

CANADA / JUDGMENT

Ussher v. Ropchan

2024 BCSC 1976

COURT

Supreme Court of British Columbia

DECIDED

28 October 2024

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2024 BCSC 1976 Ussher v. Ropchan

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Ussher v. Ropchan,

2024 BCSC 1976

Date: 20241028

Docket: E213201

Registry: Victoria

Between:

Karen Rosalind Ussher, aka Karen Sosalind Ropchan

Claimant

And

Peter Donald Ropchan

Respondent

Before: The Honourable Justice Lamb

Reasons for Judgment

Counsel for the Claimant:

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Place and Dates of Trial:

Victoria, B.C.

December 4-8, 2023 and

May 13-16 and June 13, 2024

Place and Date of Judgment:

Victoria, B.C.

October 28, 2024

Introduction

- [1] Karen Ussher and Peter Ropchan met in high school in North Vancouver, BC. More than 20 years later, in May 2011, they met again through Facebook. By that time, Ms. Ussher was 39 years old and living in New Zealand with her 12-year-old daughter in a house owned by her parents. Mr. Ropchan was 40 years old and lived in a condo he owned in the Yaletown neighbourhood of Vancouver, BC. After they vacationed together in Hawaii for two weeks, Mr. Ropchan quit his job, rented out his condo and moved to New Zealand on November 15, 2011 to be with Ms. Ussher.
- [2] The parties lived in New Zealand until they decided to return to British Columbia, where Mr. Ropchan had better employment prospects. By then, the parties had a child together, born October 2012 (the "Child"). Mr. Ropchan arrived back in Canada in May 2013, in time to complete the sale of his Yaletown condo and the purchase of a house on Tyndall Avenue in Victoria, BC ("Tyndall"). Ms. Ussher, her daughter and the Child followed in June 2013.
- [3] The parties married July 30, 2017.
- [4] The parties sold Tyndall and acquired a house on Ferndale Road ("Ferndale") in Victoria in May 2019. They continued to reside at Ferndale after separating on July 25, 2011 until Ms. Ussher left with the Child in late October 2021. The Child has resided primarily with Ms. Ussher since October 2021. After a few supervised visits, Mr. Ropchan has had regular parenting time with the Child every second weekend since April 15, 2022.
- [5] The trial of this family law matter took ten days, spread over seven months.

Issues

- [6] The issues between the parties include division of family property and debt, parenting issues, child support and spousal support.
- [7] All of the statutory requirements for a divorce have been met. I find the parties separated on July 25, 2021. As of that date, Mr. Ropchan was sleeping on the couch in the basement at Ferndale. Ms. Ussher told him that, although they continued to live in the same house, they were separated and could divorce in a year. There is no possibility of reconciliation. The parties shall be divorced 31 days following the date of this judgment.
- [8] The most contentious issue between the parties is Mr. Ropchan's excluded property claim. Ferndale has been sold, and the proceeds remain in trust, awaiting the outcome of this trial. Mr. Ropchan claims the proceeds from his Yaletown condo used to purchase Tyndall and part of the proceeds from Tyndall (supplemented by gifts and inheritances he received) used to purchase Ferndale are excluded property. Ms. Ussher says Mr. Ropchan lost his excluded property claim when Tyndall was transferred into both their names as joint tenants and Ferndale was purchased in both their names as joint tenants. If Mr. Ropchan's excluded property claim is recognized, then Ms. Ussher says it would be substantially unfair to divide family property equally.
- [9] The parties agree that the Child should continue to live primarily with Ms. Ussher. Mr. Ropchan wants additional parenting time to allow for a two-week vacation with the Child; Ms. Ussher says she has concerns about Mr. Ropchan's drinking and whether he is able to deal with the Child for an extended period. Ms. Ussher wants to have decision-making authority for most parental responsibilities, while Mr. Ropchan wants the parties to continue to have joint decision-making authority.
- [10] Mr. Ropchan acknowledges that Ms. Ussher is entitled to spousal support. The duration and amount of spousal support is in dispute. Both parties seek to impute income to the other.
- [11] I will comment only briefly on credibility and reliability before turning to the issues I must decide.

Credibility and reliability

- [12] Credibility refers to the truthfulness of the witness; reliability relates to the accuracy of the testimony: *Ford v. Lin*, 2022 BCCA 179 at para. 104.
- [13] In terms of assessing credibility, I have relied in particular on the factors identified as relevant by Justice Dillon in *Bradshaw v. Stenner*, 2010 BCSC 1398 at para. 186, *aff'd* 2012 BCCA 296, leave to appeal to SCC *ref'd*, 35006 (7 March 2013). The comments of the Court of Appeal in *Faryna v. Chorny* (1951), [1952] 2 D.L.R. 354 at 357, 1951 CanLII 252 (B.C.C.A.) also provide guidance:

In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

- [14] A witness's credibility will be in doubt where their explanation defies logic or common sense, and a witness's credibility may be adversely affected when they are evasive, longwinded, or argumentative in their responses: *Youyi Group Holdings (Canada) Ltd. v. Brentwood Lanes Canada Ltd.*, 2019 BCSC 739 at para. 92, aff'd 2020 BCCA 130, leave to appeal to SCC ref'd, 39246 (21 January 2021). The reliability of a witness' testimony may be undermined by the nature and number of inconsistencies that arise: *Youyi Group Holdings (Canada) Ltd.*, at para. 92.
- [15] Mr. Ropchan was a credible witness. He gave evidence in a direct and forthright way, including making admissions against his interest in direct examination. He was plain spoken and not given to long answers, consistent with Ms. Ussher's evidence that Mr. Ropchan did not talk a lot during their relationship. His evidence did not change in a material way in cross-examination. He did not become defensive when years-old excerpts from 700 pages of text messages disclosed in the litigation were put to him in cross-examination.
- [16] Despite close to three years of family litigation, Mr. Ropchan was able to speak positively about Ms. Ussher's parenting. He has no concerns she is capable of caring for the Child, despite the various ailments that seem to afflict her.
- [17] Despite his credibility, I am not satisfied that Mr. Ropchan's evidence regarding all of the details of funds he received as gifts/inheritances and dividends from family companies is reliable. I accept as accurate his general theme that he received money from his father and grandfather. It is not surprising that he was unable to account for every deposit going back years, even when he responded (with assistance from his father and brother) to written questions from Ms. Ussher's counsel in advance of trial. However, some of Mr. Ropchan's testimony does not correlate with account statements filed in evidence. For example, Mr. Ropchan said that a \$10,000 deposit to his bank account on June 8, 2015 was a gift from his father through First Global Investments (his father's company; together with its predecessor company, "First Global"), but a bank account statement for Homer Street Investments Ltd. (his personal company) shows a transfer of \$10,000 to Mr. Ropchan's chequing account on that date. By way of another example, on January 8, 2018, Mr. Ropchan received \$22,000, which I find is a dividend paid by First Global (as confirmed by a T5) rather than part of his inheritance from his grandfather as indicated in the answers to the written questions. I accept that Mr. Ropchan tried his best and did not deliberately misstate the source or destination of funds, and his evidence that large deposits to his personal bank account were generally gifts or inheritances is reliable and was corroborated by his father. Many of the deposits could be traced and his evidence corroborated by careful review of the documents. And to be fair to Mr. Ropchan, some of alleged deposits to his account that were put to him on cross-examination appear from the account statement to be withdrawals, a discrepancy

that was not corrected during cross-examination.

- [18] On the other hand, Ms. Ussher was a less credible witness.
- [19] Ms. Ussher's testimony took place over a number of days. After testifying for a day and a half in direct examination, Ms. Ussher requested lengthy breaks from cross-examination to accommodate her pain, stiffness and fatigue. As of the start of the trial, Ms. Ussher had a consultation with a specialist scheduled, but she had no diagnosis for her complaints of swollen joints, pain and fatigue. She was taking a number of prescription medications to treat her symptoms.
- [20] There were times during her testimony, particularly in direct examination, when Ms. Ussher seemed to forget her physical ailments, and she was able to give very lengthy answers with little discernible difficulty.
- [21] In cross-examination, Ms. Ussher often had difficulty answering questions directly. She was reluctant to acknowledge Mr. Ropchan took the Child to his therapies and activities before they separated, even when she was shown text messages that confirmed he did so. She was reluctant to acknowledge that Mr. Ropchan has had parenting time since April 2022 with no problems. She repeatedly labelled Mr. Ropchan as an alcoholic and suggested the Child was at risk in his care, though she acknowledged she has not seen Mr. Ropchan drink alcohol since October 2021 and the parties have limited in-person contact since then.
- [22] Overall, I find that Ms. Ussher's evidence about Mr. Ropchan's conduct and parenting ability is not reliable. When testifying, she seized opportunities to criticize him, even when the original question did not implicate his conduct or parenting ability.
- [23] I have approached Ms. Ussher's evidence about the parties' finances with caution. Ms. Ussher testified they income split for tax purposes; however, none of her income tax returns showed income splitting, and still she insisted that she recalled they income split one year. In cross-examination, when it was put to her that she opened a new bank account in July 2021 because she planned to leave Mr. Ropchan, Ms. Ussher said she intended to ask her parents for money to pay for counselling that Mr. Ropchan refused to finance. However, credit card statements from April through June 2021 show that Ms. Ussher's psychologist fees were paid using her secondary credit card on Mr. Ropchan's account. In direct examination, when discussing events in July 2021, Ms. Ussher said she had borrowed money from her parents to figure out a plan to leave him. I find it is more likely that Ms. Ussher opened a new account in July 2021 to have a place to deposit the \$50,000 her parents advanced to her to finance her leaving the family home. Her refusal to admit this in cross-examination adversely affects her credibility and the reliability of her evidence.
- [24] Where there is a conflict between Mr. Ropchan's testimony and Ms. Ussher's testimony regarding real property owned by the parties, in the absence of contemporaneous documents to corroborate Ms. Ussher's version, I generally prefer Mr. Ropchan's evidence. It makes little sense that Mr. Ropchan would not purchase Tyndall in both their names from

the outset if he was always going to do it anyways, as Ms. Ussher testified. Registering Tyndall in his name alone is more consistent with Mr. Ropchan's preference to keep his accounts and assets separate. His evidence about why she was added to title is more consistent with his measured approach to decision-making. I find it hard to believe she had no idea how Mr. Ropchan came up with the \$725,000 required to complete the purchase of Ferndale nor was she interested enough to inquire. I find it is more likely that she claimed ignorance because she understands that Mr. Ropchan is advancing an excluded property claim on the basis that the \$725,000 came from an inheritance from his grandfather and his savings accumulated from family gifts.

The parties' financial circumstances

- [25] As a starting point, it may be useful to outline the parties' financial circumstances before and during their relationship.
- [26] There was very little evidence at trial about Ms. Ussher's financial circumstances prior to her relationship with Mr. Ropchan. She worked in retail before the Child was born (which I will address in more detail later in these reasons). There was no evidence Ms. Ussher had any savings or owned property before November 2011. I am left to conclude that Ms. Ussher owned no significant assets when the parties' relationship started.
- [27] After the parties moved back to Canada in June 2013, Ms. Ussher relied on Mr. Ropchan for financial support. He provided a secondary card on his credit card account (which he paid off in full each month) for family expenses, and at some point he started transferring \$500 per week to Ms. Ussher to encourage her to budget and ideally curb her spending. The parties did not have a joint bank account at any point in their relationship.
- [28] Mr. Ropchan brought considerable assets into the relationship, including investments and a condo.
- [29] In 2008, Mr. Ropchan set up his own investment holding company, Homer Street Investments Ltd., using \$200,000 gifted to him by his grandfather. Mr. Ropchan has not deposited additional funds in Homer Street Investments since 2008. As of the date of separation, Homer Street Investments Ltd. held various investments and cash worth approximately \$200,000. Ms. Ussher acknowledges Homer Street Investments Inc. is Mr. Ropchan's excluded property.
- [30] By the time Mr. Ropchan moved to New Zealand to live with Ms. Ussher in November 2011, he owned a condo in Yaletown that he had purchased for \$495,000. The exact date of the Yaletown condo purchase was not in evidence, but I accept that it was likely prior to January 5, 2008, given the name of his holding company. To fund the purchase of the Yaletown condo, Mr. Ropchan received a gift of \$200,000 from his father and a gift of \$200,000 from his grandfather, and he took out a mortgage of \$150,000, which was paid off before November 2011.

