she could be earning income through some form of online business. She did not refer me to any authorities in which income had been imputed to a party based on similar facts. It would not be appropriate for me to impute income to the claimant for purposes of an interim support order in these circumstances. I decline to do so.

Interim Child Support

- [105] I order the respondent to pay the claimant interim child support based on the respondent's self-reported level income of \$420,000. The table amount works out to \$3,462 per month, which I round up to \$3,500 per month, starting January 1, 2025. This effectively means that the interim amount ordered by Groves J. and continued by Robertson A.J. will effectively continue uninterrupted.
- [106] I am assuming that the existing support orders already cover the period up to and including the end of December 2024. As noted, my order is without prejudice to the claimant's ability to apply to retroactively adjust the amount of child support once there is confirmation of the respondent's actual level of income from his employment in Hong Kong (and elsewhere, if applicable) up to the end of December 2024.
- [107] I am not inclined to order retroactive child support which pre-dates the child support order made by Groves J. That claim can be addressed at trial.

Special and Extraordinary Expenses

- [108] The claimant seeks an order that the respondent pay M.'s s. 7 expenses, retroactive to June 1, 2023, including medical and dental insurance premiums, various health-related expenses which exceed insurance reimbursement by at least \$100 annually, expenses for extracurricular activities including swimming, soccer, scuba diving and skiing, and educational expenses including tuition and medical insurance charged by the school district.

[109] The respondent objects on the basis that now that he is relocating to Vancouver, M. will qualify for coverage under the BC Medical Services Plan, and he will qualify as a domestic student and no longer be obliged to pay tuition to attend his high school. He agrees that costs related to M.'s extracurricular swimming are appropriate but says there is no evidence of what the expenses for other activities are, and in any event, they should be covered under the basic support payment.

[110] Section 7 of the Guidelines is as follows:

Special or extraordinary expenses

7 (1) In a child support order the court may, on either spouse's request, provide for an amount to cover all or any portion of the following expenses, which expenses may be estimated, taking into account the necessity of the expense in relation to the child's best interests and the reasonableness of the expense in relation to the means of the spouses and those of the child and to the family's spending pattern prior to the separation:

- (a) child care expenses incurred as a result of the employment, illness, disability or education or training for employment of the spouse who has the majority of parenting time;
- (b) that portion of the medical and dental insurance premiums attributable to the child;
- (c) health-related expenses that exceed insurance reimbursement by at least \$100 annually, including orthodontic treatment, professional counselling provided by a psychologist, social worker, psychiatrist or any other person, physiotherapy, occupational therapy, speech therapy and prescription drugs, hearing aids, glasses and contact lenses;
- (d) extraordinary expenses for primary or secondary school education or for any other educational programs that meet the child's particular needs;
- (e) expenses for post-secondary education; and
- (f) extraordinary expenses for extracurricular activities.

[111] Based on the available evidence, in my view it is appropriate for the respondent to pay the following s. 7 expenses:

- a) Medical and dental insurance premiums including, without limitation, any medical or dental insurance required for M. by his school or the school district, in the event he continues be classified as a foreign student;
- b) Health-related expenses which exceed insurance reimbursement by at least \$100 annually;
- c) Expenses for extra-curricular swimming;
- d) Tuition and fees, if any, for M. to attend secondary school, in the event he continues to be classified as a foreign student.

[112] Since the claimant currently has no income, the respondent is responsible for 100% of these expenses.

Interim Spousal Support

[113] In *Robles v. Kuhn*, 2009 BCSC 1163 at para. 12, Master Keighley summarized principles relevant to an interim spousal support application:

12 On interim support applications, the application of these provisions must be qualified by certain established considerations:

1. On applications for interim support the applicant's needs and the respondent's ability to pay assume greater significance: *Gibb v. Gibb*, [2005] B.C.J. No. 2730 (S.C.);
2. An interim support order should be sufficient to allow the applicant to continue living at the same standard of living enjoyed prior to separation if the payor's ability to pay warrants it: *Grossi v. Grossi*, [1993] B.C.J. No. 878 (S.C.);
3. On interim support applications the court does not embark on an in- depth analysis of the parties' circumstances which is better left to trial. The court achieves rough justice at best: *Randhawa v. Randhawa*, [1999] B.C.J. No. 1082; *Newson v. Newson*, [1998] B.C.J. No. 2906, 65 B.C.L.R. (3d) 22 (C.A.);
4. The courts should not unduly emphasize any one of the statutory considerations above others;
5. On interim applications the need to achieve economic self-sufficiency is often of less significance;
6. Interim support should be ordered within the range suggested by the Spousal Support Advisory Guidelines unless exceptional circumstances indicate otherwise: *Ladd v. Ladd*, [2006 B.C.J. No. 1930, 2006 BCSC 1280 (S.C.);
7. Interim support should only be ordered where it can be said a prima facie case for entitlement has been made out: *L.G.B. v. M.A.C.M.*, [2005] B.C.J. No. 2966, 2005 BCSC 1786 (S.C.);
8. Where there is a need to resolve contested issues of fact, especially those connected with a threshold issue, such as entitlement, it becomes less advisable to order interim support: *L.G.B.*

[114] In *I.F. v. R.J.R.*, 2015 BCSC 793 at paras 122-126, Justice Ballance discussed the purpose for an interim order:

122 The main purpose of an interim order for spousal support is to bridge the period between when the action is commenced and the trial at which time the court will be in a position to make a decision on the merits: *D.R.M. v. R.B.M.*, 2006 BCSC 1921; *Goriuk v Turton*, 2011 BCSC 652.

