

CANADA / JUDGMENT

Wang v. Mitchell

2024 BCSC 988

COURT

Supreme Court of British Columbia

DECIDED

7 June 2024

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2024 BCSC 988 Wang v. Mitchell

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Wang v. Mitchell,

2024 BCSC 988

Date: 20240607

Docket: E211601

Registry: Vancouver

Between:

Wenchen Wang

Claimant

And

Brandon Jay Mitchell and Thomas Robert Moir Maze a.k.a. Tom Maze

Respondent

And

Wenchen Wang and Thomas Robert Moir Maze a.k.a. Tom Maze

Respondents by way of counterclaim

Before: The Honourable Justice Marzari

Reasons for Judgment

Counsel for the Claimant:

C.L. Lee

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The Respondent Brandon Jay Mitchell, appearing in person:

B.J. Mitchell

The Respondent Thomas Robert Moir Maze a.k.a. Tom Maze, appearing in person (via videoconference)

T.R.M. Maze

Place and Date of Trial:

Vancouver, B.C.

February 26-29

March 1, 4-8, 11-15

April 2-5, 15-19, 22-26, 29-30, and May 1-3, 2024

Place and Date of Judgment:

Vancouver, B.C.

June 7, 2024

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INTRODUCTION

- [1] To say this is a high-conflict family case is to understate the extent of the complexity and conflict in this case. Mr. Brandon Mitchell and Ms. Wenchen Wang seek a divorce from each other, after an 8-year marriage that had the family living in both China and Canada, with extended stays in the United States. There are various properties claimed as family assets, though none were vested in either spouse's name at the time of separation. There are two children of the marriage, S and H, who were seven and four years old at the beginning of trial.
- [2] At the time of trial, the children had not seen their mother in over a year, no child support had been paid for almost three years, and they were living in a condominium with Mr. Mitchell that is owned by the second respondent in this claim: Thomas Maze.
- [3] Mr. Maze is the former business partner of Mr. Mitchell; he resists the claim that the condominium is family property and seeks the sale of the condominium. He also resists division of the full value of family businesses in which he also claims an interest.
- [4] Both Mr. Mitchell and Mr. Maze were self-represented throughout trial. Ms. Wang, who can speak English but is not fluent, was represented by counsel and testified with the aid of an interpreter.
- [5] Ms. Wang's mother, Ms. Jingjun Li, was originally also a party to a proceeding joined to this one in which she had sued Ms. Wang, Mr. Mitchell, Mr. Maze, and Mr. Maze's mother, Jean Moir, for the recovery of loans she says she made for the purchase of the condominium, and other assets claimed by the spouses in the family claim. Shortly before trial, Ms. Li sought to discontinue her action for financial reasons. That discontinuance application was opposed by Mr. Mitchell, and I heard Ms. Li's application and granted it at the outset of the trial, with costs issues (including the scale of costs), to be determined by me at the conclusion of this trial. Ms. Li was then called as a witness in Ms. Wang's case.

CREDIBILITY AND RELIABILITY

- [6] The parties have highly disparate accounts of the events leading up to the marriage, the separation, the ownership and control over various alleged family businesses, and the acquisition of alleged family properties. Ms. Wang has largely accepted Mr. Maze's evidence with respect to the acquisition of the condominium located at 68 Smithe Street in downtown Vancouver (the "Smithe Street Condo") in April 2020, and Mr. Maze's evidence regarding the Vancouver-based businesses he and Mr. Mitchell were involved in between 2019 and 2021 including: Squadra Capital Limited Partnership ("Squadra Capital"), Vancouver Food Trucks, and Santapan Indonesian Grill ("Santapan"). However, Mr. Maze's account of these events is irreconcilable with Mr. Mitchell's account. The same is true as between Ms. Wang's and Mr. Mitchell's account of the circumstances of their marriage and separation. All parties allege fraud and deceit by the others. Nearly all aspects of this case, including the background facts, are contested.

- [7] Therefore, much turns on my determination of the credibility and reliability of the testamentary evidence, and the authenticity of contested documentary evidence. Given the tenor of the trial, and the broad allegations of lying, deceit, and fraud that were regularly bandied about the courtroom, I prefer not to state my findings of credibility on a similarly broad basis. Furthermore, such findings are often specific to an issue, or not necessary with respect to every fact in dispute. Therefore, while I have considered all the testimony in relation to the evidence as a whole, I start by setting out my factual findings and my reasons for accepting the evidence of some witnesses and rejecting that of other witnesses in relation to those facts more specifically.
- [8] I will address the broader allegations of fraud, deceit, lying, and criminality towards the end of these reasons when I consider, on the whole of my findings, whether the parties' allegations in this regard have been made out. All of the parties seek a remedy in costs for the allegations made against them, and for the other parties' conduct during the litigation.
- [9] In making my findings based on credibility and reliability factors, I have considered the entirety of the evidence at trial, and the oft-quoted considerations in *Bradshaw v. Stenner*, 2010 BCSC 1398, aff'd 2012 BCCA 296, leave to appeal to SCC ref'd, 35006 (7 March 2013), including that "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": *Faryna v. Chorny*, [1952] 2 D.L.R. 354 at 357, 1951 CanLII 252 (B.C.C.A.).
- [10] I will start with my findings on the background facts necessary to understand the context of my findings on the key issues in this trial.

BACKGROUND FACTS AND FINDINGS

- [11] Mr. Mitchell was born in 1984, and is now 39 years old. He grew up in California. He moved to China in 2009 while studying business. He studied Mandarin for a year, and later moved to Shanghai in 2012 while working for a construction and engineering company doing procurement work. He is fully fluent in Mandarin.
- [12] Ms. Wang was born in Shanghai in 1988. In or about 1992 and 1993, her parents began operating two businesses now known as: Shanghai Wenchen Industrial Ltd. ("Wenchen Ltd.") and Shanghai Jingchen Xinchuang Rubber Centre (the "Rubber Company") (collectively, the "Chinese Companies") located on lands on Shiqian Road, Jiading District in Shanghai (the "Factory Lands").
- [13] In 2006, Ms. Wang went to the United States to complete her high school studies in an effort to improve her English.

- [14] In 2008, her father, Mr. Jusheng Wang, who had been diagnosed with Amyotrophic Lateral Sclerosis ("ALS") approximately a decade earlier, died, and she returned to China. At that time, her mother, Ms. Li, had been directing the Chinese Companies for some years with the assistance of Mr. Zhenhai Chen, who was, and remains, the manager of the Chinese Companies.
- [15] Ms. Wang worked as a part-time sales associate in a retail store and continued her studies in English for approximately two years. In July 2012, Ms. Wang and Ms. Li obtained permanent residency status in Canada. Upon receiving this designation, they flew to Vancouver to look at their housing options, and Ms. Wang tried to enroll at Douglas College, but she had missed the enrollment deadlines. Ms. Wang and Ms. Li then flew back to Shanghai, with a plan for Ms. Wang to return to Vancouver the following year to improve her English and attend Douglas College, and to set up a home for herself and Ms. Li.
- [16] Mr. Mitchell and Ms. Wang met in Shanghai in October 2012 when Mr. Mitchell asked Ms. Wang for directions on the street. They started dating in November 2012, and were married on February 18, 2013. Beyond that, the parties do not agree on the circumstances of the marriage.
- [17] Ms. Wang testified that they had been dating for a few months when Mr. Mitchell was fired from his job and he begged Ms. Wang to marry him so that he could stay in China and they could continue their relationship. She agreed. Mr. Mitchell testified that he had a good job as a procurement engineer in Shanghai when Ms. Wang became pregnant. He loved Ms. Wang, and wanted to "do the right thing" because of his strong moral character.
- [18] Regardless of the reason, it is clear that Ms. Wang and Mr. Mitchell were married not long after they had met, and Ms. Wang was pregnant within a month of their marriage. Upon their marriage, Mr. Mitchell moved out of his motel accommodation and moved into the apartment where Ms. Wang and Ms. Li were living on Changning Branch Road in Shanghai (the "Shanghai Condo"). Ms. Li moved out shortly thereafter. I accept the evidence of both Ms. Wang and Ms. Li that Ms. Li initially expected Mr. Mitchell and Ms. Wang to pay her rent, but that they never did.
- [19] Mr. Mitchell claims that various properties in Shanghai registered in Ms. Li's name at the time of the marriage are family property on a number of bases, including that Ms. Wang was, or became, the owner of some or all of these properties during the marriage. These properties are as follows:
- a) The Factory Lands;
 - b) The Shanghai Condo;
 - c) An apartment located on Tianshan Road, Shanghai ("Tianshan Road Property"); and

- d) A unit on Yunping Road where Ms. Li now lives. This property was purchased before the marriage, but it was substantially renovated during the marriage before Ms. Li moved in ("Yunping Road Property").

(collectively, the "Chinese Properties")

- [20] Upon her marriage, I accept Ms. Wang's evidence that her expectation was that Mr. Mitchell would find remunerative work that would support their lifestyle and allow them to raise a family, while she would be a mother and housewife. On all the evidence, I find that, while Ms. Wang was interested in investing, and made investments with funds loaned to her by her mother, she was not the sophisticated businesswoman that Mr. Mitchell portrays her to be. Although she was listed as a supervisor or director after her father's death on the registration documents for the Chinese Companies, I find that she did not perform either role.
- [21] Mr. Mitchell says that the work that he engaged in after the marriage was working for the Chinese Companies as a beneficiary of a family trust set up to provide the family (including himself, Ms. Li, and Ms. Wang) with income from the Chinese Companies. This is the income that Mr. Mitchell says both he and Ms. Wang lived off of throughout their marriage. I will discuss this trust claim more specifically below.
- [22] In any event, I find that both Ms. Wang and Mr. Mitchell ceased to be regularly employed in the traditional sense after the marriage.
- [23] I find that, throughout their marriage, the spouses were highly dependent on Ms. Li, who allowed them to live in the Shanghai Condo and paid for the majority of their living expenses and credit card bills (which were not small).
- [24] In July 2013, approximately four months after their marriage, Mr. Mitchell and Ms. Wang went to the United States, where Mr. Mitchell wanted their child to be born. Ms. Li paid for this trip, which Ms. Wang says was a loan that Mr. Mitchell promised to pay back. Ms. Li also paid the American medical bills associated with complications with Ms. Wang's pregnancy while in California. The complications led to the loss of what would have been the parties' first child later that summer. Later that year, Ms. Li flew out to California to meet Mr. Mitchell's family and paid for their trip to Las Vegas and San Francisco. At Mr. Mitchell's request, Ms. Li also bought Mr. Mitchell a watch that cost over \$10,000 USD. Eventually, Mr. Mitchell and Ms. Wang returned to Shanghai together, and resumed living in the Shanghai Condo.
- [25] I accept Ms. Wang's evidence that she was under considerable pressure from her mother to cease her financial dependence on Ms. Li, which led to frequent arguments between Ms. Wang and Mr. Mitchell about finances, and his ability (or inability) to provide for her. Ms. Wang's evidence was that these arguments became physically violent within the first month of their marriage and continued throughout their marriage. Mr. Mitchell also said that arguments over his ability to provide for the family were emotionally abusive and became

physical over time, though he says that Ms. Wang was the sole aggressor in this respect. I will address the parties' contrasting testimony regarding family violence in their relationship below.

- [26] There is considerable evidence of the lengths to which Ms. Li went to help Mr. Mitchell become a financial support to Ms. Wang. For example, I find that in 2014, Ms. Li bought a new BMW, which she put in Ms. Wang's name, and that Mr. Mitchell used to make some money for a few months as an Uber driver in Shanghai.
- [27] I find that Ms. Li also directed the Chinese Companies' employees to assist Mr. Mitchell with respect to his various business ideas. Mr. Mitchell says that these business ideas were significant contributions he made to the Chinese Companies. I will discuss the evidence and my findings regarding those efforts further below.
- [28] By 2015, the evidence of both parties indicates that they were contemplating divorce. I accept Ms. Wang's evidence that she went so far as to go the civil office in Shanghai to apply for a divorce in September 2015, but that the office was closed for lunch, and the parties instead decided to take some time apart to reflect. Mr. Mitchell flew home to California.
- [29] However, approximately a month later, Ms. Wang discovered that she was pregnant again. The parties decided to reconcile, and Ms. Wang flew to meet Mr. Mitchell in California, where they stayed with Mr. Mitchell's grandparents for two months.
- [30] In late December 2015, the parties decided to drive to Vancouver, British Columbia, with the plan that Ms. Wang would be able to rely on her permanent resident status to obtain prenatal health care and deliver their child in Canada. At some point during the marriage, Ms. Wang began the process to sponsor Mr. Mitchell for permanent residency in Canada.
- [31] Mr. Mitchell's immigration process was complicated, however, by Mr. Mitchell's criminal record for petty theft, disorderly conduct/resisting an officer, and possession of a dangerous weapon in the United States between 2005 and 2007 when he would have been between 21 and 23 years old, none of which are directly relevant to this case other than their impact on Mr. Mitchell's immigration process. In February 2021, shortly before separation, Mr. Mitchell received a letter from the Canadian immigration authorities stating that he was considered rehabilitated, and that this record would no longer preclude him from entry into or permanent residency in Canada. Mr. Mitchell also had to prove that he had funds in a bank account in Canada, which I find the parties accomplished by opening a joint account in Canada into which Ms. Li deposited approximately \$15,000 CAD in 2016.
- [32] The parties' first child, S, was born in May 2016. She was almost 8 at the time of the trial.
- [33] Ms. Li came to Vancouver to help care for Ms. Wang and S for approximately three months after S was born. The parties lived in various rental accommodations in Vancouver after their arrival in early 2016, which were generally paid for by Ms. Li. During this time, neither worked in traditional employment for any notable time.

- [34] Starting in late 2016, Mr. Mitchell developed a business relationship with a North American juicer company, Nutrifaster, and arranged to have Wenchen Ltd. (largely through its third-party contacts in China) create rubber "food pushers" for pushing fruit and vegetable matter into their juicer. I find that Ms. Li directed Mr. Chen to assist Mr. Mitchell in this business endeavour by obtaining an extension of Wenchen Ltd.'s business licence to allow for the exporting business, and by paying the manufacturing costs up front to the third-party Chinese businesses that created the molds and various parts of this product.
- [35] Starting in mid-2017, Mr. Mitchell found another customer that required molds and manufacture of a circular container designed to hold table saw blades, referred to as the "Blade Buddy" at trial. Mr. Chen and Wenchen Ltd. again assisted in the manufacture of molds and parts for this product, and arranged for their export to Mr. Mitchell's specifications.
- [36] The import/export business was registered and facilitated through Alibaba, and Mr. Mitchell managed the Alibaba account and bank accounts associated with that business under the name Shanghai KC LLC ("Shanghai KC"). Although Mr. Mitchell is quick to point out that Shanghai KC is not a separately incorporated legal entity, and ran under the auspices of Wenchen Ltd.'s Chinese business licence, I find that Mr. Mitchell had sole control and management of the Alibaba and Shanghai KC related accounts and business. He also created a thick embossed business card with a logo for Shanghai KC and distributed it to his contacts, including Mr. Maze and Mr. Kugler. In a LinkedIn profile for Mr. Mitchell, found by Ms. Wang, Mr. Mitchell is listed as the "owner" of the "Shanghai KC Injection Molding Plant."
- [37] I find that Mr. Mitchell received the revenues for these products, of which I do not have a full accounting, and periodically paid the manufacturing costs back to Wenchen Ltd. I reject Mr. Mitchell's frequent statements that all the revenues from these products and efforts were paid directly to Wenchen Ltd. There is significant evidence to the contrary, including: the evidence of Mr. Chen (the manager of the Chinese Companies); the running balance sheet of Wenchen Ltd. provided into evidence; Mr. Mitchell's own evidence that these funds were received into his personal Bank of Montreal (BMO) account starting in 2018; and Mr. Mitchell's admission in closing submissions that they were also deposited in another (undisclosed) bank account. The evidence establishes that Mr. Mitchell did not remit the profits of these endeavours back to Wenchen Ltd., only the manufacturing costs.
- [38] I accept Ms. Wang's evidence that, although Ms. Wang was included in a WeChat group originally called "Shanghai KC" (later changed by Mr. Mitchell to "Wenchen Industrial Internal"), she was not actively involved in the decision-making or management of this export business, beyond lending her name and influence to Mr. Mitchell's requests to Ms. Li and Mr. Chen.