- [31] Mr. Ropchan worked in IT tech support before moving to New Zealand and for a brief period while he lived there. Since returning to Canada in May 2013, Mr. Ropchan has had the same IT tech support job for the same company. His annual salary has increased from approximately \$60,000 in 2013 to \$87,746 in 2023.
- [32] From May 2013 to July 2021, the parties routinely spent more on living expenses than Mr. Ropchan's annual salary. They enjoyed their lifestyle without accumulating debt as a consequence of Mr. Ropchan's family's generosity.
- [33] Prior to and throughout the parties' relationship, Mr. Ropchan received significant monetary gifts from his father and his grandfather and dividends from the investment companies controlled by his father and his grandfather. Due to the passage of time, Mr. Ropchan was not able to identify all of the deposits to his chequing account. I find that any sizeable deposit into his bank account that he was not able to identify likely represents a gift from his father or grandfather.
- [34] Some of the funds advanced to Mr. Ropchan were paid as dividends from First Global Investments, an asset management company controlled by Mr. Ropchan's father, Donald Ropchan. Mr. Ropchan and his brother have owned preferred shares in First Global or its predecessor company since 2013. Donald Ropchan decides when to issue dividends to the preferred shareholders.
- [35] After his grandfather passed away in 2014, Mr. Ropchan inherited cash and received dividends from Ropchan Investments Ltd., his grandfather's holding company.
- [36] In 2017, he inherited \$100,000 from his grandmother's estate, which he used to buy a BMW.
- [37] The following table summarizes the funds received by Mr. Ropchan during the period the parties cohabitated (other than for 2015, source for and actual dividend amounts are not available prior to 2018):

Cash gifts from father and grandfather

Cash inheritance

First Global dividends

Ropchan Investments dividends

Unidentified taxable dividends (likely included in cash gifts)

2012

\$262,500

\$22,500

2013

\$45,560

\$25,000

2014

\$26,100

\$26,068

2015

\$15,665

\$115,000

\$20,000

2016

\$5800

\$47,180

\$2339

2017

\$28,900

\$300,000

\$29,547

2018

\$18,769

\$283,750

\$22,000

\$30,000

2019

\$109,815

\$500,000

2020

\$9,966

\$23,412

\$30,000

2021

\$1,000

\$30,000

\$43,164

[38] All cash gifts and dividends were deposited into Mr. Ropchan's bank account. Cash gifts were higher than usual in 2012 because Mr. Ropchan received a \$200,000 gift from his grandfather after the Child's birth.

[39] Mr. Ropchan used some of the funds he received from his father, his grandfather and their companies to purchase RRSPs and TFSAs, and he invested some funds in a non-registered mutual fund account. He cashed in the non-registered mutual fund account to fund the purchase of Ferndale. All of Mr. Ropchan's investment accounts were held in his name alone.

Division of family property and debt

[40] I will identify family assets and their values before analyzing Mr. Ropchan's excluded property claim and Ms. Ussher's alternative argument that equal division of family assets and debts would be significantly unfair in this case. The latter issue requires consideration of the appropriate award spousal support.

Family property

[41] Section 81 of the Family Law Act, S.B.C. 2011, c. 25 provides that each spouse has a right to an undivided half interest in all family property as a tenant in common, subject to an agreement or order that provides otherwise. Section 84 of the Family Law Act defines family property to include property that is owned by at least one spouse on the date of separation. Generally, the value of the family property must be based on its fair market value as of the date of trial: Family Law Act, s. 87.

[42] Family property is presumptively divided equally, subject to Mr. Ropchan's excluded property claim and Ms. Ussher's unequal division claim. The first step in the analysis is to identify and value the family property to be divided.

[43] The primary asset to be divided is the balance of the proceeds from the sale of Ferndale, which was \$2,141,785.58 as of the trial date. The current amount may be slightly different, as the funds are in an interest-bearing trust account and some of the Child's special expenses (including his private school fees) have been paid from the funds in trust by consent. Each party received a \$100,000 advance from these funds, which will be accounted for in the final order.

- [44] There are three RRSP accounts in Mr. Ropchan's name with the following values based on September 2023 account statements:
- a) Phillips, Hager & North Investment Funds Ltd. ("PH&N"): \$83,603;
 - b) Tangerine Investments: \$17,789; and
 - c) TD mutual fund RRSP (#893): \$133,675.
- [45] Mr. Ropchan's employer matches his contributions to PH&N. Post-separation, Mr. Ropchan and his employer have contributed approximately \$14,692, which means the value of PH&N for property division purposes is \$68,911.
- [46] Mr. Ropchan has a TD mutual fund TFSA in his name valued at \$83,910 close to the separation date, the most recent statement in evidence. Ms. Ussher received a \$25,000 cash advance from this account post-separation with Mr. Ropchan's consent, which will be accounted for in the final order.
- [47] At the date of separation, Mr. Ropchan owned a 2021 BMW that he purchased subject to a five-year loan. He traded in the 2021 BMW in March 2022 and netted \$15,098, which he put toward the purchase of a 2008 BMW for \$16,098.
- [48] Ms. Ussher drives a Toyota Rav4, which was a family vehicle that remains in Mr. Ropchan's name. She values the Toyota Rav4 at \$6000 on her F8 financial statement made November 6, 2023, and he accepts that value.
- [49] As of the date of separation, Mr. Ropchan had \$17,565 in his bank account. Ms. Ussher had \$306 in her chequing account.
- [50] The parties have an RESP for the Child's benefit worth \$11,259.74. The parties agree they will continue to hold the RESP jointly for the Child's benefit. I will not include the RESP when dividing family property. The parties may deal with the RESP by agreement.

Mr. Ropchan's excluded property claim

- [51] As noted at the outset, the most contentious issue at trial was Mr. Ropchan's excluded property claim.
- [52] Mr. Ropchan's most significant excluded property claim relates to the Ferndale sale proceeds. Mr. Ropchan acknowledges that Ms. Ussher is entitled to an equal share in the increase in value of both Tyndall and Ferndale over the course of their relationship. However, he says the sale proceeds of the Yaletown condo that were used to buy Tyndall can be traced to Ferndale and are excluded property. He says the balance of Ferndale's purchase price, paid from his inheritance and mutual funds accumulated from gifts and his inheritance, is excluded property. Ms. Ussher says any excluded property claim was extinguished when Tyndall and later Ferndale were registered in both parties' names as joint tenants.

[53] Ms. Ussher accepts Homer Street Investments is Mr. Ropchan's excluded property.

[54] Mr. Ropchan also advances an excluded property claim for the following:

- a) his 2008 BMW;
- b) his Toyota Rav4;
- c) his TD RRSP;
- d) his TD TFSA;
- e) his Tangerine RRSP; and
- f) his bank account balance as of the date of separation.

[55] I will review the legal framework for excluded property before analyzing how it applies to the circumstances in this case. For the reasons that follow, I am satisfied Mr. Ropchan has proven many of his excluded property claims.

[56] The spouse claiming property is excluded property pursuant to s. 85 of the Family Law Act bears the onus of proving that fact on a balance of probabilities: *Shih v. Shih*, 2017 BCCA 37 at paras. 42-44. Mathematical certainty is not required, but clear and cogent evidence is required: *Shih* at para. 40, 43. I may draw reasonable inferences from evidence that is less than certain or precise in order to do justice between the parties: *Shih* at para. 44.

[57] Section 85 of the Family Law Act identifies various categories of assets that are excluded from family property, including

- a) property acquired by a spouse before the relationship between the spouses began (s. 85(1)(a));
- b) an inheritance to a spouse (s. 85(1)(b));
- c) a gift to a spouse from a third party (s. 85(1)(b.1)); and
- d) property derived from property or the disposition of property referred to in s. 85(1)(a) to (f) (s. 85(1)(g)).

Ferndale proceeds

[58] I am satisfied that Mr. Ropchan has largely proven his excluded property claim for \$1,355,000 of the Ferndale sale proceeds.

[59] Mr. Ropchan owned the Yaletown condo before the parties' relationship started. I accept that the \$655,000 from the sale proceeds for the Yaletown condo that were used to acquire Tyndall qualifies as excluded property: Family Law Act, s. 85(1)(a) and (g).

- [60] Ms. Ussher argues that Mr. Ropchan failed to prove his excluded property claim by failing to provide evidence of the value of the Yaletown condo as of the date they started cohabitating. However, keeping in mind the guidance from Shih, I am satisfied find that Mr. Ropchan has proven on a balance of probabilities that \$655,000 from the proceeds of the Yaletown condo used to buy Tyndall qualifies as excluded property based on the following:
- a) Mr. Ropchan purchased the Yaletown condo for \$495,000 on or before January 5, 2008;
 - b) He sold the Yaletown condo on May 13, 2013 for \$687,107;
 - c) The parties started cohabitating November 15, 2011;
 - d) Assuming a linear increase in value from January 5, 2008 to May 13, 2013, the increase in value of the Yaletown condo from the date of cohabitation to the sale of the Yaletown condo was approximately \$54,000 (half of which Ms. Ussher is entitled to receive: Family Law Act, s. 84(2)(g));
 - e) Mr. Ropchan purchased Tyndall as sole owner in May 2013 for \$681,669 using the proceeds of the sale of his Yaletown condo; and
 - f) The difference between Tyndall's purchase price and Ms. Ussher's share of the increase in value of the Yaletown condo over the course of their marriage-like relationship is approximately \$655,000.
- [61] I am satisfied that assuming a linear increase in the value of the Yaletown condo is a reasonable inference in the circumstances and is fair to both parties. Mr. Ropchan may have purchased the Yaletown condo prior to January 2008, but he was in the best position to lead such evidence and failed to do so.
- [62] Ms. Ussher says that even if Mr. Ropchan had an excluded property claim in respect of Tyndall purchase moneys, his excluded property claim was lost when he transferred registered ownership of Tyndall from himself to both parties as joint tenants, which he did on November 25, 2014. I disagree. As Justice Griffin explained at para. 95 in *Venables v Venables*, 2019 BCCA 281, "the intention of the spouse transferring ownership is key in determining whether the property transferred from one spouse to the other remains excluded property or becomes family property". In this case, I am satisfied Mr. Ropchan did not intend to gift an equal share in Tyndall to Ms. Ussher or to their marriage-like relationship when he agreed to register Tyndall in both their names. Instead, I accept Mr. Ropchan's evidence that he only registered Tyndall in both parties' names to provide security for the Child and Ms. Ussher in case he died. In the meantime, Mr. Ropchan intended to keep his excluded property as his property, consistent with keeping his finances separate from Ms. Ussher.