123 Because interim orders are summary in nature and temporary, they provide a rough justice at best: *Newson v. Newson*, 65 B.C.L.R. (3rd) 22 (C.A.) at para. 11. The "rough justice" approach underlying the temporary order implicitly recognizes that the evidence before the chambers judge on the interim application is often insufficient to permit an in-depth analysis of the wide array of factors relevant to entitlement and quantum of support: *R.C.G. v. C.L.G.*, 2010 BCSC 1596, para. 11; *Johnson v Johnson*, [1993] B.C.J. No. 2140 at 16.

124 The legal test governing interim support is not necessarily the same as the test applicable in reaching the final order: *Goriuk*. This is because the full picture of many of the considerations under the applicable legislation will not be known until a fulsome inquiry on the merits is embarked upon a trial.

125 Relying on *Newson*, *Goriuk* confirmed that where the marriage is admitted and need is proved interim support should be ordered without adjudicating the issues, unless the action is frivolous or vexatious.

126 While the other relevant factors that inform the issue of spousal support are to be considered to the extent possible, the respective needs and means of the parties are ordinarily the central factors, if not the most prominent, on an interim application. The corollary is that considerations such as compensatory factors and the need to achieve self-sufficiency often hold less significance: *R.C.J. v. C.L.G.*, 2010 BCSC 1596 at para. 11; *Goriuk* at para. 33.

[115] The respondent did not challenge the claimant's entitlement to interim support, just the quantum.

[116] I order the respondent to pay the claimant interim spousal support based on the respondent's attributed income of \$420,000 and the claimant's income of \$0, based on the Spousal Support Advisory Guidelines ("SSAG") recommended mid range level of \$11,169 per month, which I will round up to \$11,200.

[117] It is my understanding that the respondent has been responsible for paying property-related expenses relating to the North Van Property and HK Property while the Hague Convention/jurisdiction application was pending. It is not clear whether he has complied with this order. On the assumption that he did, it appears appropriate to order that his obligation to pay the claimant spousal support commence on August 1, 2024, and continue on the first day of each subsequent month until further order.

[118] This order is without prejudice to the claimant's ability to apply to retroactively adjust the amount of spousal support once there is confirmation of the respondent's actual level of income from his employment in Hong Kong (and elsewhere, if applicable) up to the end of December 2024 and/or previous years. I am not inclined to order retroactive spousal support which pre-dates August 1, 2024. That claim can be addressed at trial.

Sale of North Van and HK Properties

Background

[119] The respondent applies to sell both the North Van and HK Properties. His primary rationale for sale of the properties is that his unilateral decision to resign from his job in Hong Kong and to relocate Vancouver will mean that he will cease to have any income with which to pay costs associated with these properties. He also says he has limited savings available.

[120] He values the HK Property at HKD 7,830,000, which is based on an HSBC valuation dated November 13, 2024. This does not appear to be based on a proper appraisal. The HK Property has two HSBC mortgages on it which had balances owing of HKD 3,688,845.83 and HKD 1,106,249.02 respectively as at November 11, 2024. This suggests there is equity of roughly HKD 3,034,905.15. In his submissions, the respondent used an exchange rate of CAD \$1 = HKD 5.7. Based on that rate, equity is roughly CAD \$532,439.50.

[121] In his affidavit #9 affirmed November 14, 2024, the respondent states:

35. As well, I borrowed the sum of HKD2,700,000 from my father on August 6, 2014 pursuant to the terms of a loan agreement dated September 6, 2024 (the "Hong Kong Property Loan Agreement"), which sum was borrowed from him in order to have sufficient funds to purchase the Hong Kong Property in 2024.

[Bolding added]

[122] It is not clear whether the bolded date above was a typographical error or it indicates that the agreement was recently created.

[123] The respondent tenders a handwritten document written in Chinese text, which has been translated. It is entitled "IOU" and is dated 2014/ [8 or 9] /6. The parties named are the respondent and his father, Barry Chow. It states that the borrowed funds are for down payment in buying real estate property. It does not identify a specific property. It sets out an interest rate of 5% per annum, and that it shall be repaid in full within twenty years. Below that, under "Terms of Repayment", it goes on to state:

When the property is sold, Stephen shall pay back the capital and interest to Dad.

Stephen may, whenever he is financially capable, pay back the capital and interest to Dad.

[124] The respondent has produced a HSBC Transaction Advice stub showing that HKD 1,600,000 was deposited into an account in his name on August 11, 2014. It does not identify the source of those funds. He says there was a second installment, but he was not able to locate a record of it.

[125] The claimant says in her affidavit #11 that the respondent told her when they purchased the HK Property that they had purchased it with sale proceeds from the former home in Hong Kong. She also suggests that the respondent's parents have not worked since 1990 and were never in a position to provide the parties with financial assistance. She also deposed that the respondent's mother told her that they had only loaned \$20,000-\$30,000 and that they

considered these amounts to be gifts to M. The respondent's parents have tendered affidavits denying this.

[126] The respondent seeks to have the balance owing on the alleged loan from his parents/father repaid from the sale proceeds of the HK Property.