- [39] In 2017, Ms. Wang briefly worked as a waitress at a Chinese restaurant where she did not need strong English skills. She was not paid very much for this work. Mr. Mitchell would care for S while Ms. Wang was working in the evenings. After her employer provided a letter confirming her employment status in support of her sponsorship of Mr. Mitchell's permanent residency application, Ms. Wang stopped working and returned to caring for S full time.
- [40] Despite the lack of any steady employment income, the parties nevertheless incurred significant expenses. In 2017, they drove a Ford F150, which they traded in for a Porsche Cayenne that same year. Mr. Mitchell had complaints about this vehicle's power windows, and arranged a further trade-in for a new Porsche Cayenne towards the end of 2019. I find that it was primarily Mr. Mitchell who drove these vehicles, and it was Ms. Li who paid for the Porsche down payments as well as the monthly lease amounts.
- [41] In 2017, Ms. Wang went back to China for several weeks. Mr. Mitchell cared for S during this time.
- [42] Around this time, Ms. Wang signed a contract for a pre-sale townhouse in Horseshoe Bay (the "Horseshoe Bay Condo"). I find that Ms. Li paid all the deposits for this pre-sale contract. Ms. Wang and Ms. Li say that this was a townhouse chosen by Ms. Li and funded by Ms. Li, but placed in Ms. Wang's name for convenience. Mr. Mitchell says that the townhouse was chosen by himself and Ms. Wang and always intended to be their family home. The Horseshoe Bay Condo was not ready for completion until April 2022, after the parties' separation. I will address the issues arising from the Horseshoe Bay Condo below.
- [43] I find that, throughout the marriage, Ms. Li paid the parties' main living expenses and credit card bills. Some of this was done through transferring funds to Canada from China, though there are restrictions on the amount of funds that can be transferred out of China by any one person in a year. Mr. Mitchell and Ms. Wang also had a credit card with a Chinese bank that Ms. Li could pay without transferring money outside of Canada. I find that Ms. Li's funds supported a lavish lifestyle, first in China, then in Canada. Although I do not have a clear accounting of all their expenditures, both Mr. Mitchell and Ms. Wang accuse the other of profligate spending on luxury items during the marriage.
- [44] In the summer of 2018, Ms. Wang got pregnant again. I accept her evidence that the marriage was not in a good place at this time, and that Mr. Mitchell was frequently away from their home until very late at night.
- [45] The parties's second child, H, was born in March 2019. He turned five during the trial and will start kindergarten in September 2024.
- [46] Just before H's birth, Ms. Li flew to Vancouver to care for Ms. Wang and H, and she brought with her the wife of Mr. Chen, Ms. Liu, to assist. Ms. Wang suffered from postpartum depression at this time. Ms. Li and Ms. Liu stayed for approximately one to two months.

- [47] In 2019, Mr. Mitchell bought a truck and arranged with a sheet metal shop specializing in the conversion of trucks into food trucks to convert the truck into a food truck. His intention was to design and build a model food truck that could service many different types of food truck requirements, and to produce them at scale. I find that Mr. Mitchell partnered with the shop owner, Mr. Taylor Bell (who was a sheet metal fabricator), and with Mr. Martin Kugler (who was an electrician also specializing in food truck conversions), to design and build the food truck. Mr. Kugler was a witness in this trial. I note that Mr. Kugler has an outstanding claim against Mr. Mitchell for his electrical work on the food truck, though he has not pursued it beyond the pleadings stage (the "Kugler Litigation").
- [48] At some point in 2019 or 2020, Mr. Mitchell started a sole proprietorship under the name "Vancouver Food Trucks" and opened a bank account in that name. In late spring 2020, the food truck passed final inspection. I find that the food truck was used to sell Indonesian food under the name "Santapan Indonesian Grill" ("Santapan") during the summer and fall of 2020.
- [49] In October 2019, Ms. Wang took both the children back to Shanghai to stay with Ms. Li, and the parties gave up their condo rental on Alberni Street in downtown Vancouver. Ms. Wang says that this was because they had run out of money, and Mr. Mitchell wanted her to go back with the children to convince Ms. Li to provide them with more funds. She testified that when she asked to come back over the next year, Mr. Mitchell told her that there was nowhere for her and the children to live in Vancouver.
- [50] Mr. Mitchell says that Ms. Wang absconded with the children without his consent and refused to bring them back at his request, until he threatened her with the Hague Convention for "kidnapping" the children.
- [51] For the reasons set out below, I believe Ms. Wang's testimony that between the fall of 2019, when she flew to Shanghai with the children, and her return with the children to Vancouver in December 2020, Mr. Mitchell was discouraging her from returning with the children. During this time H was between seven months and almost two years old, and S was between three and four and a half years old.
- [52] I find that, shortly after Ms. Wang left for Shanghai with the children, Mr. Mitchell started living with his present girlfriend, Ms. Herlina Wahyuni, who was 20 years old at the time and living in Vancouver on either a student or work permit. Mr. Mitchell did not testify as to precisely when this relationship started. Ms. Wahyuni was notably evasive on this point, trying to give the impression that she was only in a business relationship with Mr. Mitchell until quite recently. I find on all the evidence that Ms. Wahyuni and Mr. Mitchell were romantically involved by the fall of 2019.
- [53] In September or October 2019, Mr. Mitchell met Mr. Maze for the first time at a coffee shop, where they arranged through friends to meet to discuss business opportunities. Mr. Mitchell brought Ms. Wahyuni to that meeting. Soon thereafter, Mr. Maze and Mr. Mitchell began developing a hedge fund investment business, Squadra Capital, and they would meet

regularly at Ms. Wahyuni's home, where Mr. Mitchell was living. Mr. Mitchell described Ms. Wahyuni as his girlfriend to Mr. Maze and Ms. Moir during this time. When Mr. Mitchell moved into the Smithe Street Condo in the summer of 2020, Ms. Wahyuni continued to live with Mr. Mitchell. When Ms. Moir found out that Mr. Mitchell also had a wife and children living in Shanghai, she was put off. Mr. Mitchell told Ms. Moir that this arrangement was normal and acceptable for Chinese women, particularly after they had had children. He said something similar to Mr. Maze. I found the evidence of both Mr. Maze and Ms. Moir on these issues to be both reliable and credible.

- [54] Ms. Wahyuni, on the other hand, testified that when Mr. Mitchell moved into her house in November 2019, they were only in a business relationship, and he was just living in her den. She testified that he did not pay her rent because she was working on a deal with him to let her use the food truck. Ms. Wahyuni testified that she had begun planning a food business with some of her Indonesian friends and contacts and planned to use the food truck when it was finished.
- [55] Overall, I found Ms. Wahyuni's evidence on this point evasive and not credible in light of the testimonial and documentary evidence before me in this trial. For example, Ms. Wahyuni's own testimony described intricate and specific details (always helpful to Mr. Mitchell's position) that suggest a level of close knowledge and intermingling of her finances with Mr. Mitchell's by late 2019 or early 2020. Despite her frequent denials of anything more than a business relationship with Mr. Mitchell in 2019, 2020 and 2021, the whole of her evidence in relation to her words and actions indicate a much closer relationship, much earlier than she admits to.
- [56] Ms. Wahyuni's evidence was particularly problematic with respect to her evidence regarding a two-page text message she exchanged with Mr. Maze in the summer of 2020. On its face, this text exchange indicates an intimate relationship marked by abuse between her and Mr. Mitchell at this time. In this text exchange, Ms. Wahyuni describes Mr. Mitchell shouting at her on the street, and then says that he caused the red marks on her neck. I do not accept Ms. Wahyuni's testimony with respect to this exchange that, while the messages shown on the first page (in chronological order) were about Mr. Mitchell, the immediately following message was a reference to her ex-boyfriend, and not to Mr. Mitchell. I accept Mr. Maze's evidence that this entire text exchange was continuous, and related to Mr. Mitchell.
- [57] After receiving this text message, and talking to Ms. Wahyuni further, I find that Mr. Maze came close to breaking off his partnership with Mr. Mitchell altogether in August 2020, and hired a realtor to sell the Smithe Street Condo. Mr. Maze ultimately continued his partnership with Mr. Mitchell (and agreed not to sell the Smithe Street Condo) after Mr. Mitchell arranged a meeting between the three of them, and Ms. Wahyuni told Mr. Maze that she had been lying about the abuse she had disclosed. I need not determine the truth of these allegations or statements for the purposes of these proceedings, but I find that Ms. Wahyuni did make these statements, and that her evidence regarding the length and nature of her relationship with Mr. Mitchell is wholly unreliable and not credible.

- [58] I find, on all the evidence, that Mr. Mitchell was in a relationship with Ms. Wahyuni by November 2019 at the latest, when he moved into her home. I find that Mr. Mitchell and Ms. Wahyuni continued to live together until late December 2020 when Ms. Wang returned to Vancouver. I further find that Ms. Wahyuni moved back in with Mr. Mitchell upon Mr. Mitchell's separation from Ms. Wang in June 2021.
- [59] I also find that, starting in 2018, Mr. Mitchell had already begun to plan his separation from Ms. Wang. In 2018, Mr. Mitchell opened a BMO bank account, which he kept secret from Ms. Wang, and where he received revenues from various business ventures he involved himself in, including revenues for the manufacture of the molds and products for Nutrifaster and Blade Buddy. Mr. Mitchell testified that he opened this account and maintained it secretly because of his concerns regarding the future of his relationship with Ms. Wang.
- [60] All of the above factual findings form the context in which I reject Mr. Mitchell's claims that Ms. Wang refused to come back to Vancouver at his request and "kidnapped" the children against his will between October 2019 and December 2020. I find instead that during this time Mr. Mitchell was putting pressure on Ms. Wang to convince Ms. Li to fund the purchase of a new family home before she returned. He was also involved in an undisclosed relationship and living with his girlfriend in Vancouver throughout this period.
- [61] In March 2020, Mr. Mitchell provided \$115,000 CAD to Mr. Maze, paid by bank draft drawn from Ms. Wang's joint account with him, to close the purchase of a 553 square foot 1-bedroom and den condominium located at 68 Smithe Street, Vancouver (the "Smithe Street Condo"). Mr. Maze says that these funds were a loan from Mr. Mitchell, but Mr. Mitchell says that he provided the funds (which he claims were \$121,500 CAD) subject to a trust agreement with Mr. Maze providing that they would each have an interest in the Smithe Street Condo in proportion to their financial contributions. I will address my findings with respect to the Smithe Street Condo below.
- [62] Upon her return to Vancouver in December 2020, I find Ms. Wahyuni moved out, and Ms. Wang and the children joined Mr. Mitchell in living at the Smithe Street Condo. I find that Ms. Wang did not know that Mr. Mitchell had been living there with his girlfriend prior this time.
- [63] Approximately six months after Ms. Wang's return, the parties separated on June 2, 2021. The circumstance of that separation was Ms. Wang's arrest on charges of assault with a weapon and forcible confinement. The events of that evening are very much in contention, and I will address them below.
- [64] Ms. Wang's initial release terms limited communications with Mr. Mitchell, except for the purposes of arranging and exercising parenting time with the children. The Ministry of Children and Family Development ("MCFD") conducted a review shortly thereafter, and those terms remained in place. On November 25, 2021, the charges against Ms. Wang were stayed by the Crown, and Ms. Wang entered into a peace bond restricting her contact and communications with Mr. Mitchell for any reason for one year. No supervision requirements

or other restrictions for her parenting time were imposed.

- [65] I will review the specific circumstances of this arrest below. It is sufficient to note here that Ms. Wang's restrictions on communications with Mr. Mitchell became a very significant obstacle to Ms. Wang being able to arrange or exercise parenting time with the children, and the police were called numerous times during Ms. Wang's attempts to see the children during the parenting time that she was able to arrange. The parties each blame the other for the conduct resulting in these police calls.
- [66] In March 2023, approximately one year before trial, Ms. Wang alleges that Mr. Mitchell assaulted her while she was seven months pregnant during a parenting time exchange. Mr. Mitchell denies that allegation, and tendered a video that he says proves no assault took place at that exchange, and that Ms. Wang's current partner threatened him. I will review the circumstances of that exchange and video below as well.
- [67] After this incident, Ms. Wang testified that she considered that the exchanges were traumatizing for both the children and herself. In order to protect herself, her foetus, and the children from the conflict and violence of the exchanges, she chose to cease exercising her weekly parenting time on Sundays, and to instead pursue full custody of the children through the courts. Although applications in this respect were made, they were not heard or resolved. As a result, Ms. Wang has not seen the children since March 2023.
- [68] I find that Mr. Mitchell, Ms. Wahyuni, and the children have lived in the Smithe Street Condo since the summer of 2021. Mr. Mitchell covered the mortgage payments, property taxes, insurance, and strata fees in the range of \$2,300-\$2,600 per month between the summer of 2020 (when he moved in) and December 2021, when he and Mr. Maze had a major falling out. Mr. Mitchell has since then failed to cover any of the carrying costs of the Smithe Street Condo for over two years, and has also refused to leave the Smithe Street Condo, despite the considerable efforts of Mr. Maze and Ms. Moir to have him removed.
- [69] There is extant litigation between Mr. Maze, Ms. Moir, Squadra Capital, and Mr. Mitchell with respect to the financial repercussions of this falling out (the "Partnership Proceedings"), and Mr. Mitchell says that he has placed a Certificate of Pending Litigation ("CPL") on the Smithe Street Condo in both this family claim and in the Partnership Proceedings.

ISSUES

[70] The issues to be decided in this case are as follows:

- a) Parenting: both parties seek full custody of the children and full decision-making authority;
- b) Support: both parties seek child support and spousal support from the other;
- c) Property Division:

- i. Mr. Mitchell seeks declarations that the Smithe Street Condo, the Chinese Companies, the Chinese Properties, Vancouver Food Trucks, Squadra Capital, and the Horseshoe Bay Condo are all family property under the Family Law Act, S.B.C. 2011, c. 25 [FLA]. He seeks reapportionment in his favour of all the Canadian property and businesses in compensation for Ms. Wang retaining the Chinese Properties and Chinese Companies, together with a \$300,000 adjustment in his favour.
 - ii. Ms. Wang seeks an unequal division of Vancouver Food Trucks, Santapan, Squadra Capital, and any other businesses or family assets Mr. Mitchell controls. Although she claims for division of the Smithe Street Condo in her pleadings, in her opening and closing submissions at trial, Ms. Wang clarified that she has accepted Mr. Maze's legal and beneficial claim over that property, and only seeks division of Mr. Mitchell's share if Mr. Mitchell is successful in establishing a proportionate interest in the Smithe Street Condo. Ms. Wang also seeks a declaration that Ms. Li's contribution to the purchase of the Smithe Street Condo is family debt. Finally, she seeks declarations that the Horseshoe Bay Condo and the various Chinese Companies and Chinese Properties are not family property for the purposes of division, on the basis that they are all Ms. Li's property.
 - iii. Mr. Maze did not file a counterclaim in this family claim, though he has claims against Mr. Mitchell in the Partnership Proceedings. In this family proceeding, Mr. Maze resists the claim of Mr. Mitchell (and Ms. Wang to the extent that she maintains a claim in the alternative) that the Smithe Street Condo is family property, and seeks orders that he has both legal and beneficial ownership over that property. He supports a sale of the Smithe Street Condo as soon as possible to return the loan received from Mr. Mitchell, though he also seeks to recover more than \$120,000 from Mr. Mitchell for the costs of the mortgage and other losses he has incurred while Mr. Mitchell has lived in the Smithe Street Condo without contribution since January 2022. Mr. Maze also resists the claims by the parties that Squadra Capital is family property, and asserts a half interest in that asset, as well as a quantum meruit claim for his work on Vancouver Food Trucks in the spring and summer of 2020.
- d) Family Debt:
- i. Ms. Wang asserts that she and Mr. Mitchell owe funds to her mother, Ms. Li, that were recorded in promissory notes during the marriage. These promissory notes primarily relate to the presale payments of \$355,000 for the Horseshoe Bay Condo and \$130,000 for the Smithe Street Condo, though there are earlier promissory notes dating back to 2013-2016 for over \$50,000.
 - ii. Mr. Mitchell says that the promissory notes are fraudulent. He asserts that a \$50,000 loan that he arranged in March 2020 with a family friend, Ms. Deborah Bojman, is family debt.

[71] Although there are good reasons in most cases to address the parenting and support issues before addressing property division, in this case, I will address the property division issues first as they provide important context for the remaining issues. I will therefore address the issues in this case as follows:

a) With respect to property division:

i. Is Mr. Mitchell the beneficiary of a family trust over the Chinese Companies and/or the Chinese Properties?

ii. Alternatively, was Ms. Wang the owner of any of the Chinese Companies or Chinese Properties at the time of separation, making them family property subject to division?

iii. In the further alternative, does Mr. Mitchell have a claim in unjust enrichment with respect to his contributions to the Chinese Companies or Chinese Properties as against Ms. Wang?

iv. Is the Horseshoe Bay Condo family property?

v. Is Vancouver Food Trucks and/or Santapan family property?

vi. Is Squadra Capital family property?

vii. Is the Smithe Street Condo family property?

viii. Was the Porsche Cayenne (traded in post-separation by Ms. Wang for a Mercedes Benz) family property?

ix. Is there other family property, and, if so, how should it be divided?

b) With respect to family debt:

i. Has Ms. Wang established family debt in relation to the promissory notes to Ms. Li in evidence? If so, for what amounts?

ii. Has Mr. Mitchell established a family debt to Ms. Bojman? If so, for what amount?

iii. Has Ms. Wang established a Canada Revenue Agency ("CRA") debt as family debt?

c) For those things found to be family property and family debt, how should they be divided and their value apportioned? Has either party made out a case for reapportionment on the basis of significant unfairness pursuant to s. 95 of the FLA?

d) With respect to parenting, I will consider the following issues as they relate to the best interests of the children in relation to parenting time and parenting responsibilities:

i. Any criminal proceedings pertaining to the children's safety;

ii. The history of the care of the children;

iii. Family violence, and whether the children are at ongoing risk of harm in this regard;

iv. The ability of the parties to care for the children on an ongoing basis; and

- v. The ability of the children's parents to cooperate in the children's best interests.
 - e) With respect to support:
 - i. What are the incomes of Mr. Mitchell and Ms. Wang for support purposes?
 - ii. Are either Mr. Mitchell or Ms. Wang entitled to spousal support?
 - iii. What support amounts are payable going forward and retrospectively?
 - f) What are the appropriate remedies and orders in this family case?
 - g) Finally, I will consider the parties' demands for special costs against each other and give directions in this respect.
- [72] I turn then to the property division issues in this case.