- [63] Ms. Ussher testified that Mr. Ropchan promised her that he would put Tyndall in both their names. Mr. Ropchan denied making that promise. I prefer his evidence on that point. As noted previously, I found Mr. Ropchan to be a more credible witness generally, and his evidence on this point is more reliable. If Mr. Ropchan had always intended to register Tyndall in Ms. Ussher's name, there is no reason he could not have done so from the outset or at an earlier date:
- a) Mr. Ropchan could have obtained a power of attorney to sign Tyndall purchase documents on Ms. Ussher's behalf;
 - b) he could have transferred Tyndall into both names when Ms. Ussher arrived in Canada in June 2013; and
 - c) it is unlikely he would have declined to transfer Tyndall into both their names when Ms. Ussher told him it was required to allow her to be strata president, a rationale he rejected as untrue.
- [64] Instead, when her strata president argument failed, Ms. Ussher asked Mr. Ropchan to transfer ownership of Tyndall into both names to give her and the Child the security of remaining in Tyndall in the event he died, an argument he accepted after doing his own online research.
- [65] In this case, there was no "pooling of funds with an intention on the part of each spouse to gift their respective contributions for the purposes of the marriage": *Pisarski v. Piesik*, 2019 BCCA 129 at para. 48. Ms. Ussher's failure to contribute to the down-payment is not determinative because the "pooling of purchase moneys is not essential"; however, the critical question is whether the parties intended to own the family home in combination: *World v. World*, 2021 BCSC 1177, at para 18. In this case, I find that Mr. Ropchan had no intention of gifting Tyndall to the parties' then marriage-like relationship and instead needed to be convinced to register Tyndall in both parties' names. Mr. Ropchan's intention was to give Ms. Ussher peace of mind in case he died, not to forego his excluded ownership interest in Tyndall.
- [66] Mr. Ropchan did not document his intention to retain his excluded property interest, but I do not find this indicative of an intention to give it up in this case. In general, Mr. Ropchan intended to keep the parties' finances separate. They did not have a joint bank account, and all of Mr. Ropchan's investment accounts remained in his name alone (except the Child's RESP). Their only joint financial instrument was the secondary credit card Mr. Ropchan gave Ms. Ussher on his account. Mr. Ropchan saw no reason to register Tyndall in both parties' names originally, as it was purchased with his money. Mr. Ropchan was well aware that he brought assets to the relationship, whereas Ms. Ussher did not.
- [67] Turning to the purchase of Ferndale in 2019, the parties offered to purchase Ferndale for \$1,625,000, conditional on the sale of Tyndall. Tyndall sold within one day, but the parties needed to come up with approximately \$750,000 to complete the purchase of Ferndale.

[68] I am satisfied that most of the Ferndale purchase moneys are Mr. Ropchan's excluded property based on the following:

- a) Mr. Ropchan cashed in non-registered mutual funds in the amount of \$547,858.11 on April 25, 2019 to fund the purchase of Ferndale;
- b) Mr. Ropchan paid the \$50,000 deposit toward the purchase of Ferndale using the mutual fund proceeds;
- c) Mr. Ropchan received a \$500,000 dividend from Ropchan Investments Inc. as part of his inheritance from his grandfather's estate on May 24, 2019; and
- d) Mr. Ropchan paid the balance of Ferndale's purchase price (\$737,832.30) using a bank draft from his chequing account on May 30, 2019.

[69] Mr. Ropchan testified to these facts, and his evidence is corroborated by his chequing account statement and a T5 issued by Ropchan Investments Inc. Ms. Ussher testified that she was not involved in the financial aspects of the Ferndale purchase and was unaware of the source of the funds used to complete the purchase.

[70] In terms of the source of the funds in the non-registered mutual funds cashed in to buy Ferndale, Mr. Ropchan testified that he deposited gifts and inheritances into the non-registered mutual fund, and I accept his evidence. Despite the absence of an account statement for the non-registered mutual fund, I am satisfied that the funds received when he cashed in the non-registered mutual fund balance is largely Mr. Ropchan's excluded property based on the following:

- a) Mr. Ropchan received a gift of \$200,000 from his grandfather on November 19, 2012;
- b) On August 22, 2013, Mr. Ropchan transferred \$180,000 out of his chequing account;
- c) In 2015, Mr. Ropchan withdrew \$25,000 from a mutual fund;
- d) In 2015, Mr. Ropchan received a \$115,000 inheritance from his grandfather's estate;
- e) On November 12, 2015, Mr. Ropchan transferred \$90,000 into a mutual fund;
- f) In 2016, Mr. Ropchan withdrew \$25,000 from a mutual fund;
- g) In April 2017, Mr. Ropchan withdrew \$10,000 from a mutual fund;
- h) In June 2017, Mr. Ropchan received a \$200,000 inheritance from his grandfather's estate;
- i) In November 2017, Mr. Ropchan transferred \$150,000 into a mutual fund;
- j) In 2018, Mr. Ropchan received a \$283,750 inheritance from his grandfather's estate;
- k) In February 2019, Mr. Ropchan transferred \$150,000 into a mutual fund;

- l) Mr. Ropchan received additional gifts from his father (in cash and as dividends) and additional dividends as part of his grandfather's estate from 2012 to 2019 (as described in para. 37 above); and
 - m) Mr. Ropchan's salary from 2012 to 2019 was less than the parties' living expenses in those years (i.e., the parties had no savings from Mr. Ropchan's income).
- [71] Based on the foregoing, I am satisfied that there is clear and cogent evidence that \$510,000 (the net result of the transactions in para. 70 (b), (c), (e) - (g), (i) and (k)) from the non-registered mutual fund account was derived from gifts and inheritances Mr. Ropchan received. His overall testimony about the source of funds in the non-registered mutual account and his written answers to questions from Ms. Ussher's counsel are generally consistent with these findings. Mr. Ropchan's chequing account statements corroborate the transfers between his chequing account and a mutual fund, and account statements confirm that the large deposits into a mutual fund were not made into his RRSP or TFSA accounts. The \$180,000 transfer out of his chequing account on August 22, 2013 does not refer to "mutual fund", but it is a reasonable inference that those funds found their way to the non-registered mutual fund account. Mr. Ropchan testified that he would withdraw funds from the non-registered mutual fund account from time to time to cover the parties' living expenses and in particular their monthly credit card bills, which is consistent with his chequing account statement.
- [72] Without detailed account statements for the non-registered mutual fund to show the value at the outset of the parties' relationship or that he made other contributions from excluded property sources, Mr. Ropchan has failed to prove the difference between the non-registered mutual fund cash-out value of \$547,858.11 and \$510,000 is excluded property. It is reasonable to infer that the difference is attributable to a market increase in value, which is family property to be shared equally between the parties. As a result, I find \$37,858 from Ferndale purchase moneys of \$737,732 is family property to be divided, which leaves Mr. Ropchan with excluded property of \$700,000 (rounded).
- [73] In response to Mr. Ropchan's excluded property claim, Ms. Ussher argues she is entitled to share in the increase in the value of Mr. Ropchan's grandfather's estate from the date of his death until the estate proceeds were distributed. I do not find this submission persuasive. There was some evidence that the value of the grandfather's estate increased from \$2,000,000 to \$2,750,000 as a result of wise investing by Donald Ropchan, executor of the estate. However, Ms. Ussher provided no authority for the proposition that family property includes an unrealized inheritance. Ms. Ussher argues that Mr. Ropchan's interest in his grandfather's estate "crystallized" when his grandfather died in 2014; however, the value of that inheritance remained indeterminate until it was actually paid out. Mr. Ropchan's grandfather's estate was complicated and required consensus between the four beneficiaries regarding how to distribute the estate. In 2019, the four beneficiaries agreed they wanted to receive a cash dividend (representing the bulk of the remaining estate), but other options that would not have resulted in a significant cash payment at the time were also considered.

I find Mr. Ropchan's inheritance became family property (subject to his excluded property claim) only when he actually received distributions. Pursuant to s. 84(2)(g)(ii) of the Family Law Act, any increase in value in those inheritance distributions would be family property, consistent with my findings in this case.

[74] I find Mr. Ropchan did not lose his excluded property claim when Ferndale was purchased by both parties as joint tenants for the same reason he did not lose his excluded property claim when Tyndall was transferred into both names. Despite marrying in 2017, the parties' finances remained separate for the most part. I accept Mr. Ropchan did not intend to gift Ferndale to the marriage. Instead, he intended to preserve his excluded property claim, consistent with his investment of gifts and inheritances into a non-registered mutual fund account in his name alone.

[75] As a result, Mr. Ropchan's excluded property claim in respect of Ferndale may be summarized as follows:

- a) \$655,000 from Tyndall purchase moneys (pursuant to s. 85(1)(a), (b.1) and (g)); and
- b) \$700,000 from Ferndale purchase moneys (pursuant to s. 85(1)(b.1) and (b)).

2008 BMW

[76] Mr. Ropchan has an excluded property claim for his 2008 BMW vehicle in the amount of \$4000.

[77] In June 2017, Mr. Ropchan purchased a 2015 BMW in his own name using an inheritance from his grandmother. The 2015 BMW qualified as excluded property: Family Law Act, s. 85(1)(b) and (g). In 2021, shortly before the parties separated, Mr. Ropchan traded in the 2015 BMW and applied the trade-in allowance of \$32,700 to the purchase a 2021 BMW and financed the balance of the purchase price. I accept that \$32,700 of the purchase moneys for the 2021 BMW qualified as excluded property: Family Law Act, s. 85(1)(g).

[78] In March 2022, Mr. Ropchan traded in the 2021 BMW when the financing payments of \$1213 per month became too onerous on top of child and spousal support payments. By then he had paid approximately \$12,130 in loan payments toward the cost of the 2021 BMW, of which approximately \$11,000 would have been principal based on the interest cost in the conditional sales agreement. Mr. Ropchan received net proceeds of \$15,098 on the sale of the 2021 BMW after paying the outstanding loan. I accept that \$4000 of those funds are derived from the original 2008 BMW and qualify as excluded property. The extra \$1000 Mr. Ropchan contributed from his own funds to buy the 2008 BMW vehicle for \$16,098 is not family property.

[79] In short, \$11,000 from the value of the 2008 BMW vehicle is family property. The rest is excluded property or not family property.

Toyota Rav4

[80] I accept the Toyota Rav4 is excluded property (value of \$6000), as Mr. Ropchan sold a 2005 BMW M5 that he owned prior to the parties' relationship to buy the Rav4.

TD RRSP

[81] Mr. Ropchan claims the entire value of the TD RRSP in his name as excluded property. I find that \$108,659 of the current value of \$133,675 is Mr. Ropchan's excluded property, pursuant to s. 85(1)(b) of the Family Law Act, for the following reasons:

- a) The TD mutual fund account was valued at \$56,631 as of October 2014, the earliest statement Mr. Ropchan was able to obtain post-separation;
- b) As of October 2014, the TD mutual fund had not increased in value over the original book value price;
- c) The beginning balance of the mutual fund as of January 1, 2016 was \$53,658 (i.e., less than its value as of October 2014);
- d) There is no evidence that Mr. Ropchan withdrew funds from the RRSP between October 2014 and January 1, 2016, which suggests the RRSP declined in value due to market fluctuations;
- e) Mr. Ropchan received gifts in the form of cash and dividends that he used to invest in the TD RRSP account;
- f) Between January 1, 2016 and June 30, 2021, Mr. Ropchan contributed \$55,000 to his TD RRSP;
- g) Mr. Ropchan has contributed nothing to his TD RRSP post-separation;
- h) Mr. Ropchan's salary from 2012 to the date of separation was less than the parties' living expenses in those years (i.e., the parties had no savings from Mr. Ropchan's income to invest in an RRSP); and
- i) Between January 1, 2016 and September 30, 2023, the TD RRSP mutual fund increased in value by \$25,016.

[82] The increase in value of the RRSP (\$25,016) is family property, subject to division: Family Law Act, s. 84(2)(g)(i). The balance (\$108,659) is Mr. Ropchan's excluded property.

TD TFSA

[83] Mr. Ropchan claims the entire value of the TD TFSA in his name as excluded property. I find that \$56,260 of the value of the TD TFSA (\$83,910) is Mr. Ropchan's excluded property, pursuant to s. 85(1)(b) of the Family Law Act, for the following reasons:

- a) The TD mutual fund account was valued at \$34,730 as of October 2014, the earliest statement Mr. Ropchan was able to obtain post-separation;
- b) As of October 2014, the TD mutual fund had increased in value by \$2970 over the original book value price;
- c) There is no evidence as to when the TD TFSA was opened;
- d) The TD TFSA was worth \$42,337 as of January 1, 2016;
- e) There is no evidence that Mr. Ropchan made any contributions to the TFSA between October 2014 and January 1, 2016;
- f) Mr. Ropchan received gifts in the form of cash and dividends that he used to invest in the TD RRSP account;
- g) Mr. Ropchan made net deposits of \$24,500 between January 1, 2016 and June 30, 2021;
- h) Mr. Ropchan's salary from 2012 to 2019 was less than the parties' living expenses in those years (i.e., the parties had no savings from Mr. Ropchan's income to invest in a TFSA); and
- i) Between January 1, 2016 and June 30, 2021, the TD TFSA mutual fund increased in value by \$17,073.