[127] Based on an interest rate of 5% per annum, if one were to assume no payments have been made thus far, this would result in interest of about HKD 135,000 per year. Assuming 10.5 years of interest have accrued, this would come to roughly HKD 1,417,500 in accrued interest to December 2024. Using the figures suggested by the respondent:

HSBC Valuation

HKD 7,830,000

\$1,373,684.21

HSBC Mortgage

- HKD 3,688,845.83

- 647,165.93

HSBC Mortgage

- HKD 1,106,249.02

- 194,078.77

Subtotal

HKD 3,034,905.15

532,439.50

Loan from father

- HKD 2,700,000

- 473,684.21

Interest on Loan

- HKD 1,417,500

- 248,684.21

Equity (Loss)

- HKD 1,082,594.85

-\$189,928.92

[128] The respondent values the North Van Property at \$2,028,000, based on the 2024 BC Assessment Authority valuation. It does not have any financial charges registered on title.

[129] The respondent says that in 2019, he borrowed \$850,000 from a person named Yuan Yuan Jia. He tendered a translation of the loan agreement which indicates it was signed on July 20, 2019 in Shenzhen, China. It states:

1. Promise to Pay: Stephen Marcellus Chow , the Borrower, promises to pay Yuan Yan Jia , the Lender, Canadian Dollars \$850,000, being the total amount of the loan (or equivalent currency) and interest for the balance of the unpaid amount at 4.5% per annum as follows:
2. Repayment: Starting from the sixth year at the latest (July 21, 2024 [sic]) after the Agreement has been signed, the Borrower shall pay interest on the loan amount and 20% of the capital in the first month of every year and shall complete total repayment before ten years have lapsed from the date of signing of the Agreement or after 3063 Royal Avenue, North Vancouver, BC, Canada is sold.
3. Application of Payment: payment shall first apply to the interest, then to the capital.
4. Advance Payment: The Borrower may repay all or part of the capital early without being penalized.
5. Security: The real estate property owned by the Borrower located at 3063 Royal Avenue, North Vancouver BC, Canada shall be used as collateral to secure the loan.

[130] With regard to para. 2 of the agreement, by my count the sixth year would actually start on July 21, 2025, not 2024.

[131] In the respondent's affidavit #9, he states:

40. Ms. Jia lent me the total sum of Canadian \$851,073.33 in three installments, being \$200,000 on July 29, 2019, \$250,000 on July 30, 2019 and \$401,073.33 on August 6, 2019, which total sum was used by me to purchase the North Vancouver Property. The North Vancouver Property was purchased for \$1,455,000 on August 9, 2019.
41. Pursuant to the terms of the North Vancouver Loan Agreement, I was required to pay interest at a rate of 4.5% per annum, with a first payment starting on July 21, 2024.
42. On August 19, 2024, I paid to Ms. Jia the sum of HKD1,090,125, which sum represents interest owing pursuant to the terms of the North Vancouver Loan Agreement.

[132] The claimant deposed in her affidavit #11 that the respondent had never mentioned Ms. Jia to her and she does not know who Ms. Jia is. She said she has seen a loan document between a "Jia Yuan Yuan" and the respondent dated March 21, 2019, and it was not the same as the one the respondent has attached to his affidavit. She also notes that there are restrictions on transfers of funds from mainland China to outside the country, limited to USD \$50,000 per year.

- [133] In the respondent's affidavit #10, he responds that Ms. Jia is a former girlfriend of one of his very good friends, Ken Fong. She resides in China but has businesses in Hong Kong, and as such bank accounts in Hong Kong. He says he obtained the copy of the loan agreement from her because he did not have the original. He also says they had discussed the loan and had other drafts of the agreement. He does not recall if any of the drafts were dated March 21, 2019.
- [134] The respondent says on August 19, 2024, he paid Ms. Jia the sum of HKD 1,090,025 on account of interest which he says is due on the loan.
- [135] During submissions, claimant's counsel advised that they had requested that the respondent provide contact information for Ms. Jia, so they could inquire with her about the alleged loan and agreement, but the respondent has refused, citing concerns about Ms. Jia's privacy. The circumstances surrounding the alleged loan raise obvious concerns.

Applicable Law

- [136] Rule 15-8 of the Supreme Court Family Rules, B.C. Reg. 169/2009 ("SCFR") deals with sales by the court. Sub-section (1) - (3) are as follows:

Court may order sale

- (1) If in a family law case it appears necessary or expedient that property be sold, the court may order the sale and may order a person in possession of the property or in receipt of the rents, profits or income from it to join in the sale and transfer of the property and deliver up the possession or receipt to the purchaser or person designated by the court.

Conduct of sale

- (2) If an order is made directing property to be sold, the court may permit any person having the conduct of the sale to sell the property in the manner the person considers appropriate or as the court directs.