PROPERTY DIVISION

- [73] Both parties seek division of family property pursuant to the FLA. Section 81 of the FLA provides that on the date of separation, each spouse is entitled to an undivided half interest in all family property, and is equally responsible for family debt regardless of their use or contribution to it.
- [74] Family property is defined in s. 84(1)(a) as all real and personal property that is owned or beneficially owned by either spouse on the date of separation, unless the property is excluded from family property under s. 85(1). Any real or personal property owned by at least one spouse at the time of separation is family property. The value of the family property is generally the fair market value at the date of the trial, subject to agreement or as otherwise ordered: FLA, s. 87; and *D.Z. v. M.Z.*, 2022 BCSC 706 at para. 152.
- [75] Where a property is established to be family property, exclusions may apply pursuant to the FLA, including amounts received as a gift or inheritance to only one spouse. Although the original value of excluded property is not family property, any increase in its value from the time of the marriage to the time of the trial is family property: FLA, s. 84(2)(g).
- [76] Family debt is defined at s. 86(a) as including all financial obligations incurred by a spouse during the period of the relationship. Debt incurred after the date of separation is only family debt if it is incurred for the purpose of maintaining family property: FLA, s. 86(b).
- [77] Under s. 87(b)(ii) of the FLA, the presumptive date for valuing family property and debt is the date of the trial. Departing from the presumptive date of valuation is effectively a reapportionment of family property and debt, which can only be achieved through an application of s. 95 of the FLA and a finding that an equal division would result in "significant unfairness": see *Namdarpour v. Vahman*, 2019 BCCA 153 at paras. 52, 61; and *Kumagai v. Campbell Estate*, 2018 BCCA 24 at para. 76.

[78] The court may consider the following factors in ordering an unequal division of family property and debt under s. 95(2) of the FLA:

(c) a spouse's contribution to the career or career potential of the other spouse;

...

(f) whether a spouse, after the date of separation, caused a significant decrease or increase in the value of family property or family debt beyond market trends;

(g) the fact that a spouse, other than a spouse acting in good faith,

(i) substantially reduced the value of family property, or

(ii) disposed of, transferred or converted property that is or would have been family property, or exchanged property that is or would have been family property into another form, causing the other spouse's interest in the property or family property to be defeated or adversely affected;

[79] The parties' relative contributions to family assets and debts during the marriage is largely irrelevant to reapportionment under s. 95(2) of the FLA. Although the FLA does not preclude relative contributions as a factor that might be considered under s. 95(2)(i) as one of "any other factor[s] that may lead to significant unfairness," the circumstances in which it may be considered and relied on are now substantially constrained: *Jaszczewska v. Kostanski*, 2016 BCCA 286 at para. 44.

[80] Both parties seek a reapportionment of family property in their favour.

A. The Chinese Companies and Chinese Properties

[81] Mr. Mitchell advances three bases in support of his claimed entitlement to the Chinese Companies and Chinese Properties. The first is that he is the beneficiary of a family trust that encompasses some or all of the above assets. The second is that Ms. Wang was the owner of some or all of these assets during the marriage and so they are family property on that basis. Finally, he argues that Ms. Wang and Ms. Li have been unjustly enriched by his contributions to the Chinese Companies and Chinese Properties.

[82] Mr. Mitchell accepts that this Court cannot make orders binding Chinese businesses or Ms. Li to give him a portion of these business or properties. Instead, he seeks a reapportionment of all the Canadian family assets to himself, including the Smithe Street Condo, Vancouver Food Trucks, and the Horseshoe Bay Condo (which he seeks to have transferred into his name mortgage-free), together with a \$300,000 equalization payment.

[83] I find that Mr. Mitchell has not made out any of the above claims with respect to the Chinese Companies or Chinese Properties. I will address each of his claims in turn.

The Trust Claim

- [84] Mr. Mitchell's trust claim is based on two trusts that he asserts are established by the evidence: first, that Ms. Wang and Ms. Li were the beneficiaries of a family trust established by Mr. Wang before his death, and that, second, he was made a beneficiary of this family trust (or perhaps was made the beneficiary of a newly constituted family trust) upon marrying Ms. Wang.
- [85] Mr. Mitchell's evidence with respect to the establishment of these trusts is vague and inconsistent. In his affidavit sworn in relation to a pre-trial application, Mr. Mitchell averred that there was a family trust established by Ms. Wang's father in or about 2010 of which Ms. Wang was the beneficiary and which was the source of their joint income during the marriage. In his examination for discovery, he again described Ms. Wang as the beneficiary of a family trust that was explicitly made. At times, he describes seeing a document specifically creating a family trust, at others, he says it was a term of Mr. Wang's will made before he died in 2008. Mr. Mitchell's evidence has also varied as to whether there was one trust or two, and whether Ms. Li was a beneficiary together with Ms. Wang, or with himself and Ms. Wang.
- [86] With respect to the formation of the family trust that he argues he is expressly a beneficiary, Mr. Mitchell argues that he formed this trust with Ms. Li and Ms. Wang, and specifically that they all agreed they would share in the benefits of the Chinese Companies. Mr. Mitchell testified that this occurred at a meeting between the three of them.
- [87] Both Ms. Li and Ms. Wang deny such a meeting occurred, or that there is a family trust that benefits any of Ms. Li, Ms. Wang, or Mr. Mitchell. They also say that Mr. Wang did not leave a will.
- [88] In order to establish the existence of an express trust, the parties are agreed that certainty of intention, subject and objects of the transfer are required, and that the trust property has been vested in the trustee: *Air Canada v. M & L Travel Ltd.*, [1993] 3 S.C.R. 787 at para. 23, 1993 CanLII 33; and *Aura Ventures Corp. v. Vancouver (City)*, 2023 BCCA 209 at para. 45, leave to appeal to SCC ref'd, 40866 (15 February 2024). The burden of establishing these elements rests on the party asserting the trust's existence: *Xu v. Hu*, 2021 BCCA 2 at para. 13. While a trust agreement need not be in writing, the evidence must be capable of establishing at least an oral agreement whereby the settlor of the trust evinces an intention to separate legal from beneficial ownership of property, and sets out with certainty who the trustee of the trust will be, who the beneficiaries will be, and what the property is comprised of.
- [89] Even if I were to take Mr. Mitchell's trial evidence at face value, and disregard his inconsistent pre-trial evidence and the contravening evidence of Ms. Wang and Ms. Li on this point, Mr. Mitchell's own trial evidence does not establish the three certainties for the family trusts he asserts.

- [90] With respect to the first alleged family trust, I accept the evidence of Ms. Wang and Ms. Li that Mr. Wang did not leave a will. If Mr. Mitchell saw a one-page document lying around somewhere in the factory, as he said he did, it was not Mr. Wang's will.
- [91] Furthermore, Mr. Mitchell did not provide any evidence of the words he saw written on the document. His testimony amounts to no more than an impression that that a document created a family trust benefitting Ms. Li and Ms. Wang from Mr. Wang's property, though he is not familiar with what that would legally entail. Mr. Mitchell's testimony taken at its highest does not establish a family trust at common law. Nor have I been provided with any evidence of Chinese law on this point.
- [92] To the contrary, I accept the evidence of Mr. Qiu, the corporate lawyer for the Chinese Companies, that Ms. Li has been the sole shareholder and directing mind of the Chinese Companies since the death of Mr. Wang.
- [93] Indeed, Ms. Li was the co-owner of the Chinese Companies since the 1990's according to the official Chinese corporate records before me at trial. No trust document was required to ensure that Ms. Li was able to continue operating the Chinese Companies, as she had done for years while Mr. Wang was incapacitated and before Mr. Wang's death.
- [94] There is similarly no evidence capable of establishing the three certainties required to establish the second alleged family trust of which Mr. Mitchell claims to be an express beneficiary. Again, taking Mr. Mitchell's testimony on this point at its highest, I am unable to determine from this evidence that the elements of a trust existed.
- [95] For example, on the evidence, there is no clear settlor of this trust, and it is therefore not possible to determine their intention. I am equally unable to determine from the evidence who the trustee of this trust was intended to be. Neither Mr. Mitchell, nor any other party, made any mention of a third-party trustee administering the funds from the Chinese Companies or Properties. Instead, the evidence as a whole, even that of Mr. Mitchell at times, indicates the degree to which Ms. Li continued to control her wealth, deciding what items of the parties' lifestyle warranted her financial support. I find that it was also Ms. Li who directed the financial operations of the Chinese Companies, with the assistance of Mr. Chen. I find that she was not acting as trustee for herself, her daughter, or her son-in-law in doing so.
- [96] Nor is the subject matter of the alleged trust clear--at times, Mr. Mitchell seems to infer that it encompassed all of Ms. Li's properties and businesses, while at other times, just the Chinese Companies themselves.
- [97] Mr. Mitchell did testify that the beneficiaries of the trust were himself, Ms. Wang, and Ms. Li. While he implied that his beneficial entitlement was in an equal share to that of Ms. Li and Ms. Wang, his evidence does not establish the requisite legal certainty in this respect. In any event, I do not accept his evidence on this point.

- [98] Ms. Li's occasional statements captured in WeChat exchanges relied upon by Mr. Mitchell saying things to the effect that it is alright if Mr. Mitchell did not fully reimburse her for certain things, because it is "all family money", or that she used to think he contributed to the family business but she no longer does, do not establish the existence of a family trust. To the contrary, the messages exchanged and relied upon by Mr. Mitchell are consistent with Mr. Mitchell negotiating with Ms. Li as to how much she would support him or the family, including how much he owed her on certain advances made by the Chinese Companies to his business ventures. The evidence as a whole in this trial indicates that Ms. Li was consistently controlling her own wealth, and supporting the family at her discretion, even when she suggests on occasion that she does not need full repayment from Mr. Mitchell because she wants to support the family.
- [99] Despite Mr. Mitchell's testimonial evidence, and some online forms he was able to find, I find that the evidence at trial establishes that Ms. Li owned and controlled the Chinese Companies and Chinese Properties, both before and after her husband's death in 2008, and before and after the parties' marriage in 2013. The evidence does not support that she was acting as a trustee (as such a role would be defined under the common law) for Ms. Wang or for Mr. Mitchell throughout this time, despite her financial support of them. In any event, I have no evidence, expert or otherwise, on what the laws of China would require to create such a trust.
- [100] I find that no trust over the Chinese Companies or the Chinese Properties was ever created. I find that Mr. Mitchell was not the beneficiary of a family trust in relation to the Chinese Companies, or any other Chinese assets.

The Claim that Ms. Wang Owned Chinese Assets at the Time of Separation

- [101] In his counterclaim, Mr. Mitchell claims an interest in a number of properties in China, only some of which were the subject of substantial evidence before me.
- [102] In an affidavit sworn by Mr. Mitchell in relation to a pre-trial application, Mr. Mitchell swore that he and Ms. Wang purchased various properties in China during the marriage, including the Shanghai Condo, Tianshan Road Property, Yunping Road Property, and properties on Shiqian Road and Pingcheng Road. At trial, he conceded that these were not purchased during the marriage, and had all been purchased before he met Ms. Wang in 2012.
- [103] In his closing submissions, Mr. Mitchell instead advanced a position that Ms. Wang was the owner of two properties in China before and during the marriage: the Shanghai Condo, and the Yunping Road Property, as well as the Chinese Companies. I will deal with each in turn.

The Chinese Companies

- [104] The trial evidence, including both oral testimony and legal documentation, establishes that Ms. Li was the sole shareholder and the sole directing mind of both the Chinese Companies throughout the parties' marriage and at the time of separation.
- [105] Mr. Mitchell relies on an online query result from a Chinese database that indicates that in 2010, Ms. Wang replaced her father as a listed "supervisor" of Wenchen Ltd., together with Ms. Li. Another translation uses the term "director" for this position. Regardless of this online query result, I am satisfied on all the evidence that Ms. Wang has never held any shares in the Chinese Companies. This includes the evidence of Mr. Qiu, who is a lawyer at a private firm in Shanghai and who has been the corporate lawyer for the Chinese Companies since he was hired by that firm in 2016. I also accept Mr. Qiu's evidence that it was always, and only, Ms. Li that provided legal direction for the Chinese Companies during his tenure as corporate counsel on retainer with those companies. I found Mr. Qiu's evidence to be trustworthy and reliable.
- [106] I also find that Ms. Wang did not perform any corporate duties, or draw a salary directly from either of the Chinese Companies during the marriage. I make this finding despite Mr. Mitchell's reliance on a document sent from an email address that both he and Ms. Wang controlled, suggesting otherwise. I prefer the evidence of Ms. Wang, Ms. Li, Mr. Chen, and the corporate lawyer, Mr. Qiu, in this regard.
- [107] I find that the Factory Lands themselves are owned by one of the Chinese Companies, and are therefore also not family property.

The Shanghai Condo

- [108] With respect to the Shanghai Condo on Changning Road, I find that Ms. Li purchased that property in or about 2010 with a completion date in 2011. I find that Ms. Li sold that property in 2020, before separation.
- [109] With respect to Ms. Li's ownership, I accept the evidence of Ms. Li and Ms. Wang, supported by a copy of a document bearing the seal of the Shanghai Changning District Real Estate Registration Office, showing Ms. Li as the sole owner of this property. Although that document is not dated, I find that Ms. Li's ownership and sale of this property predates the separation date.
- [110] Mr. Mitchell relies on an excerpt from a WeChat exchange with Ms. Wang in 2018 when Ms. Wang asks if he thinks they should sell "our property at JinTing88," which is a reference to the Shanghai Condo. He also relies on an excerpt from a WeChat exchange with Ms. Wang from 2020 where she discusses renting the Shanghai Condo for ¥12,800 RMB/month and complains about the current tenants. Ms. Wang says that she does not know why she was referring to the property at that time as "our property" and that the latter discussion related to her assisting her mother to rent that home.

- [111] Ms. Li's evidence was that she contemplated giving this property to Ms. Wang, but in the end, decided against it, and instead decided to sell the property. Although Ms. Wang and Mr. Mitchell may have treated the property as their own at times, they were wrong if they thought it belonged to them, and she never transferred it to them. When she first let them live there after their marriage in 2013, she expected them to pay rent (though they never did). When they moved to North America in 2015, she lived there until her new home on Yunping Road was ready.
- [112] I accept Ms. Li's evidence on this point, which is consistent with Ms. Wang's evidence and the documentary evidence. It is also generally consistent with the evidence as a whole that, while Ms. Li provided significant financial support to Ms. Wang and Mr. Mitchell at times, she also maintained a firm hold on her purse strings.
- [113] On all the evidence, I find that the Shanghai Condo was not owned, legally or beneficially, by Ms. Wang during the marriage or at the time of separation, and is therefore not family property.

Yunping Road Property

- [114] I find that the evidence establishes Ms. Li was, and is, the sole owner of the Yunping Road Property. This is the townhouse where Ms. Li now lives.
- [115] I find that Ms. Li also purchased this property in or around 2010 or 2011, well before Mr. Mitchell met Ms. Wang in late 2012. The copy of the official land title documentation dated October 2018 shows Ms. Li as the sole owner of this property as of that date. Neither Ms. Wang nor Mr. Mitchell were living in China at that time.
- [116] Mr. Mitchell relies on a copy of an online printout from a Chinese database dated July 11, 2022 indicating "Yes" under the heading, "Does this property have co-ownership." He also relies on copies of receipts dated 2010 and 2011 that show "Payer's Name" as both Ms. Li and Ms. Wang in relation to the receipt of monies for this property. Ms. Wang says that these were receipts received from the bank, but that she was always acting on behalf of her mother when she made those payments. Ms. Li says this was always her property, and her property alone.
- [117] Even if Ms. Wang received receipts for the payment for this property together with her mother, the evidence establishes that Ms. Wang has never had substantial money of her own. Her father did not leave her anything, and he had no will. If Ms. Wang participated in making payments for this property, I find that it was with Ms. Li's funds. In any event, I find that only Ms. Li was registered as the owner of the Yunping Road Property, and only she has had the benefit of that property.
- [118] I find that the Yunping Road Property is not property that was legally or beneficially held by Ms. Wang at the time of separation, or at all. It is therefore not family property.

Tianshan Road Property

- [119] Although Mr. Mitchell did not include a claim over this property as family property in his closing submissions, I will address it briefly because it was listed in Mr. Mitchell's counterclaim, and evidence was led with respect to its ownership.
- [120] I find that the Tianshan Road Property was registered in Ms. Wang's father's name starting in or around 1999. Ms. Li had it transferred into her own name in or about 2019. Ms. Wang, at times, hoped her mother would put it in her name, and even discussed registering title to it with Mr. Mitchell in or about 2018. I also find that for some time during the marriage, Ms. Li directed funds generated by this property into Ms. Wang's accounts. However, the evidence establishes that in 2019, title to the property was not transferred to Ms. Wang, but to Ms. Li.
- [121] I find that the Tianshan Road Property is also not property owned by Ms. Wang during the marriage or at the time of separation. It is not family property.

Conclusion on the Ownership of the Chinese Properties

- [122] In conclusion, I find that Ms. Li was the legal owner of all the Chinese Properties over which Mr. Mitchell claims entitlement, and that Mr. Mitchell has not established that either he or Ms. Wang had beneficial ownership of these Chinese Properties during the marriage or at the time of separation.
- [123] I turn next to Mr. Mitchell's argument that the Chinese Companies and Chinese Properties have been unjustly enriched by his contributions to these assets during the marriage.