[84] I accept that the deposits to the TFSA were funded by gifts or dividends given to Mr. Ropchan by his father or grandfather or by his inheritance from his grandfather's estate. However, the increase in value of the TFSA is family property, subject to division: Family Law Act, s. 84(2)(g)(i). Doing the best I can with the evidence provided, I find the increase in value of the TD TFSA (\$27,650) is family property. The balance of the TD TFSA is Mr. Ropchan's excluded property.

Tangerine RRSP

[85] Mr. Ropchan owned an RRSP in his own name through Tangerine prior the parties' relationship. Mr. Ropchan has proven that the Tangerine RRSP was worth approximately \$9,442 when the parties started to cohabitate. The value of the Tangerine RRSP at the start of their relationship (\$9,442) qualifies as excluded property: Family Law Act, s. 85(1)(a).

Bank account balance

[86] I accept that Mr. Ropchan has proven it is more likely than not that his bank balance of \$17,565 as of the date of separation is derived from gifts or dividends from his father or from his inheritance. As noted previously, the parties spent more than Mr. Ropchan's salary on their lifestyle. It is reasonable to conclude that Mr. Ropchan's positive bank balance as of the date of separation is attributable to gifts from his father and his inheritance from his grandfather. I note in particular that Mr. Ropchan deposited more than \$70,000 in dividends in his chequing account in February 2021.

Total excluded property claim

[87] To summarize, Mr. Ropchan has proven the following excluded property claims:

a)

Ferndale proceeds:

\$1,355,000

b)

2008 BMW:

\$4,098

c)

Toyota Rav4:

\$6,000

d)

TD RRSP:

\$108,659

e)

TD TFSA:

\$56,260

f)

Tangerine RRSP:

\$9,442

g)

Bank account balance:

\$17,565

Family Debt

[88] Section 86 of the Family Law Act defines family debt as all financial obligations incurred by a spouse during the period when the relationship between the parties begins and ending when the spouses separate.

[89] As of the date of separation, the parties had credit card debt of \$4403 which is a family debt.

[90] Mr. Ropchan owed tax arrears to Canada Revenue Agency of \$15,696 in 2021. This tax liability arises from the \$73,164 in dividends he received in 2021.

Is equal division significantly unfair?

[91] As an alternative, Ms. Ussher submitted that if Mr. Ropchan is successful in his excluded property claims, then it would be substantially unfair to divide the remaining family equally. Given my findings on Mr. Ropchan's excluded property claim, I will analyze whether equal division of family property and debt is significantly unfair in this case.

Legal framework

[92] Section 95(1) of the Family Law Act allows the court to order unequal division of family property or family debt or both if it would be significantly unfair to divide equally family property or family debt or both.

[93] Recently, Justice Elwood in *Lan v. Buchanan*, 2024 BCSC 302 summarized the Court of Appeal's analysis of s. 95 in *Jaszczewska v. Kostanski*, 2016 BCCA 286:

[74] Justice Harris wrote that s. 95 seeks to increase certainty, fairness, and predictability in property division by reducing the discretion of the courts to depart from equal division: at para. 36. The test in the previous legislation (the Family Relations Act, R.S.B.C. 1996, c. 128) only required unfairness, whereas the FLA requires "significant unfairness." In addition, the Legislature more precisely specified the factors to be considered in applying this threshold.

[75] Justice Harris agreed with the analysis in *Remmem v. Remmem*, 2014 BCSC 1552, where the trial judge defined "significant" as "extensive or important enough to merit attention" and something that is "weighty, meaningful or compelling", concluding that to justify an unequal distribution "[i]t is necessary to find that the unfairness is compelling or meaningful having regard to the factors set out in s. 95(2)": *Jaszczewska* at para. 41. Justice Harris held that it would be unwise to attempt to define the meaning of "significant unfairness", but found that reapportionment under s. 95 would require "something objectively unjust, unreasonable or unfair in some important or substantial sense": *Jaszczewska* at para. 42.

[94] In *Singh v. Singh*, 2020 BCCA 21, Justice Garson summarized the legislative intent of s. 95(1) and the meaning of "significantly unfair" as follows:

[134] In summary, it is clear that the Legislature intended the general rule of equal division to prevail unless persuasive reasons can be shown for a different result: *Jaszczewska* at para. 41. Reapportionment will require something objectively unjust, unreasonable, or unfair in some important or substantial sense. This is in contrast to the previous legislation where courts had discretion under s. 65 to reapportion property or debt where it would be simply "unfair" not to do so. The threshold for "significant unfairness" is high. There must be a real sense of injustice that would permeate the result if the court did not deviate from the presumptive equal division.

[Emphasis added.]

[95] Section 95(2) of the Family Law Act sets out various factors the court may consider when assessing whether equal division of family assets and debt would be significantly unfair, including the following:

- (a) the duration of the relationship between the spouses;
- (c) a spouse's contribution to the career or career potential of the other spouse;
- (i) any other factor, other than the consideration referred to in subsection (3), that may lead to significant unfairness.

[96] Section 95(3) of the Family Law Act allows the court to consider "the extent to which the financial means and earning capacity of a spouse have been affected by the responsibilities and other circumstances of the relationship between the spouses if, on making a determination respecting spousal support, the objectives of spousal support under section 161 [objectives of spousal support] have not been met".

[97] The Court of Appeal recently confirmed at para. 69 of *Healey v. Healey*, 2024 BCCA 68, that:

[69] In considering a claim for unequal division of family property, the court should proceed by first making a notional equal division of property, and then determine whether such an equal division would be significantly unfair, given the factors in s. 95(2) and, where applicable, s. 95(3) of the [Family Law Act]

Ms. Ussher relies on s. 95(2) and (3).

[98] As a result, the first step in the analysis is to determine the notional equal division of family property and debt. I will then consider whether Ms. Ussher has proven equal division would be substantially unfair in this case.

Notional equal division of family property and debt

[99] I find that notional equal division of family property and debt would result in the following allocation after factoring in Mr. Ropchan's excluded property claim:

Asset or debt

Value

Mr. Ropchan's Excluded property

Ms. Ussher's share

Mr. Ropchan's share

Ferndale proceeds of sale

\$2,141,786

\$1,355,000

\$393,393

\$1,748,393

Homer St. Investments

\$196,609

\$196,609

0

\$196,609

PH&N RRSP

\$68,911

0

\$34,456

\$34,455

TD RRSP

\$133,675

\$108,659

\$12,508

\$121,167

TD TFSA

\$83,910

\$56,260

\$13,835

\$70,085

Tangerine RRSP

\$20,132

\$9,442

\$5,345

\$14,787

2008 BMW

\$15,098

\$4,098

\$5,500

\$9,598

Toyota Rav4

\$6,000

\$6,000

0

\$6,000

Mr. Ropchan's account balance

\$17,565

\$17,565

0

\$17,565

TD visa (debt)

(\$4,403)

(\$2201.50)

(\$2201.50)

CRA debt

(\$15,696)

(\$7,848)

(\$7,848)

Total net assets

\$2,663,597

\$1,753,633

\$454,987.50

(17%)

\$2,208,609.50

(83%)

Is equal division significantly unfair?

[100] Ms. Ussher's submits that the 2021 tax liability is not family debt because it was incurred on dividends of \$73,164 Mr. Ropchan received in 2021. Of the funds received as dividends, Mr. Ropchan invested \$20,000 in his TD RRSP and \$12,000 in his TD TFSA, he spent some of the money on family expenses incurred from February 2021 to July 25, 2021, and the balance was in his bank account as of the date of separation. As outlined above, Mr. Ropchan has established his excluded property claim with respect to the TD RRSP, the TD TFSA and his bank account. In my view, it would be significantly unfair if Ms. Ussher was required to pay the tax debt on money that Mr. Ropchan is entitled to keep as excluded property, which is approximately 67% of the dividend amount. Mr. Ropchan would be responsible for half of the tax debt for the amount spent on family expenses, which means the tax debt should be reallocated so that \$13,050 is paid by Mr. Ropchan and \$2646 is paid by Ms. Ussher.

[101] More generally, Ms. Ussher argues that an unequal division is appropriate having regard to the factors of s. 95(2) and 95(3) of the Family Law Act.

[102] Ms. Ussher relies upon s. 95(2)(a), the duration of the relationship between the spouses. The parties' relationship lasted just less than 10 years. This is a neutral factor, in my view, in assessing whether equal division is significantly unfair.

[103] Ms. Ussher relies upon s. 95(2)(c), her contribution to Mr. Ropchan's career. In my view, this factor modestly favours unequal division because Mr. Ropchan's career trajectory and earnings are somewhat modest. Ms. Ussher did move back to Canada where Mr. Ropchan had better employment opportunities, and she stayed at home with primary responsibility for the Child. I accept there were discussions over the course of the relationship about Ms. Ussher returning to work, but that did not happen. By assuming primary responsibility for the Child, Ms. Ussher allowed Mr. Ropchan to maintain his employment uninterrupted by household responsibilities. However, this is not a case where one spouse took on a disproportionate share of household responsibilities to accommodate the other spouse's demanding career or where the working spouse was able to take advantage of dynamic career opportunities. Mr. Ropchan has worked in the same position since 2013 and has enjoyed modest salary increases over that time. Still, he has the advantage of a continuous work history at a salary that comes close to covering his monthly living expenses.

[104] Ms. Ussher argues that the circumstances in this case are similar to the facts in Healey. In my view, there are some significant factual differences between the case at bar and Healey. In Healey, the parties had a much longer marriage (21 years versus less than 10 years), the parties had agreed that the wife would stay home with the children while the husband established a career as a financial advisor (from which he earned \$12,000 to \$15,000 per month in commissions), and the value of excluded and family property was considerably

higher than in this case.

[105] On the other hand, the Court of Appeal in Healey found the fact the husband's excluded assets related to the economic characteristics of the spousal relationship on the basis that

- a) The husband's excluded assets helped maintain the marital standard of living;
- b) the husband confirmed he anticipated his excluded assets would fund in part the parties' retirement; and
- c) the fact the wife relied on the husband to plan and save for retirement while she cared for the children and household (with his encouragement) instead of focusing on her career.

[106] In this case, there is no doubt Mr. Ropchan's excluded assets helped maintain the parties' marital standard of living. Mr. Ropchan used his excluded property to buy Tyndall and then Ferndale. The parties used money gifted to Mr. Ropchan and his pre-relationship investments to remain debt-free despite discretionary spending that routinely exceeded Mr. Ropchan's salary.

[107] Generally speaking, Ms. Ussher relied upon Mr. Ropchan to support her financially and apparently did not worry about family finances. Ms. Ussher claims she did not really know how much Mr. Ropchan earned from employment and how much he received from other sources during their relationship, but occasionally he would ask her to curb her spending if a large bill (such as property taxes) was imminent. Ms. Ussher was aware that Mr. Ropchan would receive large dividend cheques from time to time. Mr. Ropchan told her that he expected to receive a significant sum from First Global at some point. The parties discussed potentially retiring early or buying an investment property. I am satisfied it is more likely than not that both parties expected funds from First Global (which have not been received) would help to support their retirement. There is nothing to suggest that Ms. Ussher was concerned about financial security, either in the day-to-day or for her future. These circumstances are not dissimilar to Healey.

[108] Section 95(3) allows the court to consider the extent to which the financial means and earning capacity of a spouse have been affected by the responsibilities and other circumstances of the relationship if, on making a determination respecting spousal support, the Family Law Act objectives of spousal support are not met. This factor was significant in Healey, where the wife was entitled to spousal support on both compensatory and non-compensatory grounds. In this case, Mr. Ropchan did not dispute entitlement but only amount and duration, which I address later in these reasons. Not unlike in Healey, Ms. Ussher's standard of living will decline as a result of the breakdown of the relationship, whereas Mr. Ropchan will likely be able to maintain his standard of living by using his excluded property to purchase a home or generate income or have funds for retirement. At the very least, Mr. Ropchan will have relative financial security with a steady source of income in addition to his excluded assets, whereas Ms. Ussher has no employment income and expenses that exceed support payments. Her relatively weaker financial position is due

in part to her primary role in caring for the Child. The spousal support objective of relieving the economic hardship of the marriage breakdown will not be accomplished, in part because the parties' relationship lifestyle reflected the benefits derived from Mr. Ropchan's excluded property and gifts and dividends he received rather than his income.