Directions for sale

- (3) The court may give directions for the purpose of effecting a sale, including directions
- (a) appointing the person who is to have conduct of the sale,

- [137] The principles applicable to an application for sale are summarized in *Halan-Harris v. Blain*, 2023 BCSC 681 at paras. 13-15:

- [13] The principles to be applied upon an application for a sale of family property are set out by Master MacNaughton, as she then was, in *K.J.M. v. P.D.A.*, 2011 BCSC 1729 at paras 13-14:

- [13] Rule 15-8 permits the Court to order that matrimonial property be sold where it appears that it is necessary or expedient to do so. As the Court of Appeal said in *Reilly v. Reilly*, [1992] B.C.J. No. 2561, an order for sale can be made on an interim basis.
- [14] The parties agreed about the principles to be considered and applied by the court when dealing with such an application. They have been set out in a number of cases and include, in summary:
- a) If a sale is not necessary then, viewed objectively, it should be advantageous to both parties: *Reilly* at para. 35;
 - b) Any doubt about the justice of an order for sale should be resolved in favour of the status quo recognizing that the status quo for one spouse may perpetuate an injustice for the other: *Bodo v. Bodo*, [1990] B.C.J. No. 346 (S.C.) and *Reilly* at para. 35;
 - c) Where children are involved, the court should consider their need for stability and easy access to their school and friends, especially in the period immediately following separation. However, stability for the children may be balanced by other factors which affect their best interests including maintaining a relationship with an access parent: *Bodo*, at p. 12, *Dean v. Dean*, 2008 BCSC 1176 at para. 14, and *L. v. L.*, 2002 BCSC 871 at para. 33;
 - d) The availability and affordability of alternative accommodation for each party and their dependents: *Bodo* at p. 12;
 - e) The emotional condition of each party especially the party who has primary parenting responsibility: *Bodo* at p. 12;
 - f) External economic factors such as a declining market or the wasting of the asset: *Bodo* at p. 12;
 - g) The capacity of the parties to maintain the asset: *Bodo* at p. 12; and
 - h) The inability of one party to buy out the others interest and the inevitability of the ultimate sale of the property: *Lede v. Lede*, [1994] B.C.J. No. 1655 (S.C.) at paras. 15-16, *Dean v. Dean*, 2008 BCSC 1176 at para. 12.
- [14] More recently, in *Morrison v. Greenwood*, 2020 BCSC 1356, Justice MacNaughton wrote:
- [26] Rule 15-8(1) confers discretion on the court to order the interim sale of property where it is necessary or expedient to do so. In the event that there is no necessity, expediency becomes the sole basis for determining whether or not such an order should be made.
- [15] From *Kapoor v. Makkar*, 2020 BCCA 223, at paras. 21-22, the most recent pronouncement from the Court of Appeal on orders for sale in family matters, the following principles can be derived:
- a) The factors to consider in determining whether a sale is necessary or expedite include,

- i. the needs of the children;
 - ii. the availability (including affordability) of alternative accommodation;
 - iii. the emotional condition of the spouses;
 - iv. external economic factors;
 - v. wasting of the asset; and
 - vi. the capacity of both parties to maintain the asset.
- b) Where it is not necessary to sell, the proposed sale must be advantageous to both parties; and
- c) The onus is on the spouse seeking to change the status quo and any doubts should be resolved in favour of the status quo.

Analysis

- [138] The respondent relies on his decision to resign from his long-time employment in Hong Kong and relocate to Vancouver without employment as the basis for arguing that he can no longer afford to pay the two mortgages and other property-related costs associated with the HK Property, the debt he says is owing to Ms. Jia, which he characterizes as being a debt owing on the North Van Property, and support two households.
- [139] The respondent argues it is inevitable that both the North Van Property and HK Property will have to be sold, due to the debts associated with each of the properties and the claimant's inability to afford to buy out his interest in either property.
- [140] The claimant disputes the alleged debts owed to the respondent's parents /father and Ms. Jia. She also says his decision to resign from his position in Hong Kong and reduce his income to \$0 is unreasonable and shows his desire to try to control her and M. financially, which is something she alleges he did throughout their relationship. She notes that in s. 1 of the FLA, the definition of "family violence" includes, with or without intent to harm a family member unreasonable restrictions on, or prevention of, a family member's financial and personal autonomy. She argues that it is premature to consider the applications on their merits and denies that sale of the properties is either necessary or expedient.
- [141] With respect to the HK Property, the valuation evidence put forward by the respondent is not a formal appraisal and does not appear to otherwise qualify as expert valuation evidence. There is also no evidence addressing whether the respondent has arranged or intends to arrange a tenant for that property in the event it is not ordered sold. If renting is an option, there is no evidence regarding what the reasonable range of rent that could be generated from it and whether that would be sufficient to cover mortgage payments due for the two HSBC mortgages, as well as other property-related costs. The amount of debt secured against the property is substantial and will have to be addressed eventually.

- [142] The respondent has clearly demonstrated that he does not wish to try to buy out the claimant's interest in the HK Property. The claimant has not indicated that she wishes to try to retain the HK Property. Even if she wished to do so, based on the limited evidence currently available, it does not appear that would be likely, given her current focus on remaining in the lower mainland of BC while M. completes high school and potentially pursues post-secondary education thereafter.
- [143] A concern I do have, given what I would characterize as the respondent's extreme and financially irrational reaction since the release of Giaschi J.'s Reasons, is that if the HK Property is not sold in a controlled way now, it seems likely the respondent can simply force a sale in short order by failing or refusing make monthly payments due on the two HSBC mortgages.
- [144] In the circumstances, I am satisfied that it is necessary to sell the HK Property. Even if it is not necessary, I am satisfied it would be expedient and advantageous to both parties to sell the HK Property in a controlled fashion now, rather than risking that happening in an uncontrolled way later. I am not persuaded that there is any reason for the respondent to have sole conduct of the sale. The parties should share joint conduct of the sale process. If they are unable to agree or if either party is not responding to requests for their input in a timely manner, either party is at liberty to apply to this court for directions. If either party is obstructing the listing and sale process, the other is at liberty to apply for sole conduct.
- [145] The lack of proper valuation evidence for the HK Property is also a concern. If the parties cannot agree on the value of the property, they are to select and retain a mutually acceptable duly qualified appraiser to prepare a formal appraisal. The respondent will pay the full cost of the appraisal in the first instance, and he has leave to seek a different allocation of this expense at trial.
- [146] The respondent has asked that the alleged debt to his father be paid out of any net sale proceeds arising from a sale of the HK Property. The loan agreement document he has tendered indicates that one of its terms is that when the property is sold, the respondent is to pay back the capital and interest owing to his father.
- [147] The claimant takes issue with the authenticity of the alleged loan agreement. The agreement does not expressly refer to the HK Property. The respondent has tendered some concerning evidence regarding the agreement, namely his description of the agreement as being dated September 6, 2024. There is some indication in the evidence that the respondent has been making some payments towards certain of his parents' expenses. If so, an accounting may be necessary, as presumably there would be an argument that the parties should receive a credit or set-off for any such payments. I do not agree that the alleged debt to the respondent's parents/father ought to be paid out from the proceeds of sale of the HK Property before there has been reasonable discovery exchanged. Even if the loan agreement is valid, It is at best an unsecured debt and there is no basis for giving it priority or a preference over other unsecured debt. The net proceeds, after payment of