The Unjust Enrichment Claim

- [124] Although Mr. Mitchell does not precisely identify the beneficiaries of his efforts beyond the Chinese Companies and Properties themselves, Mr. Mitchell in essence makes an argument for reapportionment of family property based on a claim of unjust enrichment and joint family venture.
- [125] Unjust enrichment and the sharing of profits from a joint family venture were considered by the Supreme Court of Canada in relation to the division of family property as between two common law spouses in *Kerr v. Baranow*, 2011 SCC 10. I note that *Kerr* was decided in 2011, before the enactment of the FLA in British Columbia. At that time, a common-law spouse needed to prove a resulting trust or unjust enrichment in order to claim an interest in the other common-law spouse's property upon relationship breakdown. I note that *Kerr* did not consider a claim of unjust enrichment in the context of claims against a parent of a spouse.
- [126] Since *Kerr*, claims for interest in the property of the family of a spouse have been considered in other cases, most recently in *Sidhu v. Sidhu*, 2023 BCSC 449, where Justice G.P. Weatherill reviewed the case law on this issue. In *Sidhu*, this Court followed Justice

Allan's decision in *Sangha v. Reliance Investment Group Ltd.*, 2011 BCSC 1324 by finding that contributions by a spouse to the collective wealth of her in-laws did not, alone, entitle her to a share of her in-law's wealth upon marriage break-down: at paras. 124-125. The claims in *Sidhu* to unjust enrichment and joint family venture bear some similarity to Mr. Mitchell's claims in the present case. In *Sidhu*, Weatherill J. summarized the principles set out in *Kerr* as follows:

i) The unjust enrichment analysis generally

[176] A party claiming unjust enrichment must establish three things: an enrichment of the defendant, a corresponding deprivation by the claimant, and the absence of a juristic reason for the enrichment: *Kerr* at paras. 38-40.

[177] A straightforward economic approach applies to the first two elements of enrichment and corresponding deprivation. The claimant must show that they gave and the respondent received something tangible: *Kerr* at paras. 37-39.

[178] For the third element, absence of juristic reason means simply that there is no reason in law or justice for the defendant's retention of the benefit conferred by the claimant, making its retention unjust in the circumstances. Juristic reasons to deny recovery include the intention to make a gift or a contract. The list is not closed or limited. This third stage of the unjust enrichment analysis provides for due consideration of the autonomy of the parties, including factors such as the legitimate expectations of the parties and the right of parties to order their affairs by contract: *Kerr* at paras. 40-41.

[179] There are two stages in the absence of juristic reason analysis. At the first stage, the claimant must prove that the defendant's retention of the benefit cannot be justified on the basis of any established category of juristic reasons. If none of these categories apply, then the claimant has established a *prima facie* case. At the second stage, the defendant may rebut the *prima facie* case by showing there is another reason to deny recovery. The court may consider arguments around the parties' legitimate expectations and moral and policy-based arguments at this stage: *Kerr* at paras. 43-45.

ii) The joint family venture analysis

[180] In *Kerr*, the Supreme Court of Canada heard two appeals involving claims in unjust enrichment between former common-law spouses who had engaged in "joint family ventures". These cases involve a particular type of unjust enrichment "characterized as an unjust retention of a disproportionate share of assets accumulated during . . . a 'joint family venture' to which both partners have contributed": para. 80. The Court described the proper approach to determining a monetary remedy in these cases as follows:

[81] In such cases, the basis of the unjust enrichment is the retention of an inappropriately disproportionate amount of wealth by one party when the parties have been engaged in a joint family venture and there is a clear link between the claimant's contributions to the joint venture and the accumulation of wealth. Irrespective of the status of legal title to

particular assets, the parties in those circumstances are realistically viewed as "creating wealth in a common enterprise that will assist in sustaining their relationship, their well-being and their family life" (McCamus, at p. 366). The wealth created during the period of cohabitation will be treated as the fruit of their domestic and financial relationship, though not necessarily by the parties in equal measure. . . . In such cases, the unjust enrichment is understood to arise because the party who leaves the relationship with a disproportionate share of the wealth is denying to the claimant a reasonable share of the wealth accumulated in the course of the relationship through their joint efforts. The monetary award for unjust enrichment should be assessed by determining the proportionate contribution of the claimant to the accumulation of the wealth.

[Emphasis added.]

[181] As the underlined text states, even if a joint family venture exists, the claimant must still prove their proportionate contribution to that venture, which will determine the amount of their monetary remedy. There is no presumption that the fruits of the joint family venture will be shared equally between its members. There must be a clear link between the claimant's contributions to the joint venture and the accumulation of wealth. The joint venture need not encompass all of the parties' assets, and can attach to specific assets according to the evidence: *Ibbotson v. Fung*, 2013 BCCA 171 at paras. 56-63.

[182] Before determining the proportionate contribution of the claimant to the joint family venture, the court must "identify whether the parties have, in fact, been engaged in a joint family venture" at all: *Kerr* at para. 87. The appropriate analysis is fact-specific and grounded in the evidence: there is no presumption of a joint family venture. The emphasis should be on how the parties actually lived their lives, not on their *ex post facto* assertions or the court's view of how they ought to have done so: para. 88.

[Emphasis in original.]

[127] Mr. Mitchell need not rely on the doctrine of unjust enrichment or resulting trust as developed in *Kerr* for division of his spouse's property, because he is not a common-law spouse in a marriage that predates the FLA. However, as I understand his argument, he seeks to rely on this doctrine and his contributions to the Chinese Companies and Chinese Properties as a grounds for the reapportionment of family property in British Columbia.

[128] In order for Mr. Mitchell to prove unjust enrichment in this case, he must prove that Ms. Wang benefitted from his efforts, to his detriment, without a juristic reason. Given my findings that Ms. Wang does not legally or beneficially own the Chinese Companies or Chinese Properties at issue, any efforts by Mr. Mitchell to improve these assets to his detriment would not result in an unjust enrichment to Ms. Wang.

[129] I note that it is well-settled that a potential inheritance, even a highly likely one, is not a family asset for the purposes of division. It is not appropriate for a court to delve into the question of potential inheritances when considering the financial resources of a family law litigant: *H.S.S. v. S.H.D.*, 2018 BCCA 199 at para. 74, citing *Graham v. Graham*, 59 B.C.L.R. 27, 1984 CanLII 363 (C.A.) Further, inheritances--even if they occur during the marriage--are expressly excluded as family property under s. 85(1)(b) of the FLA.

[130] However, because it is so central to Mr. Mitchell's claims, I will set out my factual and legal findings with respect to the evidence before me at trial.

[131] Mr. Mitchell describes the benefits reaped by the Chinese Companies as his efforts "day in and day out" to find and develop the Chinese Companies. He argues that the Chinese Companies were in decline since the death of Ms. Wang's father, and that he gave up his lucrative job to turn the fortunes of the Chinese Companies around. Specifically, Mr. Mitchell gave evidence of the following contributions he made:

- a) Pitching the use of the Factory Lands as a container facility in 2013 (though this ultimately did not come to fruition);
- b) Being present for the development of three new factory buildings on the Factory Lands that he says were completed after the marriage in 2014;
- c) Renovating a storage building on the Factory Lands that was then rented to a tenant in 2015;
- d) Coordinating a survey of the Factory Lands that was required to improve the sewer system; and
- e) Being involved in the design of the renovations of Ms. Li's Yunping Road Property, including designing a 4-storey chandelier, and helping with some of the renovations.

[132] Mr. Mitchell also provided evidence of two clients that he says he brought to the Chinese Companies through Alibaba:

- a) Between 2016 and 2018, Mr. Mitchell developed an account with Nutrifaster for the production of molds and then the fulfillment of approximately 5,000 to 10,000 food pushers; and
- b) Between January to December 2018, Mr. Mitchell found a customer that required the production of molds and components of a container for table saw blades referred to at trial as the "Blade Buddy."

[133] Mr. Mitchell's presence for the construction of three new factory buildings on the Factory Lands in 2014 is not supported by the evidence of Mr. Chen, Ms. Li, and Ms. Wang, all of whom say that these factory buildings were completed in 2010, well before the marriage. Mr. Mitchell relies on Google Earth imagery that he says shows the buildings were not constructed until after 2014. Nothing turns on this discrepancy, as I have found that the Factory Lands were not owned by Ms. Wang during the marriage, and so any increase in

their value through improvement is largely irrelevant. However, as the issue was hotly contested, I will note that I found the survey and invoice evidence presented and relied upon by Ms. Wang showing the completion of these buildings in 2010 to be more compelling evidence than the Google Earth imagery relied upon by Mr. Mitchell. I found Mr. Chen's evidence, in particular, to be reliable and credible on this point.

- [134] Mr. Mitchell's design and other contributions to other properties owned by Ms. Li during the marriage are equally not relevant given that these are not family properties. Nor is Mr. Mitchell's evidence sufficient to establish a quantifiable benefit in this regard.
- [135] Even if I were to accept Mr. Mitchell's evidence at face value and prefer it over the evidence of Ms. Wang, Ms. Li, and Mr. Chen (which I do not), the contributions suggested by Mr. Mitchell do not establish that Ms. Li was enriched by these efforts. There is no evidence that Mr. Mitchell invested any of his own funds in the endeavours--his contributions to the Chinese Companies and Chinese Properties as described in his own evidence were largely aspirational. Many of his ideas for how to enrich the Chinese Companies did not pan out.
- [136] Three of Mr. Mitchell's ventures did result in a revenue stream: the rental of the storage building on the Factory Lands, the Nutrifaster food pushers, and the Blade Buddy. With respect to these, I find that Mr. Mitchell used the Chinese Companies' resources to cover the costs up front, but that the revenues these ventures generated were paid directly to Mr. Mitchell and Ms. Wang up until 2018. In 2018, Mr. Mitchell opened the BMO accounts in his own name to receive the revenues from the Nutrifaster and Blade Buddy (and possibly other) clients. He did not share information about these revenues with either Ms. Wang or Ms. Li, though they were aware that the import/export revenues were flowing through accounts that only Mr. Mitchell controlled. Neither Ms. Li nor the Chinese Companies were enriched by these more profitable ventures.
- [137] Based on the testimony, banking records, and the correspondence in evidence, I find that Mr. Mitchell controlled the import/export business, including controlling the amount of the revenues he received from this business that were paid back into the Chinese Companies to reimburse their costs. Furthermore, I find that Mr. Mitchell paid less overall to the Chinese Companies than their actual costs, and that he retained the profits from these ventures.
- [138] Although Mr. Mitchell argues that he did everything under the auspices of the Chinese Companies, including Wenchen Ltd.'s business licence, I find that he created a separate corporate seal which he used to seal various documents related to the import/export business he controlled, and that he established banking accounts that he alone controlled to process the Alibaba orders.
- [139] The business records for Wenchen Ltd. in evidence also show that Mr. Mitchell's import/export business was a small portion of the other orders and business conducted by the Chinese Companies since 2013. That business had been ongoing for years before Mr. Mitchell married Ms. Wang and entered Ms. Li's life, and for five years since the death of Ms. Wang's father. Furthermore, Ms. Wang's father had been unable to contribute to the

Chinese Companies in a meaningful way for many years prior to his death in 2008 due to his diagnosis of ALS in 1999, and it was Ms. Li and Mr. Chen who were primarily responsible for the success of those companies. Mr. Mitchell's suggestion that he came as a savvy and more experienced businessman to this beleaguered business after the death of its patriarch is not supported by the evidence before me.

- [140] I am also satisfied that Ms. Li and Ms. Wang complied with the Court's November 1, 2023 order to provide the records showing all transactions between the Chinese Companies and Ms. Wang and Mr. Mitchell. I am satisfied that the running accounts of deposits and withdrawals to Wenchen Ltd. reviewed by Mr. Chen in his evidence disclose all the transactions between that company and Ms. Wang and Mr. Mitchell during the parties' marriage, and that there were no transactions between the Rubber Company (which I understand to be more of a holding company) and Mr. Mitchell during the marriage.
- [141] I accept Mr. Mitchell's evidence that Ms. Li agreed to process a further order in the fall of 2021 (post-separation) on behalf of the Nutrifaster client (after a significant hiatus). However, I also find that this was done, not as a means to enrich the Chinese Companies or Ms. Li, but to enrich Mr. Mitchell.
- [142] In any event, Mr. Mitchell says that most of the value in the Chinese Companies and the Chinese Properties are due to the increase in Shanghai land values since Ms. Li purchased them with her husband well before the marriage. I find that, even were I to accept Mr. Mitchell's evidence about his contributions and ideas for these properties, the increase in value of these properties is not an enrichment properly attributable to Mr. Mitchell.
- [143] Nor am I able to find a corresponding detriment. Mr. Mitchell outlined no financial contributions on his part to the Chinese Properties or Companies. At best, Mr. Mitchell's evidence might support that he gave up a well-paying job to marry Ms. Wang and contribute his knowledge, energy and ideas to the Chinese Companies in February 2013. While I am more inclined to believe Ms. Wang that he had already lost his employment in China, and that she married him in part to allow him to stay in China, nothing turns on this. Even were I to accept Mr. Mitchell's evidence on this point, it is clear that the lifestyle that he was afforded, living in a downtown apartment in Shanghai rent-free, and having all of his living expenses covered, was not to his financial detriment. By all accounts, the parties did not have a modest lifestyle. Mr. Mitchell was not required to have productive or successful business ideas in exchange for this support. To the extent that Mr. Mitchell contributed his knowledge or expertise to the Chinese Companies or Properties, I find that he was more than compensated by Ms. Li funding the parties' lifestyle for the 8 years of their marriage, with little to no corresponding benefit to her.

- [144] Having found no measurable enrichment to Ms. Wang's mother's businesses and property by Mr. Mitchell, and no corresponding detriment to Mr. Mitchell, I need not consider whether Mr. Mitchell has established that there was no juristic reason for this enrichment. I find that Mr. Mitchell's contributions do not give rise to a legitimate expectation that he might share in the profits of the Chinese Companies or Chinese Properties.
- [145] I consider Mr. Mitchell's claim far weaker than the one considered in *Sidhu*, which was rejected by this Court on the following basis:
- [211] I conclude that Min's expectation that she would share in the Parents' wealth was a product of the Separation. She developed this expectation because she was married to Sid, the Parents' only son, and expected him to inherit their wealth. I also conclude that Min cannot advance a derivative unjust enrichment claim against the Parents on the basis of Sid's inchoate claim. The jurisprudence is clear that such claims are not permitted: *Russo* at para. 26; *Douglas* at para. 111.
- [212] When balancing the benefits or enrichments of the Parents against Min's deprivations, I am unable to see how it would be unjust for the Parents to retain Min's contributions. Indeed, I conclude that over the 23-year Marriage, Min derived a greater net benefit from the arrangement of the Sidhu Household than did the Parents: *Waldron* at para. 48; *Tang v. Tom*, 2021 BCSC 1399 at paras. 20-22.
- [213] In short, I can find no legitimate expectation that Min would receive or be entitled to an interest in the Sidhu Assets owned by the Parents. Nor can I conclude that it would be against public policy concerns to deny Min an interest in those assets. To the extent that Min has shown an enrichment and corresponding deprivation, I conclude that there was a juristic reason for that enrichment.
- [214] Finally, I conclude that the substantial increase in the value of the Sidhu Assets in the Parents' names is attributable primarily to the rise in the real estate market: *Gahir v. Gahir*, 2006 BCSC 235 at para. 69.
- [215] Given these findings, Min's claim for an interest in the Sidhu Assets owned by the Parents based on a constructive trust must be dismissed.
- [146] In the absence of unjust enrichment, there is no basis for a trust remedy, including one based on a "joint family venture." As noted by Weatherill J. in *Sidhu*:
- [217] It is important to note that a joint family venture is not its own cause of action. A person's involvement in a joint family venture is only considered at the remedy stage of the unjust enrichment analysis. A finding of unjust enrichment must first be made, only then can the court consider whether or not a joint family venture exists: *Peters v. Swayze*, 2018 ONCA 189 at para 8.

[147] I find that Mr. Mitchell has not established an unjust enrichment of Ms. Wang (or of Ms. Li had that been available) with respect to the Chinese Companies or Chinese Properties. He has therefore not established a basis for the reapportionment of family property on this basis.

B. Horseshoe Bay Condo

[148] In March 2017, Ms. Wang signed a pre-sale contract for the purchase of a condominium in Horseshoe Bay, West Vancouver. Ms. Wang says that this was a property that she had located with her mother, who was discussing purchasing another property either in Vancouver or in Shanghai, and that Ms. Li chose this property.

[149] Mr. Mitchell says that this was a property that he and Ms. Wang found and chose as their future family home together, including after considering the schools in the area and the desirability of having S attend at the local Gleneagles Elementary School.

[150] I have considered the evidence of Ms. Wang, Ms. Li, and Mr. Mitchell with respect to the planned purchase of the Horseshoe Bay Condo, and I have reviewed the purchaser's statement of adjustments for this sale. I make the following findings in this regard:

- a) Neither Ms. Wang nor Mr. Mitchell had the funds or income to purchase a property for themselves in 2017. However, they had good reason to encourage Ms. Li to purchase a property in Vancouver that they would likely be able to make use of, and I accept Mr. Mitchell's evidence that they considered the location of the Horseshoe Bay Condo would be a good one, including that it was in a desirable elementary school catchment.
- b) I find that Ms. Li chose to invest her funds into the Horseshoe Bay Condo on a number of grounds, including that it was a beautifully located property with views of the ocean, that it would be a good place for her grandchild to live, and that it was a pre-sale that allowed her to invest in Vancouver's real estate market in smaller annual increments that were more amenable to China's restrictions on transfers of wealth out of that country.
- c) I find that the Horseshoe Bay pre-sale contract was put only in Ms. Wang's name for a number of reasons, including that Ms. Li insisted that the contract be in Ms. Wang's name only, and Ms. Li was not present in Vancouver to manage the negotiations or able to read English.
- d) Mr. Mitchell filled out the pre-sale contract information, and it was agreed that he would include his email address on the contract because of his greater proficiency in English.
- e) Ms. Li's initial deposit of ¥100,000 RMB (approximately \$15,000-\$20,000 CAD) was paid in March 2017.
- f) Ms. Li transferred two sums of just under \$50,000 CAD each to the parties' joint account in early April 2017, which Ms. Wang then used to pay the rest of the \$118,000 deposit required for the pre-sale contract.