- [109] On the other side of the ledger, even with equal division of family property, Ms. Ussher's financial position has improved dramatically relative to her position at the beginning of the relationship: *Venables v. Venables*, 2018 BCSC 1736, aff'd 2019 BCCA 281. Based on her pre-relationship work history and her prodigious spending, Ms. Ussher is likely in a better financial position now than she would have been absent the parties' relationship.
- [110] Further, there is no presumption that a party is entitled to the same standard of living they enjoyed during the marriage: *Lee v. Lee*, 2014 BCCA 383 at paras. 60 - 61, 65.
- [111] Taking these factors into account, I am satisfied it would be significantly unfair to divide family assets equally based on the disparity between the parties' earning capacity and the difference between their post-separation assets if family assets are divided equally. As a result, after redistributing the CRA debt and accounting for the s. 95(2)(i) and 95(3) factors, I find that \$600,000 (approximately 66%) of the total net family assets should be allocated to Ms. Ussher. This unequal division will go some distance to alleviating the disparity in the parties' financial circumstances and recognizing the impact Ms. Ussher's role had on her earning capacity while respecting the excluded property provisions of the Family Law Act.

Parenting

- [112] The parties agree on many parenting orders. I will identify the orders made by consent and address the contentious issues, but first I will outline my findings of fact related to parenting.
- [113] In making parenting orders pursuant to the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.), I have considered the Child's best interests and the factors identified in s. 16(3) even though I will not review all of the factors in detail given the few areas of contention.
- [114] Both parties are guardians of the Child under s. 39(1) of the Family Law Act.

Parenting facts

- [115] The Child was born when the parties lived in New Zealand in October 2012. Ms. Ussher was 41 years old, and Mr. Ropchan was 42 years old when the Child was born. Ms. Ussher stopped working when she was six months pregnant, and Mr. Ropchan was not working at the time. They both stayed home with the Child until Mr. Ropchan returned to Canada in May 2013. Ms. Ussher, her daughter and the Child followed a month later.
- [116] In Canada, Mr. Ropchan worked full-time, and Ms. Ussher stayed home with the children. The Child was slow to speak, which led Ms. Ussher to have the Child assessed at two years old by a speech pathologist. The Child started preschool at age three. The Child's delay in

reaching developmental milestones led the parties to have the Child assessed at a private clinic in Victoria. Ms. Ussher organized that process, but I find that Mr. Ropchan was supportive. The Child was diagnosed with autism spectrum disorder and suspected attention deficit hyperactive disorder. The Child qualified for autism funding for therapy. Ms. Ussher set up a treatment team that included a behavioural consultant, a behavioural interventionist, an occupational therapist, and a speech pathologist. Ms. Ussher is now able to save money by performing the behavioural interventionist role herself, which essentially involves implementing the therapy plan developed by the behavioural consultant.

- [117] The Child initially attended a Montessori preschool and elementary school before changing in grade three to a school for children with learning disabilities when he received a dyslexia diagnosis. The Child has the support of an educational assistant for most of the school day. He has an individualized learning plan that indicates reading, written expression and math are areas of weakness. Both parties read with the Child regularly.
- [118] In 2023-2024, the Child was in grade 5. His report card from grade "Adapted 4" showed he was achieving reasonable marks, but the comments suggest there are continuing areas of weakness.
- [119] The Child has some sensory sensitivities that make him fussy with food and textures. The Child prefers to maintain a consistent routine. The Child sometimes blurts things out to other children or parents.
- [120] The parties agree that they have different parenting styles, and they have a different perspective on the Child's needs and abilities. Ms. Ussher is very attentive to the Child's needs and feels the Child continues to require close supervision. Mr. Ropchan describes Ms. Ussher as a helicopter parent. Mr. Ropchan is more of a laissez-faire parent who believes children learn from their mistakes. Mr. Ropchan believes that the Child needed constant supervision when younger but less so now. Ms. Ussher does not believe Mr. Ropchan recognizes the Child's limitations based on the current diagnoses.
- [121] I am satisfied that both parties have a reasonable though different perspective on the Child's needs and abilities. Each of the parents has strengths from which the Child benefits. Both parties have demonstrated they are capable of meeting the Child's emotional and physical needs.
- [122] I will comment only briefly on a few points. I reject Ms. Ussher's evidence that Mr. Ropchan reacted poorly to the Child's autism diagnosis, and I accept his evidence on that point. In terms of family violence, I accept Mr. Ropchan's account of the isolated incidents that involved inappropriate physical contact between him and the Child. Mr. Ropchan's effort to control Ms. Ussher's spending by giving her \$500 weekly was not coercive and controlling, especially when she had access to his credit card account during the relationship. I find the risk the Child will be exposed to family violence in Mr. Ropchan's care is low. There is little risk the Child will witness family violence of any sort between the parties now that they no longer reside together. I am satisfied that historical family violence is not a significant

factor in making parenting orders in this case.

Parenting time

- [123] Consistent with the current parenting arrangement, the parties agree the Child shall reside primarily with Ms. Ussher, and Mr. Ropchan shall have parenting time on alternating weekends from Friday at 4:00 pm until Sunday at 4:00 p.m. Mr. Ropchan shall pick up the Child at the commencement of his parenting time and return the Child to Ms. Ussher's residence at the end of his parenting time, unless the parties otherwise agree. If Mr. Ropchan's parenting time falls on a non-school day, then he shall pick up the Child at Ms. Ussher's residence. I am satisfied that this parenting schedule is in the Child's best interests.
- [124] Neither party shall change the Child's residence from the greater Victoria area without the prior written consent of the other party.
- [125] One point of contention is whether an order is required to regulate Mr. Ropchan's consumption of alcohol. Ms. Ussher says Mr. Ropchan is an alcoholic, and there should be an order that he not possess any alcohol or controlled substance during his parenting time or for eight hours before his parenting time. This is the form of order Mr. Ropchan consented to when the current alternating weekend parenting schedule was ordered in March 2022. I accept Mr. Ropchan has complied with this order since March 2022.
- [126] Based on the evidence at trial, I am not satisfied that such an order is necessary going forward. Mr. Ropchan was forthright about his drinking during his relationship with Ms. Ussher. There were regrettable incidents in the distant past when Mr. Ropchan drank too much. More recently and of concern, in September 2021, Mr. Ropchan consumed alcohol before driving with the Child in the car. Ms. Ussher was understandably upset about this incident. I am satisfied Mr. Ropchan learned from the September 2021 incident. Consistent with my credibility and reliability findings, I accept Mr. Ropchan's evidence that he does not have a temper when he drinks, and I reject Ms. Ussher's assertion that he does. On the whole of the evidence, I was impressed Mr. Ropchan has demonstrated since separation that he is able to recognize the Child's best interests and act accordingly. The risk the Child will be harmed unless there is an order precluding Mr. Ropchan from consuming alcohol is minimal. The court expects Mr. Ropchan to continue to put the Child's interests first, especially during his parenting time.
- [127] Mr. Ropchan seeks to have equal parenting time for the Child's spring break and Christmas school holidays. He would also like to have two uninterrupted weeks of parenting time per calendar year with the Child during school holidays. I am satisfied this is reasonable in the circumstances and in the Child's best interests. This holiday parenting time is in addition to Mr. Ropchan's parenting time on alternating weekends.

[128] Similarly, I am satisfied it is reasonable for Ms. Ussher to have up to three consecutive weeks of parenting time per calendar year to allow for international travel as provided in the next section. Mr. Ropchan shall have make-up parenting time for any regular weekend parenting time he misses if Ms. Ussher travels with the Child.

[129] Ms. Ussher would also like a continuation of the consent order made at the judicial case conference that neither party will leave the Child alone for longer than 10 minutes. I am not satisfied that this conduct order is necessary given the Child is almost 12 years old. I recognize that the Child may be somewhat developmentally delayed given his diagnosis, but I accept that both parents are capable of determining whether the Child is ready to be left alone and for how long. In order to prepare the Child for this eventuality, pursuant to s. 224 of the Family Law Act, I order that the Child shall take the Home Alone training program.

Travel

[130] Both parties seek orders allowing international travel with the Child. Ms. Ussher would like to take the Child to New Zealand to visit her parents or to the United Kingdom to visit her sister. Mr. Ropchan would like the option of travelling internationally with the Child.

[131] I am satisfied that it is in the Child's best interest to allow him to travel internationally with each party. In my view, Mr. Ropchan's concern there is a risk Ms. Ussher may not return from international travel is not unreasonable given her limited connection to Canada and where her family lives. That said, Ms. Ussher insists services for the Child are superior in Canada to what they would be in New Zealand or the United Kingdom, and she has demonstrated a keen interest in the Child's development.

[132] To address the residual concern about the risk of Ms. Ussher not returning to Canada, I make the following orders:

- a) Neither party shall remove the Child from the province of British Columbia without the written consent of the other party;
- b) In advance of travel outside British Columbia, the travelling parent shall provide to the other parent a travel itinerary and contact addresses and telephone numbers;
- c) Neither party will unreasonably withhold consent to a request to travel outside British Columbia made by the other parent;
- d) Mr. Ropchan shall apply for and keep current a Canadian passport for the Child;
- e) Mr. Ropchan shall keep the Child's passport in his possession and shall provide it to Ms. Ussher in advance of her international travel with the Child, and she shall return the Child's passport to Mr. Ropchan immediately upon return from travel; and

f) Ms. Ussher shall not apply for a New Zealand passport for the Child until November 1, 2028 or further order of the court.

[133] For clarity and by consent, the Supreme Court of British Columbia maintains jurisdiction over the Child.

[134] Again for clarity, either party may travel with the Child within British Columbia during their parenting time without the consent of the other party. As with international travel, for any travel outside greater Victoria, the travelling parent shall provide to the other parent a travel itinerary and contact addresses and telephone numbers.

[135] Ms. Ussher is concerned that Mr. Ropchan will not be able to accommodate the Child's needs for an extended period of time and that Mr. Ropchan's alcohol consumption on vacation may be an issue. However, Mr. Ropchan has demonstrated he is able to care for the Child for more than a few days, as he did so for approximately 10 days when Ms. Ussher fell ill. I have addressed the alcohol consumption issue already.

Parental responsibilities

[136] The parties shall continue to have joint decision-making responsibilities pursuant to s. 16.3 of the Divorce Act.

[137] Ms. Ussher seeks decision-making authority for most parental responsibilities. However, I am not satisfied that it is in the Child's best interests to allocate most parental responsibilities to Ms. Ussher. The parties have worked cooperatively since separation to make decisions about the Child's health, education and other needs. Mr. Ropchan recognizes that Ms. Ussher has done a great deal of research related to the Child's educational and health needs. He generally accepts her proposals regarding support services, extracurricular activities and education where they seem reasonable. I accept that Mr. Ropchan has put the Child's interests first when it comes to making decisions related to parental responsibilities. For example, he has reasonably made changes to parenting time to address the Child's needs and in particular the Child's need for a regular routine. Even where he disagrees with Ms. Ussher's views (for example, the Child's receiving the COVID-19 vaccine), Mr. Ropchan expressed his perspective but he accepted Ms. Ussher's decision to proceed with vaccination. The parties have demonstrated that they are able to have constructive parental communication, though it may not be as extensive as Ms. Ussher would prefer. It is clear Ms. Ussher has taken the lead in arranging the Child's therapies and managing autism funding; however, this is not a case where Mr. Ropchan is uninvolved or uninterested or obstructionist. The Child is doing well under the current regime, and I see no reason to change it.