normal realtor commission, legal expenses related to the conveyance only, and the balances owing on the two HSBC mortgages will be paid to claimant's counsel in trust and held until further order of this court or written agreement of the parties.

- [148] The consent asset protection order made by Justice Tammen is varied to the limited extent of permitting the parties to jointly sell the HK Property in accordance with these reasons.
- [149] With respect to the North Van Property, there are no financial encumbrances registered on title. The claimant disputes the debt allegedly owing to Ms. Jia, and the authenticity of the alleged loan agreement. On face of that agreement, the obligation to make payments is deferred until the sixth year after the date of the agreement, which would appear to be July 21, 2025. The respondent appears to be suggesting the first installment is already due, which on the face of the agreement, is not the case. Forcing a sale of the property would arguably accelerate any debt owed to Ms. Jia unnecessarily, further complicating an already complex dispute. I also do not agree that the alleged debt to Ms. Jia ought to be accelerated or paid out from the proceeds of sale of the North Van Property before there has been reasonable discovery exchanged regarding the debt generally and the loan agreement in particular.
- [150] The property has been the claimant's and M.'s home since August 2020. It is close to M.'s school, friends and activities. It is not in M.'s best interests that he be displaced from the North Van Property at this time.
- [151] Based on the evidence tendered, I am not persuaded that a sale of the North Van Property is necessary at this time. I am also not persuaded that a sale of the property would be expedient or advantageous for both parties. In particular, it is not expedient or advantageous for the claimant.
- [152] I dismiss the respondent's application to sell the North Van Property.

Production of Documents

- [153] The claimant applies for production of numerous categories of documents. She relies on Rule 7-1(11) SCFR, which requires parties to serve an F8 financial statement and applicable income documents at least 7 days before a judicial case conference. Rule 5-1 defines "applicable income documents" as including:
- (a) a copy of every personal income tax return filed by the person for each of the 3 most recent taxation years,
 - (b) a copy of every notice of income tax assessment or reassessment issued to the person for each of the 3 most recent taxation years,
 - (f) if the person is an employee,

(i) the most recent statement of earnings indicating the total earnings paid to the person in the year to date, including overtime, or

(ii) if that statement is not provided by the employer, a letter from the person's employer setting out the information referred to in sub-paragraph (i) and including the person's rate of annual salary or remuneration.

[154] She also relies on Rule 9-1. Sub-rule (1) requires that a party list all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and all other documents to which the party intends to refer at trial. Sub-rule (7) allows a party to demand documents which are required under sub-rule (1) which were omitted from the list. Sub-rule (8) allow a party to demand additional documents which are in the listing party's power, possession or control which relate to any or all matters in question in the case and which are additional to the documents or classes of documents required under sub-rule (1). The demanding party is required to make a demand in writing identifying the additional documents or classes of documents sought with reasonable specificity and indicate the reason why they should be disclosed. The recipient of the demand is required to respond within 35 days.

[155] The claimant argues generally that the financial picture which the respondent has disclosed thus far does not reflect the family's lifestyle during the marriage. She seeks a level of disclosure which will allow her to identify and trace family property and family debt, and to determine the respondent's means and needs, including but not limited to his pattern of remuneration that powered the family's lifestyle. She suggests the respondent has demonstrated a persistent pattern of resisting proper disclosure and selective disclosure. During the relationship, he controlled the family's financial affairs and registered family assets in his sole name. She had access to credit cards and bank accounts, but statements were mailed to his Hong Kong residence or his parent's residence in Vancouver.

[156] The respondent argues that the application for production of documents is premature. Despite the fact that the notice of family claim was filed in January 2023, the issue of whether this court had jurisdiction was not resolved until July 18, 2024, when Giaschi J.'s Reasons were released. Thereafter, the respondent filed his response to family claim and list of documents on August 27, 2024. He also argues that the claimant has not complied with the requirements under Rule 9-1 (7) and (8) of the SCFR. He asks that the document applications be dismissed or at least adjourned generally.

[157] The claimant replies that she has made demand for the various classes of documents sought in writing and has set out reasons for why they are being sought. She also notes that at no point was the action stayed, even while the respondent's jurisdictional challenge was pending, so the respondent's deadline for filing a response to family claim and list of documents were more than 1-1/2 years overdue when he filed and issued them.