- g) Ms. Li transferred another four deposits of just under \$60,000 CAD each through Chinese family members and associates later in 2017 and in early 2018 to pay all of the remaining deposits required under the pre-sale contract;
 - h) In total, I find that Ms. Li paid the entirety of the almost \$300,000 in deposits paid during the marriage pursuant to the pre-sale contract for the Horseshoe Bay Condo and as shown on the statement of adjustments, before Mr. Mitchell and Ms. Wang separated in June 2021.
 - i) The Horseshoe Bay Condo was not ready for completion until April 2022, almost a full year after the separation. I find that Ms. Li provided over one million dollars in a combination of cash and a guarantee for mortgage financing to Ms. Wang to close the sale. The mortgage secured against title at the time of closing was just over \$800,000.
 - j) Ms. Wang moved into the Horseshoe Bay Condo immediately upon closing with her current partner, Mr. Jonathan Blouin. Mr. Blouin has paid the mortgage payments monthly on Ms. Wang's behalf since the closing. The mortgage costs were close to \$3,000/month in April 2022 and had grown to close to \$4,400 in August 2023.
- [151] Ms. Wang, Ms. Li, and Mr. Blouin all testified that they consider that the Horseshoe Bay Condo belongs to Ms. Li. Mr. Blouin testified that, although he pays the monthly expenses and mortgage for the property, he considers these payments to be equivalent to rent payments to Ms. Li.
- [152] Mr. Mitchell's position is that he, Ms. Li, and Ms. Wang intended the Horseshoe Bay Condo to become the family home. Although the sale had not completed before separation, he made arrangements for a friend of his to take out a mortgage over the property so that he could complete the sale in April 2022 if necessary.

Determination

- [153] I find that the Horseshoe Bay Condo is not family property pursuant to the FLA. Neither spouse owned nor possessed this property at the time of separation. All Ms. Wang had at the time of separation was a right to complete the pre-sale contract to purchase the property, and this required a further investment of approximately \$1 million.
- [154] In *Mach v. Mach*, 2021 BCSC 1655, this Court found that although a contract to purchase a pre-sale property was not family property, if the sale ultimately completed, then any family equity invested in the property prior to separation ought to still be included in the division of family property: at paras. 122-126. I provided this authority to both Ms. Wang through her counsel, and to Mr. Mitchell, during the parties' closing submissions on this point.
- [155] Ms. Wang says that *Mach* is not applicable here, because Ms. Wang had no equity in the Horseshoe Bay Condo prior to separation in any event. She says that she has always held the property in trust for Ms. Li, either on the basis of an express trust, or on the basis of a resulting trust, and relies upon the presumption against advancement of property placed in the name of an adult child. In the alternative, she says that all of the funds used for the pre-

sale deposits during the marriage were loaned by Ms. Li and secured by a promissory note between Ms. Wang and Ms. Li, with Mr. Mitchell's consent. The decision to complete the purchase and the ability to close the purchase were also entirely based on Ms. Li's equity and not Ms. Wang's.

- [156] Mr. Mitchell's argument that the Horseshoe Bay Condo was bought with family money rests on his assertion that he and Ms. Wang (together with Ms. Li) are the beneficiaries of a family trust making all of the money held or generated by the Chinese Companies, or provided by Ms. Li, trust monies that equally belong to him and Ms. Wang as well. He also says that he advanced the necessary funds to Ms. Li before she used them to pay the deposit on the Horseshoe Bay Condo.
- [157] I have rejected Mr. Mitchell's trust arguments that he and Ms. Wang were the legal beneficiaries of the Chinese Companies, or Ms. Li's wealth more generally.
- [158] I also reject Mr. Mitchell's argument that funds from his accounts were used to pay for the Horseshoe Bay Condo. In his second affidavit, in support of sole occupancy of the Horseshoe Bay Condo, Mr. Mitchell deposed that he had transferred "\$158,888" to Ms. Li, which she then used to make the payments on the Horseshoe Bay Condo. He attaches to this affidavit a WeChat message to Ms. Li in which he mentions the transfer of this amount. I find this statement to be false and written in such a way so as to deliberately mislead the Court at the time.
- [159] I find that what actually occurred is that, on August 21, 2017, Mr. Mitchell transferred ¥158,888 RMB to Ms. Li, or the equivalent of approximately 15-20% of that value in Canadian dollars. When questioned on this point, Mr. Mitchell insisted that his use of a "\$" in his affidavit was not misleading because he did not specify the precise currency he used to pay these funds.
- [160] I also find that Mr. Mitchell did not pay these funds to Ms. Li, but rather to Wenchen Ltd. through the third-party company that was used to process his import and export business. I find that these funds were requested by Ms. Li, and sent by Mr. Mitchell, to cover outstanding manufacturing costs for the Nutrifaster food pushers that Wenchen Ltd. had paid for up front to manufacture the products. I find that they were monies owing to Wenchen Ltd., and not funds that Mr. Mitchell can rely upon as a contribution to the Horseshoe Bay Condo.
- [161] On all the evidence, I find that Ms. Li--and only Ms. Li--provided the deposits totalling \$355,000 to secure the pre-sale contract for the Horseshoe Bay Condo up to the date of separation in June 2021. It was also solely Ms. Li's funds that allowed the purchase of the property to complete in April 2022, after the separation.

- [162] Regardless of whether Ms. Li's funds were advanced on the basis that the property would be held by Ms. Wang in trust for Ms. Li, or as a loan or gift to Ms. Wang, neither Ms. Wang nor Mr. Mitchell can claim any equity in the pre-sale contract for the Horseshoe Bay Condo in this case. Even if the funds were advanced as a loan to both Mr. Mitchell and to Ms. Wang, no equity would result.
- [163] No party argued that Ms. Li advanced these funds as a gift to Mr. Mitchell and Ms. Wang together, and the evidence does not support such an inference. Ms. Li was insistent that only Ms. Wang be on title.
- [164] I find that, although Ms. Li was not certain at the time of entering the pre-sale contract through Ms. Wang whether she would live in the Horseshoe Bay Condo part-time, or allow Ms. Wang, Mr. Mitchell, and S to live there, or use the property primarily as an investment opportunity, she was certain that this would be her property to choose what would be done with it.
- [165] Although Ms. Li does not know or understand the Canadian law of trusts, or the presumption against advancement to adult children, her actions and conduct throughout the marriage, and her testimony at trial, are very much in accord with that principle. Specifically, I find that in routinely placing property purchased with her own funds in her adult daughter's name, she was not intending to make a gift to Ms. Wang or her spouse. Her expectation and intention in putting the pre-sale contract in Ms. Wang's name was that Ms. Wang would facilitate her wishes, and follow her directions in how the property was to be dealt with. Even if the evidence did not support an express trust, I would have found that Mr. Mitchell has not displaced the presumption against advancement to Ms. Wang as set out in *Pecore v. Pecore*, 2007 SCC 17 at paras. 39-41 giving rise to a resulting trust in this regard.
- [166] Furthermore, I find that this intention was consistent with Ms. Li's conduct and expectations with respect to other gratuitous transfers she made to Ms. Wang throughout the marriage. I find that, with respect to purchases made with her wealth or transfers that she put in Ms. Wang's name, Ms. Li had an intention and continuing expectation of control. For example, when she bought the car for Mr. Mitchell to drive for Uber in Shanghai, the car was put in Ms. Wang's name and the income went to the spouses, but Ms. Li considered the car itself to be hers to purchase, and hers to sell (which she then did). In addition, although Ms. Li may have allowed Ms. Wang to keep the rental income from one or more Chinese Properties at various times, Ms. Li maintained control of those properties throughout, including how and when they might be disposed of.
- [167] The promissory notes that Ms. Li had Ms. Wang sign with respect to the Horseshoe Bay Condo can best be understood, I find, as Ms. Li wanting to ensure that Ms. Wang and Mr. Mitchell understood that these were still her funds, in the absence of an understanding of Canadian trust law. I find that they were unnecessary for this purpose, because Ms. Li's intention to invest her funds in the Horseshoe Bay Condo, and to retain control of this investment and property (even if she allowed her adult daughter's spouse and her

grandchildren to live there), is consistent with a trust intention. I find that Ms. Wang signed the pre-sale contract to the property, and made the payments using Ms. Li's funds, understanding that her mother was not giving her the Horseshoe Bay Condo. Ms. Wang accepted the funds and her role as trustee in this regard, and ultimately completed the purchase of the Horseshoe Bay Condo on the same basis. I find Ms. Wang holds the Horseshoe Bay Condo in trust for Ms. Li.

- [168] Mr. Mitchell challenges those promissory notes as fraudulent. Initially, he argued that the signatures were fake and sought to have high-resolution scans sent to him and to his chosen expert in November 2023, approximately three months before trial. Mr. Mitchell obtained orders to that effect, and those high-resolution scans were provided to Mr. Mitchell, but not directly to his expert. He seeks an adverse inference of fraud on the basis that the high-resolution file was not sent directly to his expert by Ms. Li's counsel, but he concedes that he also could have sent that scan to his expert himself, but that by then he realized that the validity of the signature was not the real issue he wished to challenge.
- [169] Ultimately, Mr. Mitchell argued that the issue is not whether Ms. Wang's fingerprint and signature are real on the promissory notes, but when those notes were written. The idea that he might seek expert evidence on that point did not occur to him until shortly before trial, at which point it was too late to seek such an analysis. Still, he argues that the Court should find that the promissory notes were fraudulently created.
- [170] Given my finding that Ms. Wang holds the Horseshoe Bay Condo in trust for Ms. Li, the promissory notes relating to the Horseshoe Bay Condo are redundant to the legal outcome in this case. The promissory notes do not create family debt with respect to that property, because there is no family equity in that property.
- [171] However, for the sake of completeness, I have considered the evidence with respect to the promissory notes relating to the Horseshoe Bay Condo. There are two promissory notes that predate separation: one dated July 7, 2017 for \$115,000, shortly after the initial deposits were made to secure the pre-sale; and another dated February 17, 2019 in the amount of \$240,000. With respect to the first note, I accept the evidence of Ms. Wang that she executed that promissory note in Shanghai while she was visiting her grandmother there and she and Ms. Li reviewed the pre-sale offering. I accept the evidence of Ms. Li, Ms. Liu, and Ms. Wang that Ms. Li demanded, and Ms. Wang executed, the second promissory note in Vancouver shortly before H was born, when Ms. Li and Ms. Liu were visiting at that time.
- [172] Finally, I note that Mr. Mitchell's attempts to obtain an injunction to stop the sale of the Horseshoe Bay Condo from completing on April 7, 2022 came too late. In any event, I find that Mr. Mitchell did not have the means to complete the sale himself, including by obtaining a mortgage in his own name to do so.
- [173] In conclusion, I find that neither Ms. Wang nor Mr. Mitchell had any equity in the pre-sale contracts prior to separation, and that the Horseshoe Bay Condo is not family property.

C. Vancouver Food Trucks and Santapan

- [174] Mr. Mitchell says Vancouver Food Trucks is his sole proprietorship, and on that basis, he accepts that it is family property subject to division. He seeks reapportionment of its value entirely to himself. He says that Santapan is a separate entity owned by Ms. Wahyuni.
- [175] Ms. Wang claims division of Mr. Mitchell's interest in Vancouver Food Trucks, including in Santapan.
- [176] Vancouver Food Trucks is also the subject matter of the Partnership Proceedings as between Mr. Mitchell and Mr. Maze. In addition, Mr. Kugler maintains an action against Mr. Mitchell in relation to unpaid contributions made by Mr. Kugler in the construction of the food truck.
- [177] I am satisfied that neither Mr. Maze nor Mr. Kugler is seeking a beneficial interest in the food truck itself or in Mr. Mitchell's sole proprietorship in the outstanding litigation. However, the outstanding claims against Mr. Mitchell with respect to the construction of the food truck and the operation of Santapan may affect the value of the business if there is any merit to those claims.
- [178] Mr. Maze has an outstanding counterclaim in the Partnership Proceedings on a quantum meruit basis for \$25,000 based on the hours he says he spent helping to build, and then work at, the commissary kitchen and in the food truck. He values his time on the basis of his hourly wage as an electrician at the time.
- [179] Mr. Maze's evidence is that Mr. Mitchell initially told him that he would either be paid for his time, or that he would earn an equity stake in Vancouver Food Trucks, and he had been expecting to share the equity in the business with Mr. Mitchell and Ms. Wahyuni. He agrees that nothing was ever formalized regarding his interest, and that his involvement with Vancouver Food Trucks ceased in August 2020 after his falling out with Ms. Wahyuni when she recanted her claims of abuse. Mr. Maze's claim is therefore only in quantum meruit against this asset.
- [180] Mr. Kugler's outstanding action is also essentially in quantum meruit, though he claims close to \$75,000 based on over 100 days of work. Mr. Kugler is an experienced electrician who specialized in the electrical systems of food trucks in 2019 with his work partner, Mr. Bell.
- [181] Mr. Kugler's evidence was that he had joined Mr. Mitchell and Mr. Bell in the design of the food truck in 2019, with the goal of making a unique and one-of-a-kind food truck that could meet the needs of multiple food truck users, including managing the power needs of a commercial espresso machine, and other cookers, and multiple power sources including a generator, shore power, and solar power. The goal was to create a food truck "showpiece" that could then be marketed widely and manufactured through Mr. Mitchell's factories in China.

- [182] When Mr. Mitchell consulted Mr. Kugler about designing an electrical system to these specifics, he told Mr. Mitchell that his rate was \$85/hour, but Mr. Mitchell said not to worry about that because Mr. Kugler would be compensated with a share of the food truck company commensurate with the value he contributed. Mr. Bell was promised the same.
- [183] Mr. Kugler testified to the hours of expertise and work that he put into the design and construction of the food truck. He said that he and Mr. Bell did most of the labour on the food truck, with Mr. Bell doing the lion's share as the metal fabricator. Mr. Mitchell paid for most of the expenses and appliances, but not all of them. At some point, Mr. Bell's metal shop was repossessed, and Mr. Mitchell got the food truck out of the shop in time to prevent it being included in that repossession. Instead, it was parked at Mr. Kugler's home, where he continued to work on the electrical system until it passed inspection in the spring of 2020.
- [184] Shortly thereafter, Mr. Kugler testified that Mr. Mitchell brought his "roommate" Ms. Wahyuni, to clean the food truck, and then he drove it away. Mr. Kugler learned that the food truck was being used by Ms. Wahyuni for Santapan. When he tracked it down, Ms. Wahyuni directed Mr. Kugler to deal only with Mr. Mitchell. Mr. Mitchell began hiring him to fix leaks and do other work on the food truck when the need arose. Mr. Kugler continued to do work on the food truck when it was leased to a high-end hotel in downtown Vancouver starting in April 2021 (the "Hotel"), and I find Mr. Mitchell paid him and billed the Hotel a premium for that work.
- [185] In January 2022, Mr. Kugler asked Mr. Mitchell what his share of the value of the food truck was based on his contributions, now that the food truck was making some revenue. Mr. Mitchell responded that he had "closed the valuation" and that Mr. Kugler's time and efforts to date had earned him a "strategic partnership" that only gave him an opportunity to financially invest in the business. Mr. Mitchell told him that for a 30% share, he would need to put up \$150,000 because Mr. Mitchell had had a professional valuation done of the food truck at \$458,000 and \$545,000 for the business, and that he expected the value to grow by the hundreds of thousands because the Hotel wanted five more trucks.
- [186] Mr. Kugler asked for the valuation, and Mr. Mitchell told him that he would need to pay \$2,000 up front for his share of the business valuation. When Mr. Kugler agreed, Mr. Mitchell responded that Mr. Kugler could just give him the \$150,000 for his 1/3 share. Mr. Kugler said that he would try to raise this amount, but he was not able to. Later, he decided that this was not fair, and he decided to file a claim using the same lawyer Mr. Maze was using to defend against Mr. Mitchell's claims in the Partnership Proceedings. Only at that point did Mr. Kugler prepare an invoice based on his recorded unpaid time working on the food truck.