[138] Alternatively, Ms. Ussher seeks primary decision-making responsibility pursuant to the Joyce model. However, I am not satisfied this is necessary or that it would be in the Child's best interests to give Ms. Ussher primary decision-making authority if the parties do not agree. As noted, Mr. Ropchan has demonstrated he puts the Child's interests before his

own. For example, when the Child recently objected to going to Mr. Ropchan's home for his usual weekend parenting time, Mr. Ropchan had a calm discussion with the child and ultimately returned the Child to Ms. Ussher's home, even though there was reason to believe that the Child's objection was rooted in litigation-related information the Child learned from Ms. Ussher. Mr. Ropchan deferred to the Child's needs rather than turn his missed parenting time into conflict with Ms. Ussher. When Ms. Ussher raised a concern about the Child being left alone while Mr. Ropchan took his aging dog outside, to avoid conflict, Mr. Ropchan agreed to limit the time he left the Child alone to 10 minutes pending trial. Further, when making significant decisions, such as choosing a school, Mr. Ropchan has done research and remained open-minded.

- [139] On the other hand, Ms. Ussher has on occasion acted in ways that may have been contrary to the Child's best interests. For example, Ms. Ussher insisted Mr. Ropchan's parenting time with the Child had to be supervised after she left Ferndale in October 2021. Mr. Ropchan had only four two-hour supervised parenting visits from late October 2021 until a court order in March 2022 initiated the current parenting schedule of every second weekend with Mr. Ropchan. When the first two supervised parenting sessions went well and Mr. Ropchan's counsel suggested lifting the supervision requirement in January 2022, Ms. Ussher reported Mr. Ropchan's breach of the protection order in late October to police, even though she had been aware since November 2021 that he had returned to the family home when she was not there to ensure his dog was being cared for. I am satisfied that Ms. Ussher reported the breach to police in January 2022 to stymie Mr. Ropchan's efforts to lift the supervision requirement. I do not accept that she became fearful in January 2022 as a result of an event she had known about since November 2021. Overall, it is not clear on the evidence before the court that limited and supervised parenting time with Mr. Ropchan over a 5-month period was in the Child's best interests.
- [140] As another example, it is unfortunate that Ms. Ussher declined to share educational resources for the Child (such as flash cards) with Mr. Ropchan after separation, telling him instead to do his own research. It would be in the Child's best interests if the parents would share resources so there is consistency between households. Finally, it is not clear why Ms. Ussher stopped providing the Child's medications to Mr. Ropchan, which has resulted in the Child not taking medication during Mr. Ropchan's parenting time.
- [141] There are some issues where the parties have struggled to reach consensus, such as whether the Child should travel to New Zealand to visit Ms. Ussher's aging parents or for their funerals. However, these are issues upon which reasonable parents may disagree, particularly with a Child who values routine and in the context of ongoing family litigation where Mr. Ropchan was concerned that Ms. Ussher might not return to Canada if she went to New Zealand with the Child.

[142] In short, I am not satisfied that Ms. Ussher should be given primary decision-making responsibility for the Child even though she has taken the lead on arranging the Child's autism therapies. Mr. Ropchan's ongoing equal decision-making authority is warranted and in the Child's best interests.

[143] As a result, the parties shall share equally in all of the s. 41 parental responsibilities for the Child under s. 40(2) of the Family Law Act.

Conduct orders

[144] Ms. Ussher seeks conduct orders pursuant to s. 224 of the Family Law Act. I am satisfied the following conduct orders are appropriate in the circumstances:

The parties shall not

- a) Question the Child about the other parent or time spent with the other parent beyond simple conversational questions;
- b) Discuss with the Child any inappropriate adult, court or legal matters;
- c) Blame, criticize or disparage the other parent in front of the Child.

[145] Ms. Ussher sought an order that the parties communicate through Our Family Wizard; however, the evidence does not support the need for a communication application.

Child support

[146] Ms. Ussher seeks an order for child support pursuant to the Divorce Act, retroactive to the separation date. Mr. Ropchan has been paying support since separation, but Ms. Ussher seeks a retroactive adjustment based on imputed income and seeks to impute income on a go-forward basis. Mr. Ropchan says child support should be paid based on his Line 15000 income, other than in 2023 when he received an interest payment of \$19,825 on the Ferndale proceeds, which is a non-recurring amount. I will review the legal framework before turning to the analysis in this case.

[147] Child support is the right of the child. This right survives the breakdown of a marriage.

[148] Section 15.1(3) of the Divorce Act provides that the calculation of child support is governed by the Federal Child Support Guidelines, SOR/97-175 [Guidelines]. The Guidelines are based on the principle that parents have a joint and ongoing legal obligation to support the children of the marriage: Divorce Act, s. 26.1(2).

[149] The objectives of Guidelines are set out in s. 1:

Objectives

1 The objectives of these Guideline are

- (a) to establish a fair standard of support for children that ensures that they continue to benefit from the financial means of both spouses after separation;
- (b) to reduce conflict and tension between spouses by making the calculation of child support orders more objective;
- (c) to improve the efficiency of the legal process by giving courts and spouses guidance in setting the levels of child support orders and encouraging settlement; and
- (d) to ensure consistent treatment of spouses and children who are in similar circumstances.

[150] Sections 16-20 of the Guidelines prescribe how to determine income for child support purposes. Section 16 establishes that the starting point for determining a spouse's annual income is the "total income" set out in the spouse's T1 general form, that is Line 15000 income, adjusted in accordance with Schedule III of the Guidelines. From there, the court has discretion to make further adjustments in accordance with sections 17 - 20 of the Guidelines, always with a view to advancing the objectives set out in s. 1 of the Guidelines: *Brown v Brown*, 2014 BCCA 152 at para. 23.

[151] Section 17(1) allows the court to determine a fair and reasonable Guidelines income by considering receipt of non-recurring amounts and variables where income determined under s. 16 would not be the fairest determination of Guidelines. Section 18 allows the court to adjust a spouse's annual income where the spouse is a shareholder, director, or officer of a corporation and their Line 15000 income does not fairly reflect all the money available to the spouse to pay child support. Section 19 gives the court broad discretion to impute income to a spouse; none of the non-exhaustive list of circumstances identified in s. 19 apply in this case. As the party seeking to impute income, Ms. Ussher bears the onus to establish the evidentiary basis to justify imputation: *Marquez v. Zapiola*, 2013 BCCA 433 at para. 36.

[152] Mr. Ropchan's Line 15000 income is the starting point for the analysis:

Line 15000

Employment income

Other

Income earned July 25, 2021 to year-end

\$35,262

\$34,062

\$1,200

2022

\$84,196

\$84,196

2023

\$107,570

\$87,745

\$19,825

[153] In 2021, after separation, Mr. Ropchan received a dividend of \$1200 (actual amount: Schedule III, s. 5) from Ropchan Investments, which represented the final distribution from his grandfather's estate. Mr. Ropchan has not received any dividends from First Global since the parties separated.

[154] Ms. Ussher argues that income should be imputed to Mr. Ropchan to account for the historical financial support he receives from his father (including cash gifts, dividends from First Global, and use of a gas card issued by First Global) and expenses he runs through Homer Street Investments. Ms. Ussher says \$41,400 should be imputed to Mr. Ropchan's income for "gift" and other dividend income, and \$20,000 should be imputed to his income for the gas card and Homer Street Investment expenses.

[155] In my view, it would not be appropriate to impute income to Mr. Ropchan retroactively for dividends he did not receive. First Global has not paid dividends to Mr. Ropchan since February 2021, which is before the parties separated. Donald Ropchan, as the controlling shareholder, decides when to issue dividends. If First Global issues dividends to Mr. Ropchan in the future, those dividends will be reflected in his income tax return. Both parties have proposed that child support will be reviewed annually, and I so order. For as long as the Child is eligible to receive child support, the parties shall exchange copies of their respective income tax returns for the previous year (including all attachments) not later than May 1 of each year and copies of any notices of assessment or reassessment received from Canada Revenue Agency immediately upon receipt. The parties shall conduct a review of child support annually, and child support shall be adjusted as necessary by June 1 of each year.

[156] The next question is whether income should be imputed to Mr. Ropchan for non-dividend gifts of cash.

[157] The Ontario Court of Appeal considered the distinction between income and gifts in *Bak v Dobell*, 2007 ONCA 304. At paras. 61-62, 75, the Court stated as follows:

61 When the Guidelines were enacted, the legislature is presumed to have been knowledgeable about the various sources of taxable and non-taxable income available to an individual, including the fact that neither gift nor trust income is taxable. It can be presumed from this knowledge that the legislature deliberately omitted both gifts and trust income from presumptive income.

62 The legislature, however, did list trust income as a s. 19(1) circumstance in which income could be imputed. It did not list gifts. Since the legislature did not include gifts within the ambit of imputed income, it can be presumed, in the normal course, that the legislature did not intend the receipt of gifts to be an "appropriate circumstance" in which to impute income. For this reason, usual gifts, such as those given to mark a special occasion, are not included as income.

75 In considering whether it is appropriate to include the receipt of unusual gifts in income, a court will consider a number of factors. Those factors will include the regularity of the gifts; the duration of their receipt; whether the gifts were part of the family's income during cohabitation that entrenched a particular lifestyle; the circumstances of the gifts that earmark them as exceptional; whether the gifts do more than provide a basic standard of living; the income generated by the gifts in proportion to the payor's entire income; whether they are paid to support an adult child through a crisis or period of disability; whether the gifts are likely to continue; and the true purpose and nature of the gifts.

[158] Our Court of Appeal referenced the Bak factors in *Nielsen v Nielsen*, 2007 BCCA 604 at para. 39 when assessing whether receiving the benefit of family wealth should be included in Guidelines income. The Bak factors have been applied a number of times by our court, and the outcome is fact-specific.

[159] In this case, I am not prepared to impute income to Mr. Ropchan based on gifts of cash, retroactively or on a go-forward basis. Since at least 2012, Mr. Ropchan has received large sums of money from his father on an annual basis, but for the most part, these funds were distributed to him as dividends from First Global. Other than in 2019 (the year the parties purchased Ferndale) when he received close to \$110,000, Mr. Ropchan never received more than \$20,000 in gifts and most years were less than \$10,000 (which included Christmas and birthday gifts totalling at least \$2000). I accept the parties used the dividends from First Global and Mr. Ropchan's inheritance (in the form of dividends from Ropchan Investments and otherwise) to maintain a standard of living beyond that available on Mr. Ropchan's salary, but the same cannot be said with respect to the cash gifts. The cash gifts were not predictable or regular. Although there was evidence of deposits to Mr. Ropchan's bank account in 2023 of sums that likely originated from his father, both Mr. Ropchan and Donald Ropchan gave evidence that the latter had advanced a loan to fund Mr. Ropchan's legal expenses, a loan that both expected to be repaid from Mr. Ropchan's share of the Ferndale proceeds. There was no cross-examination of Donald Ropchan regarding whether or not he intended to continue providing gifts of cash to Mr. Ropchan in the future. In short, keeping in mind the s. 1 objects of the Guidelines and applying the Bak factors, I am not satisfied that it would be fair and reasonable to impute income to Mr. Ropchan based on cash gifts.

[160] Ms. Ussher submits that \$20,000 should be imputed to Mr. Ropchan's income for the First Global gas card and expenses Homer Street Investment pays.