- [158] Claimant's counsel issued an initial demand for 14 categories of documents on August 2, 2023. It is framed as being made under Rules 5-1(13) and 9-1(7). This was the day after the respondent filed his first F8 financial statement without mandatory attachments. The letter notes missing assets and credit facilities, the lack of a stock portfolio despite the claimant saying the respondent had offered this to her in the past, lack of disclosure of credit cards and lack of basic disclosure such as income tax returns. Counsel noted that in the circumstances, they would have to take it upon themselves to investigate the respondent's financial circumstances to properly identify and trace family property and debts, as well as the respondent's means and needs including his pattern of remuneration which afforded the parties their lifestyle. On August 8, 2023, claimant's counsel wrote again adding a request that the respondent produce account transactions from his WeChat account, pursuant to the same rules.
- [159] In a letter dated August 2, 2024, claimant's counsel wrote to respondent's counsel advising that seven years worth of bank records were being sought to prove or disprove the respondent's means and the family's lifestyle during the marriage, which is a matter in dispute. They will also prove the respondent's ability to care for M., which is relevant to the claimant's entitlement to spousal support.
- [160] On August 26, 2024, respondent's counsel wrote to claimant's counsel responding the document requests made in the application filed August 21, 2023. In response to several requests, she noted that the respondent was in the process of gathering all relevant documents addressing various categories requested.
- [161] In my view, considering the evidence regarding the history of requests for documents and explanations provided for why they are being sought and the respondent's ongoing failure to provide "applicable income documents" by September 30, 2024 (or at all), in breach of the terms of Robertson A.J.'s order, it is appropriate to consider the requests made now.
- [162] I turn now to consider the specific requests.
1. The respondent's employment contract
- [163] As noted, the respondent has thus far failed to produce copies of documents evidencing his income, including his three most recent income tax returns and notices of assessment. One document he has produced references possible entitlement to a sales incentive, suggesting he may have received or be entitled to a performance-based bonus, in addition to his base income. It is also clear from the pleadings and the extensive affidavit materials exchanged thus far that there is a significant dispute regarding the respondent's income and benefits and the family's standard of living. I agree it is appropriate that the respondent produce complete copies of all employment contract(s) and addendums thereto to which he is or has been a party.
2. The respondent's income tax returns and notices of assessment from 2016 to present

- [164] As noted, the respondent has failed to produce copies of any of his income tax returns and notices of assessment. These are long overdue and should have been attached to financial statements filed in this action. Given the starkly different versions of the family's financial circumstances during the marriage/cohabitation and following separation, I agree it is appropriate for the respondent to produce copies of his income tax returns and notices of assessment/re-assessment for every year starting January 1, 2016 to present, inclusive.
3. Statements for the respondent's TD Canada Trust Account ending *824 from January 1, 2016 to present
- [165] The broader financial circumstances during the marriage and since separation are clearly in dispute. I agree it is appropriate that the respondent produce complete copies of all statements for this account from January 1, 2016 to present.
4. Statements for the respondent's TD Canada Trust Account ending *726 from January 1, 2016 to present
- [166] The broader financial circumstances during the marriage and since separation are clearly in dispute. I agree it is appropriate that the respondent produce complete copies of all statements for this account from January 1, 2016 to present.
5. Statements for the respondent's TD Canada Trust Account ending *002 from January 1, 2016 to present
- [167] The broader financial circumstances during the marriage and since separation are clearly in dispute. I agree it is appropriate that the respondent produce complete copies of all statements for this account from January 1, 2016 to present.
6. Statements for the respondent's HSBC Account ending *833 from January 1, 2016 to present
- [168] The broader financial circumstances during the marriage and since separation are clearly in dispute. I agree it is appropriate that the respondent produce complete copies of all statements for this account from January 1, 2016 to present.
7. Statements for the two HSBC mortgages from January 1, 2016 to present
- [169] The financing relating to the two HSBC mortgages are relevant to the acquisition of and debt secured against the HK Property, which is relevant to the broader financial circumstances during the marriage and since separation are clearly in dispute. I agree it is appropriate that the respondent produce complete copies of all statements for the two HSBC mortgages from January 1, 2016 to present.
8. Statements for any of the respondent's bank, investment or credit card accounts that he has not disclosed from January 1, 2016 to present

- [170] The claimant says that when the parties were having marital difficulties in 2019, the respondent told her he would give her his stock portfolio to resolve property claims and indicated he owns stocks in the company that employs him. She notes that he has not listed any stock/investment accounts in his F8 financial statements.
- [171] The respondent denies he has received any shares from his employer. He says he was employed with a subsidiary rather than the parent company which apparently offers shares as part of some compensation packages. He denies his direct employer does so.
- [172] The claimant has produced a document in which the respondent proposed to give her his stock portfolio to resolve property claims arising from their possible separation. Presumably if he was offering it, he must have had such an asset at some point.
- [173] The claimant also notes that the respondent did not list any credit cards in his F8 Financial Statement. She says that during the marriage, family expenses were primarily paid via credit cards.
- [174] I agree that it is appropriate to order the respondent should produce bank account statements, investment account statements and credit card statements for all accounts in his name, which he holds jointly with others or held by others for his benefit, for the period January 1, 2016 to present.
9. Loan or credit card applications the respondent has submitted since January 1, 2016, including without limitation HSBC and other credit facilities including credit cards
- [175] The broader financial circumstances during the marriage and since separation are clearly in dispute. I agree it is appropriate that the respondent produce copies of any loan or credit card applications during the period January 1, 2016 to present.
10. Account transactions for the respondent's WeChat account or any other payment apps, from January 1, 2016 to present
- [176] The evidence indicates the respondent has engaged in a variety of international funds transfers, including without limitation between Hong Kong, Canada and possibly China. WeChat is one service which facilitates such transfers.
- [177] The broader financial circumstances during the marriage and since separation are clearly in dispute. I agree it is appropriate that the respondent produce records of all transactions on any WeChat account or other payment apps, between January 1, 2016 to present.
11. Documents relating to the loan owed to Ms. Jia, including (a) documents in support of such loans (loan agreement, promissory note or correspondence / messages exchanged such as emails, text messages or messages exchanged on other platforms (b) full name and contact information for Ms. Jia (c) date and amount of each loan and documents re where each was deposited (d) terms of repayment of the loans and (e) the current status of such loans