- [187] I found Mr. Kugler's evidence to be sincere, unguarded, and entirely credible, and I accept the evidence of his dealings with Mr. Mitchell. Mr. Kugler was not required to, nor would it have been appropriate for him to, attempt to prove his claims in this proceeding. The same is true of Mr. Maze's quantum meruit claim, the amount of which will have to be determined in the outstanding claims related to the food truck.
- [188] However, I am satisfied on the evidence that both Mr. Kugler and Mr. Maze have a foundation for their claim in quantum meruit against Mr. Mitchell in relation to their work on the food truck.
- [189] While Mr. Mitchell argues that these claims are so devoid of merit that I should not discount the value of the food truck on this basis in this family proceeding, I find that I cannot ignore the risk that a court will find that Mr. Mitchell owes money to either Mr. Kugler, Mr. Maze, or both, in relation to this family asset, arising from work done during the marriage.
- [190] As to the value of the food truck and its associated business, I find that there is no distinction between Vancouver Food Trucks and Santapan.
- [191] In this regard, I do not accept Mr. Mitchell's and Ms. Wahyuni's attempts to distance Santapan from Mr. Mitchell's sole proprietorship of Vancouver Food Trucks.
- [192] Starting in May 2020, Mr. Mitchell sent Ms. Wang (who was in China with the children) information and photos of the food truck and Santapan, indicating that he had started a new food truck and restaurant business and that it was making money. One earnings report he sent indicated that he had made over \$20,000 in sales that month. I find that Mr. Mitchell represented to Ms. Wang that Santapan was his business. He did not suggest that Santapan was not his business, or that it in fact belonged to Ms. Wahyuni.
- [193] In addition, the City of Vancouver issued a single vendor licence to Mr. Mitchell for both Vancouver Food Trucks and Santapan in July 2020. The evidence establishes that all of the income from Santapan went directly into the Vancouver Food Trucks bank account held in Mr. Mitchell's name. I also find that the expenses were paid out of this account, whether for groceries or labour. Furthermore, Mr. Mitchell was the one to drive the truck to Santapan's location and drive it back to the commissary kitchen every day. The fact that Ms. Wahyuni registered for the Square account (allowing for receipt of credit card payments) does not sufficiently distinguish her interest from Mr. Mitchell's, given that all of the funds from the Square account went into Mr. Mitchell's Vancouver Food Trucks bank account.
- [194] I make these findings because Ms. Wahyuni suggests that there is some residual value in Santapan that she claims for herself in her testimony. However, as far as I can tell, Santapan is no longer an active business, and even on Ms. Wahyuni's evidence, it ceased operations when the food truck was leased to the Hotel in April 2021.

- [195] The evidence establishes that Mr. Mitchell leased the food truck to the Hotel to provide an outdoor eating experience starting in April 2021, prior to separation. Mr. Mitchell was extremely pleased with this arrangement at the time, and continues to profit from it. Indeed, he says it is essentially his only source of income since separation.
- [196] I pause to note that Mr. Mitchell was not forthcoming about these arrangements. In his list of documents, where I required him before trial to list every document he might rely upon, he listed only the first lease from 2021, and only the first page of that lease. At trial, I ordered him to produce the full lease.
- [197] Although Mr. Mitchell had insisted that there was only one lease in his examination for discovery, even ridiculing Ms. Wang's counsel for asking if there were any further leases, it came to light during the trial that there were three more signed leases covering April 2022 to April 2024. Those were also ordered to be produced. Later, it came to light during the trial that Mr. Mitchell had recently signed another lease with the Hotel for the upcoming year. That lease was also produced pursuant to my order.
- [198] Starting in 2021, those leases provide for a monthly rental fee of \$4,000/month, together with hotel, restaurant, and spa credits of up to \$1,000/month, which may be accumulated and used over the course of the year. That rental rate remained at \$4,000/month from 2022 to 2023, and increased to \$4,500 in 2023-2024, with a credit for an additional \$1,600/month for in-kind services at preferred rates. In addition, I find that Mr. Mitchell has charged the Hotel for maintenance and servicing costs at a rate that includes an undisclosed profit to him.
- [199] The 2022, 2023, and 2024 leases also provide for 5% of the profits generated by the food truck sales to be paid to Mr. Mitchell. Although Mr. Mitchell says that there have been no declared profits, he has also not disclosed the information provided by the Hotel in this regard, nor has he disclosed the actual revenues he receives from these contracts, including the maintenance invoices. Nor has he disclosed the bank accounts for Vancouver Food Trucks beyond the date of separation where the revenues and expenses would be shown. I am inclined to draw an adverse inference from this lack of disclosure that Mr. Mitchell is receiving more than just the monthly rental income stated in these leases.
- [200] As Mr. Mitchell argues, the value of the income generated by the food truck should be properly considered as part of the business' value. Mr. Mitchell argues, however, that for the purposes of property division, this value should only be considered up to the date of separation.
- [201] Ms. Wang seeks her portion of Vancouver Food Trucks at its full value at the time of trial, including one-half of the rental revenues it has generated since separation.
- [202] Unfortunately, I have no expert evidence as to the valuation of the food truck, or of Vancouver Food Trucks as a sole proprietorship (complete with the benefit of a regular revenue stream).

- [203] Mr. Kugler testified that he thought the food truck would sell for \$350,000 if it were sold.
- [204] At the time he was working on it with Mr. Maze, I find Mr. Mitchell told Mr. Maze that he had invested approximately \$150,000 into the food truck. He told Ms. Wang that he had invested \$290,000, though Ms. Wang was not sure she believed him. I find that he told Mr. Kugler that he had had the food truck appraised at over \$450,000 and Vancouver Food Trucks as a business at over \$550,000 in 2022.
- [205] No such valuation was produced at trial, and Mr. Mitchell now says none was ever done. In his sworn financial statements in this proceeding dated April 2022 and February 2024, he listed the value of the food truck at \$9,000. Mr. Mitchell also declared a separate value for Vancouver Food Trucks as a business of \$95,787 in his 2022 financial statement, and \$65,000 in his February 2024 financial statement. I have no evidence as to how this was calculated, and this may just have been the funds in the Vancouver Food Trucks bank account at those times.
- [206] Mr. Mitchell's evidence was not entirely consistent on what he paid for the food truck, but I accept that he paid less than \$10,000 for the original 2001 truck. Mr. Mitchell testified to investing approximately \$100,000-\$150,000 in total for materials and appliances for the food truck, the upper amount of which accords with what he told Mr. Maze at the time. In addition, Mr. Bell provided his shop free of charge, and Mr. Bell and Mr. Kugler invested their time and expertise in transforming the truck into what I accept was a high-end food truck intended to be the design model for the future production of a series of food trucks that could be reconfigured for many purposes.
- [207] Mr. Mitchell has attributed a wide variety of values to the food truck. He has declared the value of the food truck at \$175,000 for the purposes of the insurance he holds for the food truck. In his evidence, he suggested that he regularly looks at rental and sales prices for second hand food trucks in the \$60,000 to \$80,000, but also suggested it could go much higher for something special.
- [208] In closing submissions, Mr. Mitchell responded to the suggestion that the food truck would be worth more by saying that the court could order Mr. Maze or Ms. Wang to sell it to determine its value. He would then want some time to buy another cheap older truck for \$7,000 and decorate it to maintain his income stream with the lease from the Hotel, who he says value his personal service more than the food truck itself.
- [209] In light of the highly contradictory evidence and in the absence of a proper appraisal, I find that the only appropriate way to determine the fair market value of the food truck is to order its sale. In my view there is support for the proposition that the food truck could sell for well above what Mr. Mitchell suggests, and I would therefor grant conduct of sale to Ms. Wang, who has a proprietary rather than just a quantum meruit claim to the value of this family asset. I will address the division of this asset, and the Vancouver Food Trucks business, further below.

D. Squadra Capital

- [210] Ms. Wang claims that Squadra Capital is family property, and she seeks division of Mr. Mitchell's interest in that property.
- [211] Mr. Maze resists this claim to the extent that he says that he was 50/50 partners with Mr. Mitchell, so that only 50% of the value is family property, and the rest belongs to him.
- [212] Mr. Mitchell says that he contributed more to Squadra Capital than Mr. Maze, and relies on an equity split that he proposed in November 2021 as the appropriate equity split, which would provide that he was entitled to 73.1% of the equity in the company, while Mr. Maze was only entitled to 23.4%. Mr. Mitchell would also have assigned the technical team just slightly over a 3% equity interest. Mr. Mitchell concedes that his interest in Squadra Capital is family property, though he seeks to reapportion its value entirely in his favour.
- [213] As noted above, Mr. Mitchell first met Mr. Maze at a coffee meeting between Mr. Mitchell, Mr. Maze, Ms. Wahyuni and others in fall 2019. I find that Mr. Mitchell and Mr. Maze hit it off, and very quickly began working on business ideas together. Mr. Maze was impressed with what Mr. Mitchell had accomplished in business despite being in his mid-thirties. I find that Mr. Mitchell told Mr. Maze that he had made hundreds of millions in Chinese manufacturing, owned Chinese factories that generated hundreds of thousands in income each month, that he owned the Porsche he drove and the Horseshoe Bay Condo, and that he had made a lot of money in currency trading. I find that none of these statements were true.
- [214] Mr. Maze was a qualified electrician, but he aspired to be a successful entrepreneur. He saw Mr. Mitchell as a mentor, and Mr. Mitchell saw Mr. Maze as a protégé with a strong work ethic and ambition to match his own.
- [215] By December 2019, Mr. Mitchell and Mr. Maze were meeting daily, either at Ms. Moir's home, where Mr. Maze lived, or at Ms. Wahyuni's home, where Mr. Mitchell lived. Ms. Wahyuni would often join them. They developed the plans for Squadra Capital, and Ms. Wahyuni designed their business cards. In the offering memorandum prepared for Squadra Capital, Mr. Mitchell is described as the Managing Director and Mr. Maze as the Chief Operating Officer. Squadra Capital was registered as a limited partnership in May 2020, with both Mr. Mitchell and Mr. Maze listed as general partners.
- [216] Around this time, Mr. Maze quit his job as an electrician to work on Squadra Capital full-time. He also began helping with Vancouver Food Trucks, Mr. Mitchell's other major project. I find that Mr. Maze and Mr. Mitchell worked long hours together, often 12-16 hours in a day, most days of the week.

- [217] Over time, Mr. Mitchell and Mr. Maze brought in over \$200,000 of investor money. Each takes credit for bringing in more than the other, but little turns on this for these purposes. Both invested less than \$2,000 of their own funds into the investment fund, and the business relied upon the raising of investments from others.
- [218] In 2021, Mr. Mitchell and Mr. Maze recruited a technical team to build a website and program to automate their accounting and to start to build out trading tools based on algorithms to monitor trends in the market designed to help Mr. Mitchell make trading decisions.
- [219] I find that this technical team developed software and websites around Mr. Maze's and Mr. Mitchell's trading strategies. They had done so without charge, on the promise that they would earn an equity stake in Squadra Capital. However, they had begun to push Mr. Mitchell and Mr. Maze to put something down in writing in this regard. Mr. Maze believed that he and Mr. Mitchell were equal partners in the business, but that the technical team should get a 30% share for their efforts, which would bring himself and Mr. Mitchell to closer to 35% each. Mr. Mitchell's proposal, circulated in November 2021, placed his equity at 73.1%, Mr. Maze at 23.4%, and the technical team at just over 3%.
- [220] I find that Mr. Maze considered this a betrayal of their partnership to date and deeply unfair to the technical team, and he told Mr. Mitchell that they needed to wind up the partnership.
- [221] Mr. Mitchell says that the partnership ended in late 2021 when he discovered that Mr. Maze had set up a competing business that was incompatible with his ongoing role as Chief Operating Officer of Squadra Capital, and that he therefore had to fire Mr. Maze.
- [222] At that time, Squadra Capital held approximately \$230,000, the bulk of which was investor's funds, in its Canadian Imperial Bank of Commerce (CIBC) account. Both Mr. Mitchell and Mr. Maze held signing authority over this account.
- [223] Mr. Maze then spoke to CIBC regarding the breakdown in the partnership. The result of Mr. Maze's communication with CIBC was a letter from CIBC to Squadra Capital, Mr. Mitchell, and Mr. Maze stating that, to deal with the business account, CIBC would need a current officer's resolution, together with a legal opinion that the resolution was properly passed, a court order, or both authorized signatories coming to the branch and giving joint written instructions, to deal with the account. Although Mr. Maze and Mr. Mitchell both said that they wished to return the investor's funds, they differed as to how to do this and were unable to agree upon joint written instructions or a corporate resolution to do so.
- [224] Eventually, on December 12, 2023, a few months before this trial, Justice Gomery made an order in the Partnership Proceedings on CIBC's motion that required CIBC to return the funds to the investors, including \$1,051.24 to Mr. Mitchell and \$1,049.35 to Mr. Maze.

- [225] On December 22, 2023, Mr. Mitchell appeared before a justice sitting in regular chambers on a without-notice ex parte basis and obtained a different form of order than the one issued by Justice Gomery. That ex parte order was then vacated on December 28, 2023. The order of Gomery J. was ultimately settled and entered on January 31, 2024, at which point I understand that the investors were paid out their investment funds.
- [226] After all the investors, as well as Mr. Maze and Mr. Mitchell were paid out, there was \$18,723 remaining in the account belonging to Squadra Capital. Much of this was interest earned on the investment funds since the account was frozen in 2021. With the consent of all parties in this proceeding, as well as CIBC, this remaining \$18,723 was paid into Mr. Maze's account holding the mortgage on the Smithe Street Condo, without prejudice as to its final redistribution. The Squadra Capital account was closed (the "Consent Order").
- [227] I will address Mr. Mitchell's allegation that Mr. Maze misled the Court as to this Consent Order to pay the Squadra Capital funds into the account holding the Smithe Street Condo mortgage below. I turn now to the determination of what portion of the Squadra Capital business is family property in this proceeding, and how to divide it.
- [228] I am satisfied that the Squadra Capital business currently has no value beyond what remained in that account, after the investor's funds had been returned in early 2024. The investors' funds never belonged to Squadra Capital. It appears that Squadra Capital did not generate any significant returns or income while it was active in 2020 and 2021. I find that the total value of this business is therefore the amount that was left in the Squadra Capital account upon its closing: \$18,723.
- [229] The evidence satisfies me that Squadra Capital was an equal partnership as between Mr. Mitchell and Mr. Maze. I therefore find Mr. Mitchell's share of these funds is \$9,361.50, together with the \$1,051.24 returned to him as his investment equity.
- [230] I conclude that \$10,412.74 of the Squadra Capital business is family property held by Mr. Mitchell. The other \$9,361.50 is not Mr. Mitchell's property or family property, and may properly remain in Mr. Maze's account.
- [231] I will address apportionment of this family property as between Mr. Mitchell and Ms. Wang below.

E. Smithe Street Condo

Parties' Positions

Mr. Mitchell's Position

- [232] Mr. Mitchell says that the Smithe Street Condo was purchased as an office for Squadra Capital by himself and Mr. Maze, and that Mr. Maze holds the legal title for this condo in trust for him in accordance with his proportionate share of the contributions he made for its purchase and ongoing maintenance and costs. He seeks orders vesting the Smithe Street Condo into his own name, and reapportioning the value of the property fully to himself.
- [233] To establish his beneficial interest in the Smithe Street Condo, Mr. Mitchell relies upon a proposal sent to his own legal counsel, and copied to Mr. Maze, on April 4, 2020 setting out what he says were the agreed upon trust terms pursuant to which the Smithe Street Condo was purchased (which I will refer to as the "April 4 Proposal"). Specifically, he says that the terms of the trust provided for Mr. Maze and himself to share the beneficial interest in the condo on a proportionate basis, based on their relative investments in the purchase of the condo. He says that Mr. Maze agreed to these terms by his acquiescence in completing the purchase of the Smithe Street Condo on April 6, 2020, and allowing him to live in the condo on the terms set out in the April 4 Proposal, up until December 2021.
- [234] Mr. Mitchell argues that the terms of the April 4 Proposal are the terms of the trust pursuant to which Mr. Maze holds the Smithe Street Condo, with some minor exceptions to the calculation of each parties' contributions and therefore proportionate share. First, he says that the April 4 Proposal states a slightly lower contribution on his part to the down payment on the Condo, and his proportionate share should be based on a slightly greater contribution by him to the downpayment and a slightly lower contribution by Mr. Maze. He also says that since he has made payments towards the mortgage and expenses of the Smithe Street Condo since March 2020, these payments would add to his proportionate share of his beneficial interest in the Condo, beyond what is stated in the April 4 Proposal.
- [235] In total, he says that he contributed \$121,150 towards the down payment and closing costs, and another approximately \$50,000 towards mortgages and expenses between June 2020 (when he moved in) and December 2021 (when he stopped contributing to the costs of ownership), while Mr. Maze has only contributed \$28,120 towards the down payment (he concedes that Mr. Maze has also contributed to the mortgage since he stopped paying in January 2022 but he has not accounted for that in his calculations). Mr. Mitchell argues that, overall, he is entitled to an 85% to 90% beneficial interest in the Smithe Street Condo based on his contributions to date relative to those of Mr. Maze.
- [236] Mr. Mitchell agrees that he has been living in the Smithe Street Condo since June 2020. He paid Mr. Maze the mortgage, strata, insurance, and property taxes up until December 2020 when their partnership broke down. He says that the partnership broke down at that time because Mr. Maze took the position that the Smithe Street Condo was not held pursuant to a trust, and instead took the position that it was Mr. Maze's (and his mother's) own property. At that time, Mr. Mitchell says that he had to remain in the Smithe Street Condo to secure his beneficial interest in it and to stop Mr. Maze from selling it. He also stopped paying

anything further towards the mortgage, strata, taxes, or insurance. Finally, Mr. Mitchell also started the Partnership Proceedings by filing a notice of civil claim against Mr. Maze (later adding Ms. Moir, Stephen Maze, and CIBC) and filed a certificate of pending litigation against the Smithe Street Condo.

- [237] Mr. Mitchell says that Mr. Maze's and Ms. Moir's expenditures to cover the mortgage payments, strata fees, insurance, and property taxes since January 2022 should be set off against the loss in value since 2022 when he could have sold the property for \$100,000 more than it is currently worth had Mr. Maze and Ms. Moir acknowledged his beneficial interest at that time. I note that the \$100,000 loss in value since 2022 is a rare point of agreement between Mr. Mitchell and Mr. Maze, who each seek this amount from the other.