- [161] In *M.T. v. J.S.*, 2023 BCCA 64, the Court of Appeal provided guidance on imputing income under the Guidelines for business expenses:
- [8] First, where business expense deductions are in issue, the spouse claiming the deductions will bear the burden of establishing they are reasonable business deductions under either section. The spouse asserting that expenses should be added back to income must put that in issue in their pleadings by identifying the specific expenses being challenged, but it will then be for the other spouse to assume the burden of proving the reasonableness of deductions from business income, whether in the context of self-employment or within a wholly-owned corporation: *Wiebe v. Treissman*, 2017 BCSC 1523 at para. 94. See also *Cunningham v. Seveny*, 2017 ABCA 4 at para. 28.
- [9] Second, there is a long line of cases in this province recognizing that business expenses can be addressed under either s. 18(2) or s. 19(1)(g) where a corporation is involved: *Dornik v. Dornik*, 1999 BCCA 627 at paras. 14 and 20-25; *Hausmann v. Klukas*, 2009 BCCA 32; *Ursel v. Ursel*, 2014 BCSC 1219.
- [162] Ms. Ussher did not plead that expenses paid by Homer St. Investments or First Global should be added back to Mr. Ropchan's income. Appropriate notice allows the responding party to address the deducted expense with particular evidence: *Maxim v Maxim*, 2024 BCSC 641 at para. 45 - 48 and 58. In *Maxim*, the claiming party had provided a letter to the responding party's counsel outlining the expenses sought to be added back to income. There is no evidence in the case at bar that any notice was given to Mr. Ropchan that Ms. Ussher was seeking to add back expenses.
- [163] Even if proper notice had been given, I do not have evidence that allows me to impute income in the amount sought or in any specific amount. There is no evidence to suggest that the expenses Ms. Ussher seeks to add back would cumulatively amount to anywhere close to \$20,000 per year.
- [164] Mr. Ropchan acknowledged that he uses a gas card issued to him by First Global, but there was no evidence at trial how much that benefit is worth. Mr. Ropchan did not include any figure for monthly gas expense on his F8 financial statement. Neither Mr. Ropchan nor Donald Ropchan was cross-examined regarding how much First Global pays in respect of Mr. Ropchan's gas expense.
- [165] As for Homer St. Investment paying expenses, Mr. Ropchan confirmed that Homer St. Investment pays his cellphone and internet bill and to replace his laptop. However, the value of this personal benefit is unclear. Mr. Ropchan did not include an internet expense on his F8 financial statement. It is not clear whether the telephone expense on his F8 financial statement (\$113.12) is his personal or total telephone expense. He was not cross-examined on these points.

- [166] Homer St. Investment's total annual expenses for each of the last three years were approximately \$3000 based on its T2 tax returns, which I assume includes a cost of the accountant who prepared the return. It is not possible to extract Mr. Ropchan's telephone and internet costs from Homer St. Investment's T2 tax return. Even if all of Homer St. Investment's expenses provided a personal benefit to Mr. Ropchan (which appears not to be the case) and if 50% of Homer St. Investment's expenses were added back (as the Court of Appeal found to be reasonable in M.T.), there would be an imputation of income to Mr. Ropchan in the range of \$1500 per year, which would result in a \$10 to \$15 difference in monthly child support. In my view, the potential small change in child support is not justified by the uncertainty created by adding back Homer St. Investment expenses to Mr. Ropchan's income, particularly where the value of Mr. Ropchan's telephone and internet expenses paid by Homer St. Investments is not clear on the evidence.
- [167] In summary, I am not satisfied that adding back an amount for expenses satisfies either of the Guidelines objectives of certainty and fairness between the parties.
- [168] Ms. Ussher also submitted that income should be imputed to Mr. Ropchan based on the parties' pattern of spending during their relationship and in particular the fact that they routinely spent more than Mr. Ropchan's annual salary from employment. However, this is not a case where there is an unexplained incongruity between a spouse's income reported on their income tax return and spending or where there are undisclosed documents, as in A.G. v. B.R., 2005 BCSC 96. In the case at bar, it is apparent that Mr. Ropchan received gifts, inheritances and dividends (as detailed in para. 37 above) that funded much of the parties' spending over income, supplemented by Mr. Ropchan's pre-relationship savings.
- [169] Mr. Ropchan seeks an adjustment to his 2023 Line 15000 income in recognition of the non-recurring interest payment of \$19,825 on the Ferndale proceeds. However, Mr. Ropchan received that interest payment in 2023, and I find his 2023 Guidelines income should include that sum. I recognize that the interest payment will cease when the Ferndale proceeds are distributed and the principal sum was reduced by \$200,000 in late 2023 to provide \$100,000 advances to each party. I estimate that Mr. Ropchan's share of the interest will be closer to \$15,000 in 2024. This interest income shall be added to his 2023 employment income (\$87,745) for 2024 Guidelines income.
- [170] To summarize, child support is payable retroactively to July 25, 2021 as follows:

Annual Guidelines Income

Monthly Child Support

2021

\$80,946

\$774

2022

\$84,196

\$805

2023

\$107,570

\$1,010

2024

\$102,745

\$970

[171] On a go-forward basis, I accept Mr. Ropchan's position that child support should be based on his Line 15000 income. I decline to order a minimum imputed income to Mr. Ropchan for child support purposes, as sought by Ms. Ussher. As of November 1, 2024, Mr. Ropchan shall pay monthly child support of \$839 (based on employment income of \$87,745) for as long as the Child is a child of the marriage, subject to further written agreement between the parties based on the annual adjustment outlined in para. 155 above or further court order.

Spousal Support

[172] Ms. Ussher seeks indefinite spousal support based on the same income she sought to impute to Mr. Ropchan for child support purposes with no review for 10 years from the date of this decision. Mr. Ropchan says a lump sum spousal support award of \$20,000 is appropriate given the duration of the relationship (9.5 years), the spousal support that has been paid to date and with at least part-time income attributed to Ms. Ussher starting a year from now. Alternatively, Mr. Ropchan says if ongoing support is awarded, then there should be an early review date or a step-down award or both to encourage Ms. Ussher to become self-supporting. Ms. Ussher says no income should be attributed to her because she needs to be available for the Child and her own health does not permit her to work at this time.

[173] The factors to be considered in granting an order for ongoing spousal support are set out in s. 15.2(4) of the Divorce Act and include:

- a) The length of time the spouses co-habited;
- b) The functions performed by each spouse during co-habitation; and
- c) Any order, agreement or arrangement relating to support of either spouse.

[174] As noted above, the parties' relationship lasted close to 10 years, from November 15, 2011 to July 25, 2021. Since the Child's birth, Mr. Ropchan was the primary breadwinner, and Ms. Ussher was primarily responsible for maintaining the household and caring for the Child and his special needs. Mr. Ropchan was involved in caring for the Child when he was not at work. There is no agreement or arrangement relating to spousal support, and the only order is interim.

[175] The objectives of an order for spousal support are set out in s. 15.2(6) of the Divorce Act as follows:

An order made under subsection (1) or an interim order under subsection (2) that provides for the support of a spouse should

- (a) recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown;
- (b) apportion between the spouses any financial consequences arising from the care of any child of the marriage over and above any obligation for the support of any child of the marriage;
- (c) relieve any economic hardship of the spouses arising from the breakdown of the marriage; and
- (d) in so far as practicable, promote the economic self-sufficiency of each spouse within a reasonable period of time.

[176] Mr. Ropchan acknowledges that Ms. Ussher is entitled to spousal support. I am satisfied that Ms. Ussher is entitled to spousal support on compensatory and non-compensatory grounds, as those principles were summarized in *Chutter v. Chutter*, 2008 BCCA 507, leave to appeal to SCC ref'd, 33002 (28 May 2009), at paras. 50 to 61. Ms. Ussher has taken on primary responsibility for caring for the Child, organizing his schooling and therapies, and filling the role of behavioural interventionist. Ms. Ussher agreed to move from New Zealand to Victoria, BC to support Mr. Ropchan's career. She has a strong compensatory spousal support claim. At the same time, I accept that Mr. Ropchan encouraged Ms. Ussher to return to work once the Child was school-aged, and she considered doing so.

[177] Ms. Ussher is also entitled to spousal support on a non-compensatory basis, as her standard of living will drop as compared to the standard of living she enjoyed during the marriage because she earns no income. On the other hand, Mr. Ropchan's standard of living is likely to increase because he has a steady income, and he will no longer be funding her discretionary spending.

[178] The contentious issue with respect to spousal support is the appropriate quantum, which includes the amount and duration of spousal support.

- [179] The Spousal Support Advisory Guidelines [SSAG] provide guidance in making appropriate spousal support awards; however, they do not "operate to displace the courts' reliance on decided authorities but [rather] to supplement them": *Yemchuk v. Yemchuk*, 2005 BCCA 406 at para. 64. That said, a departure from the SSAG requires an explanation: *Kerr v. Baranow*, 2009 BCCA 111 at para. 84, rev'd in part on other grounds 2011 SCC 10; *Lightle v. Kotar*, 2014 BCCA 69 at para. 63.
- [180] The first step in applying the SSAG requires determination of the parties' income in accordance with the Guidelines. Both parties seek to impute income to the other.
- [181] Ms. Ussher sought to impute income to Mr. Ropchan for both child and spousal support purposes. I have declined to impute income to Mr. Ropchan for child support purposes for the reasons outlined above, and I am satisfied that Mr. Ropchan's Guidelines income should be used to determine pre-trial spousal support.
- [182] On the other hand, his income for ongoing spousal support purposes may be different than his income for child support purposes. The Spousal Support Advisory Guidelines: The Revised User's Guide [RUG] recognizes that there may be circumstances where a payor may have a different income for determining spousal support. At para. 175 of *K.D. v. N.D.*, 2009 BCSC 995, Justice Fisher (as she then was) considered the fluctuations in the payor's income, recognizing it was not feasible to direct the parties to adjust spousal support payments on an annual basis. Similarly, in the case at bar, for ongoing spousal support, it is reasonable in my view to consider the range of spousal support that would be payable if payment of First Global dividends in the amount of \$30,000 resumes at some point in the future.
- [183] I am not prepared to impute income to Mr. Ropchan for ongoing spousal support purposes based on cash gifts from his father or for expenses paid by Homer St. Investments and First Global for the same reasons I declined to impute income for these items for child support purposes.
- [184] I accept Mr. Ropchan's submission that ongoing spousal support must recognize he will not receive interest on the Ferndale proceeds once they are distributed following this decision.
- [185] In summary, spousal support should be considered based on Guidelines income for Mr. Ropchan for 2021 to present. On a go-forward basis, I am prepared to consider spousal support based on a range of a minimum of his employment income of \$87,745 to a maximum of his employment income plus dividends of \$30,000.
- [186] As for Ms. Ussher's income, Ms. Ussher is currently unemployed and has not had remunerative employment since coming to Canada. Mr. Ropchan says she is intentionally unemployed. Mr. Ropchan does not seek to impute income to Ms. Ussher for the pre-trial period; however, he argues that income should be imputed to Ms. Ussher starting a year from now, based on minimum wage on a part-time or full-time basis. Mr. Ropchan argues that Ms. Ussher has an obligation to support the Child financially and to become self-

sufficient. Ms. Ussher says she is not able to return to work because she is essentially on call to support the Child's needs and her own health issues remain a barrier to retraining or employment.

- [187] Section 19(1) of the Guidelines allows the court to impute income where a spouse is intentionally unemployed, except where the unemployment is required by the needs of the child of the marriage or by the reasonable educational or health needs of the spouse. In this case, it is necessary to consider whether Ms. Ussher is intentionally unemployed and whether unemployment is required by the Child's needs or her own reasonable educational or health needs.
- [188] Bad faith or an intention to avoid her obligation to support the Child is not required to find Ms. Ussher is "intentionally" unemployed: *Hanson v Hanson*, 1999 CanLII 6307 (B.C.S.C.) at para. 8. As the Court of Appeal stated at para. 37 of *Marquez*, "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". The spouse's capacity to earn income will include their ability to work or to be trained to work: *Marquez* at para. 37.
- [189] To assess what is reasonable in terms of Ms. Ussher's earning capacity, it is necessary to review her circumstances. She is currently 52 years old, and she has not earned any income from employment since taking maternity leave in July 2012. Her last job was working in jewelry sales for 4 years for Michael Hill in New Zealand. Before that, Ms. Ussher worked in retail furniture sales for a number of years. When she was younger, Ms. Ussher worked in guest services at a hotel.
- [190] In terms of education, Ms. Ussher graduated high school. She completed a 15-month course in tourism management and one out of two years toward interior design at BCIT.
- [191] I accept Mr. Ropchan's evidence that the parties had many discussions during their relationship about Ms. Ussher returning to work, either part-time or full-time, in sales or something else. When the Child was approximately two years old, Ms. Ussher considered applying for an assistant management position at Michael Hill in Victoria. In text messages between the parties, Mr. Ropchan said it was up to her whether or not she applied for the job, but he suggested that she wait until the Child was toilet-trained. I accept Mr. Ropchan's evidence that Ms. Ussher was an effective strata council president when the parties lived in Ferndale. Ms. Ussher testified to the significant work she undertook as president for two years to rectify problems in management of the strata.
- [192] In terms of career options, in the fall of 2022, Ms. Ussher looked into becoming an education assistant ("EA") to help children with special needs. Based on her experience supporting the Child's special needs and advocating on the Child's behalf, Ms. Ussher believes she would be a good advocate for other families. Training requires a course (at a cost of \$4000) that runs from February to June and September to December followed by a practicum. Based on Ms. Ussher's inquiries, an EA earns \$20 per hour to start and

increasing to \$25 per hour over time, which is the same wage paid to behavioural interventionists. There is no evidence as to whether Ms. Ussher would require training to work as a behavioural interventionist for other children with autism.