- [178] The respondent has produced some documents relating to the alleged loan from and debt owed to Ms. Jia. He also mentions in one of his affidavits that there were several drafts of the loan agreement exchanged, and presumably messages exchanged.
- [179] The alleged loan from Ms. Jia is clearly a significant issue in dispute. I agree it is appropriate that the respondent produce all documents in his possession, power or control relating to the loan, communications about loan (initial request for the loan, negotiations regarding loan terms, draft agreements, comments on drafts, final agreement, advance of loan proceeds, demands for payment and payments made). This should include letters, emails, attachments, text messages and other electronic messages. It should also include documents relating to any payments made on account of the loan.
- [180] The request for contact information regarding Ms. Jia is technically not a document request. If the respondent continues to refuse to provide that information voluntarily, it can be pursued at an examination for discovery.
12. Documents relating to the loan owed to the respondent's parents, including (a) loan agreement, promissory note or correspondence exchanged such as emails, text messages or messages exchanged on other platforms (b) date and amount of each loan and documents confirming where they were deposited (c) terms of repayment of such loans (d) current status of such loans and (e) all sums of money the respondent has paid to his parents since the date of the loans and documentation to support same
- [181] The respondent has produced some documents relating to the alleged loan from and debt owed to his parents/father. The respondent has also tendered evidence indicating he has made various payments to his parents. It is not clear whether these are being credited against the alleged loan.
- [182] The alleged loan from the respondent's father / his parents is clearly a significant issue in dispute. I agree it is appropriate that the respondent produce all documents in his possession, power or control relating to the loan, communications about loan (initial request for the loan, negotiations regarding loan terms, draft agreements, comments on drafts, final agreement, advance of loan proceeds, demands for payment and payments made). This should include letters, emails, attachments, text messages and other electronic messages. It should also include documents relating to any amounts the respondent has paid to or on behalf of his parents or either of them.
13. Particulars of "personal loan payment" of CAD \$10,000 per month in the respondent's financial statement, including (a) name and contact information of the individuals receiving such payment and (b) documents confirming that such payments are being made and from what account

- [183] This is not framed as a document request. It is either a request for particulars under Rule 5-1(13) and (14) or a question more appropriately pursued at an examination for discovery of the respondent. This item is dismissed, without prejudice to the claimant's ability to pursue the request by other means.
14. Confirmation that it is the respondent's evidence that he does not have any other bank accounts he owns in Canada, Hong Kong and/or other jurisdictions, whether registered in his sole name, joint names with him being a signatory or in another individual's name on his behalf
- [184] This is not framed as a document request. It is a question more appropriately pursued at an examination for discovery of the respondent. This item is dismissed, without prejudice to the claimant's ability to pursue the request by other means.
15. Confirmation that it is the respondent's evidence that he does not have any other credit accounts he owns in Canada, Hong Kong and/or other jurisdictions, whether registered in his sole name, joint names with him being a signatory or in another individual's name on his behalf
- [185] This is not framed as a document request. It is a question more appropriately pursued at an examination for discovery of the respondent. This item is dismissed, without prejudice to the claimant's ability to pursue the request by other means.
1. Statements for the respondent's bank, credit, investment and other accounts that he has an interest in, whether or not they are disclosed in his Form F8 financial statements from January 1, 2016 to present, including accounts that have been closed since January 1, 2016
- [186] This appears to duplicate the request made in item 8 above.
2. Proof of delivery of the respondent's resignation and his employer's acceptance of his resignation
- [187] The respondent consents to providing a copy of a letter from his employer confirming the duration of his employment, including but not limited to his start date and last working date. He says he has already deposed that he submitted his letter of resignation on August 9, 2024. He has requested his former employer provide him with confirmation of their acceptance of his resignation, but says they were unwilling to do so, but would provide a letter regarding duration of his employment.
- [188] In his affidavit #10, the respondent states that it is very important to him that he leave his former employer on good terms because he will require them to provide a reference for any jobs he applies for in future, He has asked his employer to provide documents evidencing his resignation, however, they are unwilling to do so until his last day on December 31, 2024. He has internal documents he can provide that can prove he resigned, but cannot disclose them by attaching them as an exhibit to an affidavit without the express consent of his employer's legal department, which he does not have. He says his counsel

has copies.