Mr. Maze's Position

- [238] Mr. Maze says that he purchased the Smithe Street Condo for himself, albeit with help from his mother and Mr. Mitchell, and it has never been the subject of a trust agreement between himself and Mr. Mitchell. He says that Mr. Mitchell introduced himself in 2019 as a highly successful businessman with hundreds of millions in assets and factories in China, and that he wore expensive clothing and drove a Porsche Cayenne. He presented himself as mentor to Mr. Maze, when Mr. Maze was 23 years old and looking to become a successful businessman himself.
- [239] Mr. Maze says that the Smithe Street Condo was always intended to be his residence and an investment, not the Squadra Capital offices. Mr. Mitchell offered to loan him the money to bridge the down payment, without interest, to help him get into the real estate market, and as a gesture of confidence in Mr. Maze, and hinted that if their joint investment business was successful, Mr. Maze would never have to pay back the loan. He says that when Mr. Mitchell sent him the April 4 Proposal, which suggested that Mr. Mitchell's contribution to the down payment was in fact a proportionate investment and not a loan, this was the first he had understood Mr. Mitchell to be proposing this and was well after Mr. Maze had paid the non-refundable deposit on the Condo. Mr. Maze and his mother rejected the Proposal, and Mr. Mitchell agreed not to pursue it further.
- [240] Mr. Maze says that he did agree, however, that Mr. Mitchell could rent the Smithe Street Condo from him at a cost (mortgage, strata fees, taxes, insurance, etc.) until the Horseshoe Bay Condo was ready. He did this from the outset when they first started looking for condos for Mr. Maze to buy.
- [241] Mr. Maze says that since December 2021, Mr. Mitchell has continued to reside in the Smithe Street Condo without contributing to the mortgage, strata fees, taxes, insurance, or other costs. In order to maintain his own good credit rating and avoid foreclosure, Mr. Maze has continued to pay these costs, without the benefit of the use of the condo or rental income from the condo. Instead, he has had to live with his mother, Ms. Moir, who has had to help him cover the mortgage and other costs of the Smithe Street Condo using a line of credit

against her house.

- [242] Mr. Maze seeks an order that Mr. Mitchell be required to leave the Smithe Street Condo, and that he then be allowed to sell the Smithe Street Condo. He wishes to repay the loan, which he accepted at \$121,150, to Mr. Mitchell, after deducting the last 29 months of Mr. Mitchell's unpaid expense contributions for the mortgage, strata fees, and other fees of more than \$80,000. He argues that after his costs incurred in defending these proceedings, Mr. Mitchell will owe Mr. Maze more than the \$121,150 owed to Mr. Mitchell, and these amounts should be offset against this loan.
- [243] Mr. Maze also seeks damages against Mr. Mitchell for the loss of opportunity to sell the Smithe Street Condo in 2022, in roughly the same amount that Mr. Mitchell seeks against him for the same reasons. He says that now, after real estate commissions and other selling costs, the sale of the Condo would probably not recoup any more than what it was purchased for in 2020.

Ms. Wang's Position

- [244] Ms. Wang says that the \$115,000 down payment, and any other funds loaned to Mr. Maze by Mr. Mitchell to purchase the Smithe Street Condo, were provided by Ms. Li to fund the purchase of a family home for Ms. Wang, Mr. Mitchell, and the children. She argues that these funds constitute a family debt which she and Mr. Mitchell are both required to repay.
- [245] Ms. Wang originally claimed the Smithe Street Condo as family property on the basis that it had been purchased, using Ms. Li's funds, to be the family home. She believed Mr. Mitchell that Mr. Maze had agreed to be on title in name only and that she held the beneficial title.
- [246] However, after reviewing the disclosure in the file, Ms. Wang came to believe that Mr. Maze properly owned the Smithe Street Condo, subject to the repayment of the \$115,000-\$121,500 contributed by her mother as a loan. She therefore does not seek an order declaring the Smithe Street Condo to be family property, or the division of its equity. She seeks only the return of the down payment funds, which she says are owed by herself and Mr. Mitchell to Ms. Li.
- [247] Alternatively, if Mr. Mitchell is successful in establishing that the Smithe Street Condo is family property based on a trust agreement, she seeks division of Mr. Mitchell's equitable interest in the property.
- [248] In either event, Ms. Wang seeks the sale of the Smithe Street Condo and the division of this asset 60/40 in her favour.

Factual Findings

- [249] I will begin by setting out my factual findings regarding the purchase of the Smithe Street Condo, its use and its value, based on the trial evidence.

- [250] In late 2019 and early 2020, Mr. Mitchell and Ms. Wang were discussing the purchase of residential property in Vancouver while Ms. Wang was with the children in China. While Mr. Mitchell was initially advocating for residential properties in the \$3 million-dollar range, I find that by the end of December 2019, they were making enquiries about getting a mortgage for a property in the \$500,000-\$600,000 range.
- [251] I find that neither Mr. Mitchell nor Ms. Wang had any assets or regular income, and Ms. Wang's suggestion to a mortgage specialist that they could pay a \$100,000 down payment was based solely on what she thought she might be able to borrow from her mother, with whom she was living at the time. I find that there was no clear path, at that time, for them to obtain mortgage financing to purchase property.
- [252] On December 30, 2019, Mr. Mitchell mentioned a "friend" with an annual salary of \$80,000 and \$35,000 in savings, and good credit. I find that that "friend" was Mr. Maze, who Mr. Mitchell had met a few months prior.
- [253] That same day, Mr. Mitchell wrote to Ms. Wang that he had written a contract for Mr. Maze setting out three terms for Mr. Maze's involvement in the purchase, including that Mr. Mitchell would have to consent to any future sale of the property, that if they did not make all the payments on time that Mr. Maze would have the right to sell the property, return their capital, and "divide the asset accordingly," and that when Mr. Mitchell's immigration status was approved, "he must sell to us for the original purchase price with repayments deducted at any given time." The next day, he wrote Ms. Wang to say that Mr. Maze agreed to these terms.
- [254] When Ms. Wang asked for clarification of this agreement, Mr. Mitchell clarified by WeChat on December 31, 2019: "That money is all ours. It's like he assists by having his name used. He also gets benefit. To increase his credit level. He doesn't ask for a single penny. He just wants to cooperate with me."
- [255] However, I find that no such written contract existed, and that Mr. Maze did not agree to these terms at that time, or at all.
- [256] By the end of December 2019, I find that Mr. Mitchell had known Mr. Maze for approximately three to four months. I find that Mr. Mitchell presented himself throughout this time as an extraordinarily successful businessman with hundreds of thousands of dollars worth of assets in manufacturing in China.
- [257] I find that Mr. Mitchell has overstated the purpose of the Smithe Street Condo as an office for Squadra Capital, and that Mr. Maze has understated it. I find that the initial search for a condominium space was inspired by multiple factors, including that Mr. Maze had savings and was interested in buying a condominium for himself, Mr. Mitchell was looking for a place to live and said that he would rather pay rent to Mr. Maze than to a third party, and that Squadra Capital had no funds to rent a commercial office and they were looking for a condominium space that could also serve as an office space until Squadra began making

money.

[258] I find that as between Mr. Mitchell and Mr. Maze, the purposes of Mr. Maze purchasing a condominium in early 2020 were agreed as follows:

- a) The condominium could be listed as Squadra Capital's office and they could use the living room and den as office space until Squadra had the resources to lease a commercial office space;
- b) Mr. Maze would be able to invest in the real estate market in Vancouver;
- c) Mr. Mitchell would have a place to live while he waited for the Horseshoe Bay Condo to complete (expected to be later that year), after which Mr. Maze would move in; and
- d) Mr. Maze would hold the mortgage and title and be responsible for all the costs of ownership (including strata fees, insurance, and property taxes), but Mr. Mitchell would pay those costs of ownership to Mr. Maze for the months he lived in the Smithe Street Condo as a form of (or in lieu of) rent.

[259] I find that Mr. Mitchell told Mr. Maze that he would lend him the money to purchase a condominium for the above purposes. I accept Mr. Maze's and Ms. Moir's evidence that Mr. Mitchell told them that they should let him lend the money, because \$120,000 was insignificant to him, and that he was going to be Mr. Maze's business partner and mentor going forward, and he needed a place to stay until the Horseshoe Bay Condo closed later that year.

[260] I find that the understanding was that Mr. Maze would then move into the Smithe Street Condo. I also find that Mr. Mitchell frequently hinted that if Mr. Maze did well with Squadra Capital, he would not have to pay Mr. Mitchell back.

[261] Mr. Maze and Mr. Mitchell scoped out properties in downtown Vancouver in January and February 2020, and Mr. Maze made offers on a number of properties without success.

[262] On March 2, 2020, Mr. Maze made an offer to purchase the Smithe Street Condo for \$681,000, with a completion date of April 6, 2020 and a possession date of April 7, 2020. Total completion costs for the purchase were \$694,563.

[263] The offer to purchase the Smithe Street Condo was in Mr. Maze's name alone, and I find that Mr. Maze paid the \$34,000 non-refundable deposit to secure the offer upon acceptance. Mr. Maze's mother, Ms. Moir, later agreed to go on title to help her son obtain a better mortgage rate, and she is registered on title to the Smithe Street Condo with a 2% interest. Mr. Maze is on title for the remaining 98% interest.

[264] The initial mortgage was for \$544,800, with a monthly payment of just under \$2,000, taken automatically from Mr. Maze's personal account at CIBC. The mortgage was secured at a floating rate, and since mortgage rates have risen, the monthly payment is no longer sufficient to cover interest. As of March 31, 2024, during the trial, the principal outstanding

on the mortgage was \$526,037, and there was an outstanding interest accumulation of \$13,002. According to the Buyer Statement of Adjustments for the purchase, after Mr. Maze's deposit, and the receipt of the \$544,800 mortgage funds, an additional \$115,270 was required to close the purchase for a total cost of \$694,563 including all legal fees and disbursements, strata and property tax adjustments, etc. I find that the \$115,000 required to close the purchase of the Condo was paid for by Mr. Mitchell, from funds received from Ms. Li.

- [265] I find that Ms. Wang knew that Mr. Mitchell planned to place the Smithe Street Condo in Mr. Maze's name for mortgage purposes, but she believed that Mr. Maze would not be the owner, and that this discrepancy was being addressed through legal agreements providing that she was the legal and proper owner. On March 2, 2020, when Mr. Maze's offer was accepted, Ms. Wang warned Mr. Mitchell not to mention Mr. Maze's involvement when he called Ms. Li, because Ms. Li would not have agreed to this arrangement unless Ms. Wang's name was on title. I find that this warning was in the context of Mr. Mitchell getting ready to call Ms. Li to ask for the additional funds required for him to provide the \$115,000 bank draft to complete the sale.
- [266] Between late December 2019 and March 2020, I find that Mr. Mitchell lobbied Ms. Li directly, and through Ms. Wang, to fund the down payment for the purchase of a downtown condominium to provide the children with a good place to live.
- [267] The parties' joint bank account shows three transfers totalling just under \$116,000 CAD that I find were from Ms. Li between January 9, 2020 and March 5, 2020. The March 5, 2020 payment was made after an exchange of messages between Mr. Mitchell and Ms. Wang, where Mr. Mitchell states that he is nervous that he will not have the funds to complete the purchase on time, shortly after which Ms. Wang confirms that Ms. Li is providing an additional \$50,000.
- [268] I find that Ms. Li ultimately agreed to advance the required funds to Mr. Mitchell's and Ms. Wang's joint account to purchase a condominium, believing that the property would be in Ms. Wang's name, and that it would provide a good home for Ms. Wang and the children, who were living with her at that time.
- [269] I also find that Ms. Li required Ms. Wang to sign a promissory note for \$130,000 at that time, promising to return these funds in full if the sale did not complete, or if the Smithe Street Condo was ever sold. I find that Ms. Wang did sign that promissory note, and that Ms. Li, Ms. Wang, and Mr. Mitchell all understood that the funds advanced by Ms. Li were a loan. However, I find that this note was signed on February 14, 2020, before the bulk of Ms. Li's funds were advanced and before the final amount required was known. I find that, in fact, Ms. Li's contributions to the Smithe Street Condo purchase in the end were only \$115,000.

- [270] I accept Ms. Wang's evidence that Mr. Mitchell assured her that there was a written agreement in place drafted by a lawyer that would ensure that the Smithe Street Condo would legally be hers, although initially it might be in Mr. Maze's name because of his better credit rating. Mr. Mitchell made this assurance again on March 2, 2020, in a text exchange.
- [271] It was also about this time that Mr. Mitchell began corresponding with the legal counsel who was preparing the real estate transaction for the Smithe Street Condo, Ms. Magda Grala, about preparing a written agreement with respect to his investment in the Smithe Street Condo.
- [272] On March 3, 2020, Ms. Grala sent an email to Mr. Mitchell mentioning a couple of options, including that Mr. Maze could hold the title to the Smithe Street Condo in trust for both himself and Mr. Mitchell on a 50/50 basis, or that Mr. Mitchell could register a second mortgage to secure the loan for the down payment on the title. On March 5, 2020, Ms. Grala wrote to both Mr. Mitchell and Mr. Maze stating that "[t]o commence working on the co-ownership agreement," she would need certain information, including whether Ms. Moir would also be on title, and, if so, whether Ms. Moir would be liable for the mortgage, or whether she would be indemnified.
- [273] On March 12, 2020, Mr. Mitchell provided a bank draft to Mr. Maze (through Mr. Maze's brother's account) for \$115,000, which I find was then provided to Ms. Grala for the purchase of the Smithe Street Condo. I find that the funds were made payable to Mr. Maze's brother because the funds were coming from China, and the mortgage broker suggested that it go through a second bank account before being paid to the vendor to avoid the appearance that the purchaser was from China.
- [274] On April 1, 2020, Ms. Grala wrote to Mr. Mitchell and Mr. Maze to say that Mr. Mitchell would have to work with another lawyer named Joel to avoid a conflict of interest, and that Ms. Moir and Mr. Maze could have their own representation if they wished. I find that this email was in relation to the co-ownership agreement Mr. Mitchell had been emailing Ms. Grala about previously. I find that no co-ownership agreement existed at that point.
- [275] On April 4, 2020, Mr. Mitchell sent the April 4 Proposal to Mr. Maze. The Proposal was sent as an email to Mr. Maze forwarding correspondence that Mr. Mitchell had also sent to Joel, referencing a call between Mr. Mitchell and Joel, and stating that he and Mr. Maze would like to "enter an agreement to protect our interests" regarding the purchase of the Smithe Street Condo. It sets out that Mr. Maze would pay \$34,000 and Mr. Mitchell would pay \$115,000 towards the down payment on the Smithe Street Condo. It references the Buyer Statement of Adjustments in this regard.
- [276] Mr. Mitchell then goes on to ask Joel to provide a "legal document that contains the following" and goes on to list the following terms:

- Brandon Mitchell has agreed to service the debt by making all mortgage, insurance, strata payments, and any expense that arises from ownership of the property.
- Tom Maze and Jean Moir cannot sell the property without first receiving written consent from Brandon Mitchell within the first 4 years from purchase date.
- In the event Brandon Mitchell does not make good on payment Tom Maze and Jean Moir have the right to continue making payments (payments added to Tom Maze deposit balance) on his own or sell the property.
- Tom Maze and Brandon Mitchell will both benefit for positive change in market conditions in consideration of each parties contribution to the down payment on a percentage based ratio. IE: If the property value increases in value by 10%, both Tom Maze and Brandon Mitchell will receive 10% in gain of the property value at the time of sale minus closing costs. (Realtor fees, Marketing fees etc.) In the event of negative changing market conditions Brandon Mitchell assumes the risk of devaluation. IE: In the event of 10% loss of value in the property, Brandon Mitchell's share in the property will decrease but Tom Maze's share in the property will maintain at the contribution amount.
- At any time Brandon Mitchell can decide to sell the property within the first 4 years and dissolve the agreement as long as the sale of the property does not violate any conditions of mortgage that would adversely affect Tom Maze's and Jean Moir's credit.
- After the 4 year period Brandon Mitchell, Tom Maze and Jean Moir all have the right to sell the property at any time.
- In the event of death or serious injury resulting in incapacitation of either party, either party needs to buy out the other party immediately and transfer funds to the parties estate.

[Emphasis in the original.]

[277] Mr. Maze's response to this email from Mr. Mitchell was: "Lets bounce this back and forth between you my mom and I until we can get a good agreement in hand."

[278] However, when Ms. Moir saw the letter, I find that she was taken aback. She saw this as Mr. Mitchell significantly changing the terms upon which she had agreed to support Mr. Maze to purchase the Smithe Street Condo. She had no inkling of any discussions that the Smithe Street Condo would not legally and beneficially belong to herself and Mr. Maze. I accept Ms. Moir's evidence that she would not have co-signed a mortgage for Mr. Mitchell to purchase a property under those terms or any terms, she had co-signed only to help her son. She testified that she had heard Mr. Mitchell describe his contribution as an interest-free loan, to both herself and to Mr. Maze, and she had heard Mr. Mitchell hint that Mr. Maze might not even have to repay it. She had also believed Mr. Mitchell when he said that he was a very wealthy businessman with hundreds of thousands of dollars in assets in China, and that \$115,000 was nothing to him. Although she was perhaps more circumspect about Mr. Mitchell than her son, she accepted her son's decision to borrow the funds he needed from

Mr. Mitchell, and not from his father or his friend.