- [193] Ms. Ussher did not pursue EA certification in February 2023 because the parties and the Child developed COVID-19 in December 2022 and January 2023. Since then, Ms. Ussher has not pursued any retraining or employment because of the health issues she has developed since then.
- [194] Ms. Ussher testified about the health challenges she has experienced since recovering from COVID-19 in January 2023. She suffers from fatigue. She has stiffness, especially when waking up in the morning. She has pain. She has swelling in her ankles, feet, wrists and hands. She wears braces on her hands. Ms. Ussher says she struggles to keep up with the basics of taking care of the Child.
- [195] In addition, Ms. Ussher describes a chronic skin issue that started approximately three years ago as dry skin and has now turned into ulcers and blisters.
- [196] As of the trial date, Ms. Ussher's condition had not been diagnosed, and she was awaiting a consultation with a rheumatologist. Ms. Ussher takes various prescription medications, including Tramacet, Prednisone, and Naproxen. She has tried icing her arms and feet. She tried massage therapy, but she found it hurt rather than helped. Her treating physician recommended rest until she receives a diagnosis.
- [197] There was no medical evidence available at trial regarding Ms. Ussher's condition. That said, I accept she suffers some degree of pain, fatigue and joint swelling. Given her credibility issues, I am not satisfied that her symptoms are as disabling as she claims. As noted, the effect of her symptoms on her ability to testify varied from direct examination to cross-examination. I do not accept that her reduced capacity to testify in cross-examination can be explained entirely by the cumulative effect of testifying over consecutive days. As mentioned, there were times in direct examination when she was able to give lengthy answers without apparent difficulty. I accept that a diagnosis and potentially a treatment plan would be helpful in assessing whether her reasonable health needs preclude Ms. Ussher from working.
- [198] I am not satisfied that the Child's current needs prevent Ms. Ussher from working. Ms. Ussher provided the only evidence that she needs to be on-call for the Child at all times. Ms. Ussher testified that she had been called four times in the last few months to pick up the Child after a melt-down at school. In my view, Ms. Ussher is not called upon during the school day frequently enough to preclude any employment.
- [199] Ms. Ussher says there are no suitable after-school care options, noting the Child escaped from after-school care when he tried it briefly when he was much younger. Ms. Ussher says the Child would require a full-time one-on-one aide to support him at camp during spring break, the cost of which would exceed any earnings she might be able to earn. Ms. Ussher

has considered arranging Handy-Dart or carpooling to transport the Child home from school if she was able to work as an EA. I accept the Child's needs provide additional challenges in arranging after-school care, but I do not accept the Child's needs prevent Ms. Ussher from working at all. To the extent after-school care is required, Mr. Ropchan has offered to assist, and Ms. Ussher testified about possibly trading services with a neighbour.

[200] I accept that Ms. Ussher's long absence from the workforce and her limited education are significant impediments to returning to employment. That said, Ms. Ussher has proven she is resourceful and capable of acquiring new skills, as she has done by acting as the Child's behavioural interventionist and advocating on the Child's behalf and in her role as strata president. Mr. Ropchan led evidence at trial of various job postings that seemed to fit generally within Ms. Ussher's work experience and skill-set, suggesting that employment may be available to her even without retraining for an hourly wage in the range of \$23 to \$26 per hour. Her plan to retrain as an EA appears reasonable based on her experience supporting the Child.

[201] The factor that remains unclear in the assessment of intentional unemployment is Ms. Ussher's health. I accept that Ms. Ussher suffers to some degree from various symptoms, including joint pain, stiffness and fatigue. It is unlikely that her medical practitioners would prescribe medications unless they were satisfied she had ailments that could be ameliorated by such medications. However, as of the trial date, her condition remained undiagnosed. As noted in the credibility analysis, Ms. Ussher's presentation varied over the course of the trial. Given my concerns about the reliability of her evidence, I am not satisfied it is more likely than not that Ms. Ussher's symptoms affect her as consistently and as much as she claims in the absence of evidence to corroborate her complaints or to explain their cause.

[202] Mr. Ropchan emphasized the objective of self-sufficiency set out in s. 15.2(6)(d) of the Divorce Act when considering quantum of spousal support. At para. 33 of *Tedham v Tedham*, 2005 BCCA 502, the Court of Appeal provided guidance on how to assess what is practicable in terms of the spousal support objective of promoting self-sufficiency:

[Section] 15.2(6)(d) of the [Divorce Act] does not require self-sufficiency, but simply seeks to promote self-sufficiency "in so far as practicable". In determining what is practicable, regard must be had to all of the circumstances, including the age and gender of the spouse, her/his skills and education, or lack thereof, the opportunities for retraining, and the realistic prospect of the spouse being able to find not just a job, but one which enables her/him to become self-sufficient, which may be quite a different matter.

[203] A spouse is not obliged to become self-sufficient following a marriage breakdown, but rather is "obliged to make reasonable efforts to achieve self-sufficiency": *Hsieh v. Lui*, 2017 BCCA 51 at para. 47. If the spouse fails to make such efforts, then the court may impute income and reduce the amount of spousal support payable: *Hsieh* at para. 47.

- [204] There is obviously significant overlap between the factors that weigh in the assessment of intentional unemployment and self-sufficiency. In Tedham, the Court of Appeal specifically acknowledged that the payee spouse may need to retrain to become self-sufficient. Ms. Ussher says her retraining plans have been adversely affected by her health issues.
- [205] Accounting for the objectives of spousal support and Ms. Ussher's circumstances, I am satisfied that no income should be imputed to her on the basis that she is intentionally unemployed until she has had an opportunity to address her health issues and retrain or find employment. On that basis, on a go forward basis, I accept Mr. Ropchan's submission it is reasonable to impute income of \$18,720 annually to Ms. Ussher but starting July 1, 2026 instead of a year from now as he proposed. This imputed income reflects 48 weeks of annual employment at 20 hours per week at minimum wage. By July 1, 2026, the Child will be almost 14 years old, by which time the Child is likely to be more independent despite being developmentally delayed. By July 1, 2026, close to two and a half years will have elapsed since Ms. Ussher's rheumatologist's appointment, during which time she will have had an opportunity for treatment and recovery from her medical condition and to retrain as an EA if she chooses to do so. July 1, 2026 will be five years post-separation, which is slightly more than the minimum duration for spousal support based on the length of co-habitation.
- [206] In my view, given Ms. Ussher's strong compensatory claim and the Child's age, the spousal support award should be of indefinite duration. In the absence of medical evidence, I am not prepared to conclude Ms. Ussher is incapable of becoming self-supporting over time. She has demonstrated a capacity to acquire new skills, which bodes well for her potential to retrain, and she has residual retail management experience that will help her find employment. However, when she might become self-supporting is unclear on the evidence available at trial. In these circumstances, it is reasonable to allow either party to seek a review of quantum of spousal support (both duration and monthly amount payable) at any point after November 1, 2026. By then, if there is a medical basis for Ms. Ussher's unemployment or under-employment, there should be objective evidence available to prove it.
- [207] Based on no employment income for Ms. Ussher, the ranges for spousal support payable from now to July 1, 2026 would be a low of \$1378 to a high of \$1793 based only on Mr. Ropchan's employment income and a low of \$2126 to a high of \$2680 based on Mr. Ropchan's employment income and a \$30,000 dividend. In the circumstances, I find that spousal support of \$2000 reasonably reflects the possibility that Mr. Ropchan will receive First Global Dividends between now and July 1, 2026.
- [208] After July 1, 2026, based on employment income of \$18,720 for Ms. Ussher, the ranges for spousal support payable after July 1, 2026 would be a low of \$352 to a high of \$850 based only on Mr. Ropchan's employment income and a low of \$1106 to a high of \$1966 based on Mr. Ropchan's employment income and a \$30,000 dividend. In my view, it is more likely as time goes on that First Global will resume paying dividends. On that basis, I am satisfied

that spousal support should be closer to the mid-point of with-dividend spousal support. Starting August 1, 2026, Mr. Ropchan shall pay spousal support of \$1500 per month, subject to agreement between the parties or further court order.

[209] In terms of pre-trial spousal support, it is reasonable to acknowledge Ms. Ussher received the same Ferndale interest as Mr. Ropchan received in 2023 and to impute the same Ferndale interest for 2024. Pre-trial income for spousal support purposes is as follows:

Mr. Ropchan's annual income

Ms. Ussher's annual income

2021

\$80,946

\$0

2022

\$84,196

\$805

2023

\$107,570

\$19,825

2024

\$102,745

\$15,000

[210] Using the mid-range of the SSAG, this results in monthly spousal support payments from August 1, 2021 to present as follows:

2021

\$1,644

2022

\$1,664

2023

\$1,402

2024

\$1,332

Extraordinary Expenses

[211] Ms. Ussher sought an order recognizing that that the Child's current and future special or extraordinary expenses include the following:

- a) school tuition;
- b) school-related expenses including field trips, tablets or computer, not covered by autism funding;
- c) medical expenses and therapies not covered by autism funding or extended health;
- d) psycho-educational assessments;
- e) various extracurricular activities;
- f) orthodontics;
- g) tutoring; and
- h) any other special expenses agreed to in writing by both parties, such agreement not to be unreasonably withheld.

[212] Mr. Ropchan had little to say in final submissions about extraordinary expenses, choosing instead to focus on the more significant issues at trial.

[213] As noted earlier in these reasons, Mr. Ropchan generally accepts Ms. Ussher's proposals regarding support services, extracurricular activities and education where they seem reasonable.

[214] In *Bains v Bains*, 2024 BCSC 1760, Justice D. MacDonald briefly summarized the law in respect of s. 7 expenses:

[49] Section 7 of the [Guidelines] outlines what constitutes a special or extraordinary expense. I need not set out the legal principles regarding s. 7 expenses in detail because neither party disputes they should be paid.

[50] For an expense to be considered an eligible extracurricular activity, it must meet the threshold of being necessary, reasonable, and affordable. The expense must be necessary as defined in relation to the child's best interest. It should also be reasonable as measured against the combined financial means of the parents at the material time, as well as family spending prior to separation: *S.H. v. L.H.*, 2016 BCSC 353 at para. 84.

[51] The court must consider if the recipient of child support can reasonably cover the expense out of their income, including from the child support they receive. If so, the expense will usually not be considered an extraordinary expense: *L.A.M. v. S.C.M.*, 2020 BCSC 67 at para. 30; *S.H.* at para. 84.

- [215] As in Bains, I order that, going forward, s. 7 expenses must be necessary, reasonable, and affordable and shared in proportion to each party's income. The parties must agree in advance before any educational, medical, dental and any other expenses are incurred as s. 7 expenses. This should include reasonable extra-curricular activities. The parties have reached consensus in the past. It is not necessary to list all of the extracurricular activities that qualify as s. 7 expenses, as these may change over time.
- [216] The party incurring a special or extraordinary expense shall provide the other party with a receipt for reimbursement. The reimbursement will be paid within 7 days of receiving a receipt.

Conclusion

- [217] If the parties wish to address costs, they may arrange with Supreme Court Scheduling to make submissions before me for this purpose.

"Lamb J."

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