[189] The respondent's decision to resign from his employment in Hong Kong is a significant disputed issue in these proceedings and documents relating to his resignation and departure from Xilinx are clearly relevant and producible. I agree it is appropriate that the respondent produce copies of all documents relating to transmission or delivery of his resignation from his former employment with Xilinx Hong Kong Inc., its receipt and acceptance of his resignation and correspondence or communications relating to terms and arrangements relating to his departure. If the respondent has concerns about confidentiality of these documents, he can contact the claimant regarding an appropriate form of confidentiality order.

3. All job applications, letters or emails of introduction and other correspondence relating to the respondent's efforts to find comparable employment since January 1, 2023

[190] The respondent objects to this item on the basis that he has already deposed that he did not begin to apply for jobs in the Vancouver area until after he had submitted his resignation on August 9, 2024. He did not make any applications for jobs between January 1, 2024 and August 18, 2024. For the period after that, he has provided a spreadsheet of positions he has applied for, date he applied, interview status and confirmation of receipt of applications.

[191] The respondent's efforts to secure new employment are a significant issue in dispute, I agree it is appropriate that he produce all documents relating to his efforts to secure new employment, starting in August 2024.

4. Full and complete copy of the document attached as Exhibit "D" to the respondent's affidavit #7 dated August 19, 2024

[192] This relates to an electronic ticket receipt for a Cathay Pacific Airline ticket from Hong Kong to Vancouver dated September 4, 2024. This relates to travel the respondent says he arranged so he could register M. as a domestic student at his school, and avoid tuition payable while he is a foreign student. He says a copy of the boarding passes associated with this ticket were provided to the claimant with a letter dated November 21, 2024.

[193] The respondent's response to the request is not really responsive. If the document which has been produced as an exhibit is not a complete copy of the relevant electronic ticket receipt, it should be produced.

Summary of Orders

[194] By consent:

- a) The parties continue to be joint guardians of M., pursuant to s. 39 of the FLA.
- b) The parties can both exercise s. 41 FLA parenting responsibilities in respect of M.

- [195] The respondent's application for interim shared parenting of M., on an alternating week-on, week-off schedule and transitions on Monday mornings, is dismissed.
- [196] The respondent's Guidelines income is imputed as \$420,000. This is without prejudice to the claimant's ability to apply to retroactively adjust the amount of child and spousal support due to her once there is confirmation of the respondent's actual level of income was from his employment in Hong Kong (and from other sources, applicable).
- [197] The respondent's request that income be imputed to the claimant is dismissed. Her income is \$0.
- [198] The respondent is ordered to pay the claimant interim child support for M. of \$3,500 per month, starting January 1, 2025. This means that the interim amount ordered by Groves J. and continued by Robertson A.J. will effectively continue uninterrupted. This is without prejudice to the claimant's ability to apply to retroactively adjust the amount of child support once there is confirmation of the respondent's actual level of income from his employment in Hong Kong (and elsewhere, if applicable). The application for retroactive child support which pre-dates the child support order made by Groves J. is adjourned to be addressed at trial.
- [199] The respondent is ordered to pay the claimant 100% of the following interim s. 7 expenses, including:
- a) Medical and dental insurance premiums including, without limitation, any medical or dental insurance required for M. by his school or the school district, in the event he continues be classified as a foreign student;
 - b) Health-related expenses which exceed insurance reimbursement by at least \$100 annually;
 - c) Expenses for extra-curricular swimming; and
 - d) Tuition and fees, if any, for M. to attend secondary school, in the event he continues to be classified as a foreign student.
- [200] The respondent is ordered to pay the claimant interim spousal support in the sum of \$11,200 per month, starting on August 1, 2024, and continuing on the first day of each subsequent month, until further order. This is without prejudice to the claimant's ability to apply to retroactively adjust the amount of spousal support once there is confirmation of the respondent's actual level of income from his employment in Hong Kong (and elsewhere, if applicable). The application for retroactive spousal support which pre-dates August 1, 2024 is adjourned to be addressed at trial.
- [201] The respondent's application to sell the HK Property is granted, subject to the following:

- a) The parties will have joint conduct of the sale. If they are unable to agree or if either party is not responding to requests for their input in a timely manner, either party is at liberty to apply for directions. If either party is obstructing the listing and sale process, the other is at liberty to apply for sole conduct.
- b) If the parties cannot agree on the value of the property, they will promptly arrange a mutually acceptable duly qualified appraiser to prepare an appraisal of the HK Property. The respondent will pay the full cost of the appraisal in the first instance, and he has leave to seek a different allocation of this expense at trial.
- c) The net proceeds, after payment of normal realtor commission, legal expenses related to the conveyance only, and the balances owing on the two HSBC mortgages, will be paid to claimant's counsel in trust and held until further order of this court or written agreement of the parties. The request to pay the balance owing on the alleged loan from his parents/father from the sales proceeds is dismissed.
- d) The consent property restraining order of Justice Tammen is varied to the limited extent of permitting the parties to jointly sell the HK Property in accordance with these reasons.

[202] The respondent's application to sell the North Van Property is dismissed.

[203] The orders relating to the claimant's application for production of documents are set out above. I will not repeat them here. The documents that have been ordered to be produced are to be listed in an amended list of documents and copies of the documents produced to the claimant with 30 days from the date of release of these reasons.

[204] The balance of the relief sought by the respondent is dismissed.

Costs

[205] With respect to costs, the claimant has had the greater measure of success and is entitled to costs of the applications from the respondent.

"Associate Judge Bilawich"

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