- [279] I found the testimony of Ms. Moir, who is an elementary school teacher, to be entirely credible, and generally reliable as to those matters of which she testified to having direct knowledge, and which she recalled with clarity. I find that Mr. Mitchell had told Mr. Maze in her presence that his contribution would be an interest-free loan to Mr. Maze to help him purchase the Smithe Street Condo (as well as to use it as an office for Squadra Capital). Mr. Mitchell's April 4, 2020 email to Mr. Maze came as a surprise to her, and was wholly inconsistent with the arrangement that she had understood when she had co-signed the mortgage and become co-owner of the Smithe Street Condo. I find that Ms. Moir would not have co-signed the mortgage to assist Mr. Mitchell, and that she only did so in the belief that she was helping her son to purchase the Smithe Street Condo.
- [280] I find that, after talking to his mother, Mr. Maze also realized that there were significant discrepancies between what he had understood he was agreeing to with Mr. Mitchell, and the April 4 Proposal sent to him and Joel. They discussed trying to pull out of the purchase of the Smithe Street Condo, but Mr. Maze had already made the non-refundable deposit of his entire savings.
- [281] I accept Mr. Maze's evidence that he told Mr. Mitchell these terms were not acceptable, in particular the sharing of equity and the restriction on his ability to sell. He suggested that they immediately sell the condo so that he could recover his deposit and pay Mr. Mitchell back his loan. I find that, after some heated discussion, Mr. Mitchell indicated that it really did not matter to him, and he would let this go. Mr. Maze offered to prepare a loan agreement, but Mr. Mitchell said that this would not be necessary.
- [282] I find that Ms. Moir and Mr. Maze accepted this resolution. I find that both believed that, because they had not agreed to the terms in the April 4 Proposal, they had not agreed to become trustees for Mr. Mitchell, and that they owned the legal title to the Smithe Street Condo outright (subject to a mortgage and an interest-free loan advanced by Mr. Mitchell).
- [283] Mr. Mitchell testified that, although Mr. Maze and Ms. Moir did not enter into an agreement on the terms in his April 4 Proposal, he was satisfied that, by allowing the sale to complete two days later, they had "acquiesced" to these terms, and that he was therefore in a legal position to enforce the trust obligations stated in that email. He did not consider it necessary to pursue the matter any further, at least so long as Mr. Maze did not do anything to "breach" those terms.
- [284] Soon after the possession date, while both Mr. Mitchell and Mr. Maze were painting and renovating the Smithe Street Condo, Mr. Maze knocked a sprinkler on the ceiling, causing a flood. The flood caused extensive damage, not only to the Condo unit, but to other units as well. Mr. Maze had to rely on the insurance he had purchased for the Smithe Street Condo, and a supplementary insurance package he had purchased to help cover the \$50,000 deductible. I find that he was still short approximately \$22,000, which he had to raise himself. Mr. Maze took full responsibility for this accident. Mr. Mitchell did not contribute

to these costs.

- [285] It took several months before the Smithe Street Condo was habitable. I find that some time in June 2020, Mr. Mitchell moved into the Smithe Street Condo with Ms. Wahyuni, and the three of them continued to work in this space. Mr. Mitchell paid Mr. Maze the costs of the mortgage, insurance, strata, and property taxes starting in June 2020. According to the evidence before me, he was sending Mr. Maze e-transfers in the range of \$2,300 to \$3,000 monthly to cover various costs.
- [286] As noted above, later that summer Mr. Maze became concerned about Mr. Mitchell's treatment of Ms. Wahyuni and wanted to get out of the partnership with Mr. Mitchell. I find that Mr. Maze and Ms. Moir retained a realtor at that point to sell the Smithe Street Condo. I accept Ms. Moir's evidence that Mr. Mitchell begged them not to sell the Condo at that point, but did not suggest that they would not be able to pursuant to the terms of a trust agreement. Ultimately, Mr. Maze decided to continue his partnership with Mr. Mitchell, and Mr. Mitchell continued to live in the Smithe Street Condo.
- [287] This continued until December 2021, when the Squadra Capital partnership permanently broke down.
- [288] Mr. Mitchell says that Mr. Maze then breached the terms of the trust over the Smithe Street Condo by asserting that it belonged to him and Ms. Moir, and that Mr. Mitchell's interest in it was only the \$121,150 that he had loaned to them. In submissions, Mr. Mitchell suggested this was akin to robbery of his property, and it is the reason he says he has refused to leave the Smithe Street Condo ever since.
- [289] Since then, I find that Mr. Mitchell has used the Smithe Street Condo for residential purposes, residing there with Ms. Wahyuni and the children. It has not been the Squadra office. Although Mr. Mitchell has suggested he might leave at various times, he never has, and he has resisted all efforts by Mr. Maze to make him leave or to allow him to sell the Condo, including in applications to this court and to the Residential Tenancy Board.
- [290] I find that, since Mr. Mitchell stopped paying the costs of ownership to Mr. Maze, Mr. Maze and Ms. Moir have paid over \$65,000 in mortgage payments, strata fees, and property taxes, and have incurred an outstanding additional debt of overdue interest of over \$13,000 to March 2024. Ongoing monthly mortgage, interest and strata costs currently exceed \$2500 per month, and with insurance and property taxes the costs of ownership of the Smithe Street Condo are in the range of \$3000/month.

Determination

- [291] The key issue with respect to the Smithe Street Condo in this family claim (as opposed to in the extant Partnership Proceedings) is whether Mr. Maze and Ms. Moir hold it in trust for Mr. Mitchell, on the terms Mr. Mitchell claims, or perhaps on other terms. If they are not trustees holding the property for Mr. Mitchell, then it is not family property.

- [292] I have reviewed above the elements of a trust that must be established for an express trust to be created, including the three certainties of intention, subject, and object. Mr. Mitchell relies on the trial decision in Bradshaw, where a resulting trust was found on the basis of oral agreements that one party would transfer a property to the other gratuitously to obtain bridge mortgage financing, while still keeping the beneficial interest in the property. That case turned on credibility findings of the parties involved.
- [293] Mr. Mitchell says that I do not need to rely on oral agreements or resulting trusts in this case, because the April 4 Proposal sets out the agreed terms of the trust in writing. He argues that he and Mr. Maze are the beneficiaries, while Mr. Maze is the trustee. He says that the terms of the trust are as set out in the April 4 Proposal document, except that the down payment proportions are wrongly stated (he says that Mr. Maze's contribution was actually \$28,120 rather than \$34,000 and his contribution was \$121,500) and that the April 4 Proposal should be further extrapolated upon to provide that his further contributions towards the Smithe Street Condo by way of mortgage and other payments should also add to his proportionate interest.
- [294] I find that, on its face, the April 4 Proposal is nothing more than a proposal. Furthermore, it is a different proposal than the one floated the previous month (which would have had Mr. Mitchell and Mr. Maze each with 50% beneficial interest), and it is different again from Mr. Mitchell's description of the extrapolated upon trust terms during the trial.
- [295] More importantly, I find that no agreement was reached on these terms, or any other trust terms, as between Mr. Mitchell, Mr. Maze, and Ms. Moir. Even on Mr. Mitchell's own evidence, he did not have confirmation of an agreement in this respect, but only a legal position he thought he could exploit in the future.
- [296] Mr. Mitchell has not proven the existence of an intention by the settlors (Mr. Mitchell identifies the settlors as himself and Mr. Maze) to split beneficial and legal title, or the acceptance of holding title on those terms by a trustee. Mr. Mitchell has identified Mr. Maze as the trustee, but had not addressed Ms. Moir's status as one of two legal owners of the Smithe Street Condo, and a party that contributed to the purchase through the pledging of her credit. Nor has Mr. Mitchell proven clarity or certainty on the terms of that trust as to the beneficial interests of the proposed beneficiaries.
- [297] There are other fundamental difficulties with respect to Mr. Mitchell's claim of trust, including that the funds had been advanced before the April 4 Proposal had even been made. I find that Mr. Maze had made his \$34,000 deposit on the Smithe Street Condo with no intention of settling a trust for Mr. Mitchell on or about March 2, 2020. Mr. Mitchell had also paid the \$115,000 towards the down payment weeks before that date. Furthermore, Ms. Moir had agreed to sign the mortgage documents and secure the mortgage for the Smithe Street Condo, without any indication that she was settling a trust or holding a trust for Mr. Mitchell. None of these transactions has the hallmarks of a trust, whether resulting, express, or otherwise.

- [298] Finally, even if Mr. Mitchell had proven the existence of that trust, which he has not, he has not complied with it since he has refused to pay the costs of ownership since January 2022, or to allow Mr. Maze and Ms. Moir to sell the property upon his failure to make those payments, or after the 4-year mark, which passed in April 2024 during this trial.
- [299] While not in breach of trust, I find that Mr. Mitchell has been in breach of the agreement he reached with Mr. Maze before the purchase of the Smithe Street Condo, and affirmed again after its purchase, that he would pay to Mr. Maze the ownership costs of the Smithe Street Condo while he lived there. I would also note that the payment of these ownership costs, which were done by Mr. Maze from April through June 2020, and again starting in January 2022, and by Mr Mitchell between June 2020 and December 2021, have not significantly decreased the mortgage debt or added to the equity of the Smithe Street Condo.
- [300] I find that Mr. Mitchell has not established that he has a beneficial interest in the Smithe Street Condo. I find that he has not proven anything more than that he loaned Mr. Maze and Ms. Moir \$115,000 towards the down payment of the Smithe Street Condo on an interest-free basis.
- [301] I reject Mr. Mitchell's evidence that he actually advanced \$121,150 because he relies solely on a non-contemporaneous document prepared by Ms. Wahyuni for this purpose, and no additional funds beyond deposit paid by Mr. Maze, the mortgage secured by Mr. Maze and Ms. Moir, and \$115,270 were required to close the purchase. Mr. Maze's \$34,000 payment of the deposit is supported by the evidence, including Mr. Mitchell's initial text messages to Ms. Wang, and the contemporaneous April 4 Proposal. The credit card receipt for legal services relied upon by Mr. Mitchell to support a contribution could not have been for closing costs as Mr. Mitchell claims, as the legal fees were included in the Buyer Statement of Adjustments and fully covered by the \$115,270 and \$34,000 contributions.
- [302] I find that Mr. Mitchell misled both Mr. Maze and Ms. Moir into believing that he was loaning Mr. Maze funds for a down payment as his wealthy mentor and coach, and only attempted to change these terms when Mr. Maze had already committed his savings to the deposit on the Smithe Street Condo.
- [303] Mr. Mitchell also misled Ms. Wang and Ms. Li into believing that he had secured a written agreement (as early as December 31, 2020) from Mr. Maze providing that Mr. Maze was prepared to hold the Smithe Street Condo in trust for Ms. Wang, and that Ms. Wang was the beneficial owner.
- [304] Therefore, the Smithe Street Condo is not trust property beneficially held by one of the spouses. Nor is it legally owned by one of the spouses. Therefore, it is not family property. This property belongs solely to Mr. Maze and Ms. Moir.

- [305] However, Mr. Maze acknowledges a debt to Mr. Mitchell for his loan, and I find that this loan has been made out on the evidence. Although Mr. Maze was prepared to accept Mr. Mitchell's assertion that the amount of the loan was \$121,500, I have found that the evidence does not support that amount. I find that the amount loaned to Mr. Maze for the purchase of the Smithe Street Condo was \$115,000 as shown on the bank draft forwarded by Mr. Mitchell to Mr. Maze's brother. I do not have any accounting for how the remaining \$270 was paid, but the evidence relied upon by Mr. Mitchell to support his assertion that he paid more than \$115,000 lacks both reliability and credibility, and I find Mr. Mitchell has not established any further contribution to the purchase price of the Smithe Street Condo.
- [306] I find that the \$115,000 owing to Mr. Mitchell is a family asset pursuant to s. 84(2)(c) of the FLA: see e.g. *Chemko v. Jenniss*, 2019 BCSC 1296 at para. 37; and *H.C.F. v D.T.F.*, 2017 BCSC 1226 at para. 86.

F. 2019 Porsche Cayenne

- [307] Mr. Mitchell claims the 2019 Porsche leased by Ms. Wang at the time of separation as family property, and he seeks division of its value and reapportionment for what he says was Ms. Wang's improvident trade-in of the Porsche in August 2021 after the separation. Mr. Mitchell also argues that Ms. Wang unlawfully and contemptuously "absconded and disposed" of this Porsche without his consent.
- [308] I find that the evidence establishes that the Porsche lease required payments of \$2,400/month, which had been paid for throughout the marriage primarily by Ms. Li. Upon separation, Mr. Mitchell lost access to Ms. Li's support for this expense, and called the Porsche "your vehicle" when he texted Ms. Wang to take it away shortly after separation.
- [309] I find that at the time of separation, Mr. Mitchell and Ms. Wang still owed more than \$72,000 on the lease, which was a family debt. Ms. Wang did not wish to continue asking her mother for \$2,400/month to pay for the Porsche. I find that Ms. Wang brought the Porsche back to the dealer, who gave her credit for \$71,000 towards a new car. At Ms. Li's request, she traded the Porsche for a Mercedes Benz, which is the type of car Ms. Li is familiar with driving and prefers for when she is in Vancouver. Ms. Li provided Ms. Wang with an additional \$20,000 for the down payment on the lease of the Mercedes Benz, and the monthly leasing costs were slightly more modest at \$1,839/month.
- [310] I find on all the evidence that the Porsche was not an asset that either party paid for, nor one that they could continue to afford after separation. I find that the credit Ms. Wang received for trading in this vehicle was roughly equivalent to the debt the spouses owed with respect to the Porsche at the time of separation. The evidence before me at trial does not establish that Ms. Wang made an imprudent trade in this regard, or that she disposed of or absconded with a family asset.

[311] Overall, I find that Mr. Mitchell has not established any net equity held by Ms. Wang or himself with respect to the lease of the 2019 Porsche at the time of separation. Nor has he established that the Mercedes Benz is family property.

G. Other Property

BMW

[312] Mr. Mitchell claims that the BMW that Ms. Li bought in Shanghai in 2014, registered in Ms. Wang's name, and which Mr. Mitchell then drove for several months while he was in Shanghai, is family property. Ms. Li sold this car sometime after Mr. Mitchell and Ms. Wang left Shanghai in 2015. Ms. Li considered this to be her right, as she had paid for the vehicle, despite placing it in her daughter's name, and allowing Mr. Mitchell to earn money using it as an Uber driver.

[313] Given that the car was sold years before separation, it is not family property. I consider the fact that Ms. Li placed this car in Ms. Wang's name but continued to assert control and ownership over it to be entirely consistent with Ms. Li's pattern of conduct more generally. I find that Ms. Li did not intend to gift the BMW to Ms. Wang or Mr. Mitchell when she put it in Ms. Wang's name and let Mr. Mitchell drive it.

Diamond Ring and Watch

[314] Mr. Mitchell and Ms. Wang both say Ms. Wang's diamond ring and Mr. Mitchell's watch are family property.

[315] With respect to the watch, the evidence establishes that in October 2013, approximately 8 months after the marriage, Mr. Mitchell asked Ms. Li to purchase a \$10,000 USD watch for him. Ms. Li agreed. I find that this was a gift to Mr. Mitchell. Mr. Mitchell was still wearing that watch during the trial.

[316] With respect to the ring, Mr. Mitchell described it as a diamond ring he bought for Ms. Wang, but which he still has in his possession. Mr. Mitchell listed the value of this ring at \$35,000 on his financial statement, but he says that value was purely subjective. He called it a "stupid ring" and said that Ms. Wang could have it back. In her financial statement, Ms. Wang estimates that the value of the ring is \$10,000.

[317] According to the evidence, both of these items were gifts. Both remained in the possession of the spouses at the time of separation.

[318] I order that Mr. Mitchell return the diamond ring to Ms. Wang, and that he may keep the watch.

Family Debt

Promissory Notes

[319] Ms. Wang claims the following promissory notes made in favour of her mother as family debts:

- a) Approximately \$35,000 CAD related to amounts borrowed between 2013 and 2015. These include an initial promissory note signed by Mr. Mitchell in January 2013 for \$14,000 USD to pay off his credit card bills at the time and to purchase Mr. Mitchell a new iPhone. This promissory note was then added to in January 2015, increasing the amount owed to a total of \$30,000 USD with respect to the couple's travel and medical expenses in the United States in 2013, Mr. Mitchell's credit card expenses in 2013-2014, and ¥240,000 RMB spent by Ms. Wang, with the promise to pay these sums back to Ms. Li within a year by January 2016. These amounts were never paid back to Ms. Li. The note shows signatures by both Mr. Mitchell and Ms. Wang.
- b) A second promissory note signed by Ms. Wang in June 2016 for a total of \$15,580 CAD transferred by Ms. Li and used by the spouses to prove Mr. Mitchell had funds available in Canada for the purposes of his immigration. These funds were not paid back to Ms. Li.
- c) Two promissory notes totalling \$355,000 dated July 2017 and February 2019 in relation to funds I find Ms. Li transferred into the parties' joint account for the purchase of the Horseshoe Bay Condo. I find that Ms. Wang prepared and signed both promissory notes.
- d) A promissory note for \$130,000 signed by Ms. Wang while she was staying with Ms. Li in China in February 2020 in relation to the purchase of the Smithe Street Condo.

[320] Ms. Wang does not claim, nor can she, for the additional promissory notes she signed after separation in relation to funds her mother advanced to her to complete the Horseshoe Bay Condo sale, and for other expenses. In addition, Ms. Li agreed in her testimony that the extensive monthly living expenses and credit card bills that she paid on behalf of Mr. Mitchell and Ms. Wang throughout the marriage without requiring promissory notes were gifts to them, and not loans.

[321] Of the above promissory notes, I find that only the \$130,000 promissory note relates to a family debt, and that the proper amount of that debt is \$115,000.

[322] I find that the promissory notes from 2013-2015 are related to a time when Ms. Li still expected Mr. Mitchell and Ms. Wang to pay her rent, and to compensate her for covering their credit card bills. Since then, Ms. Li has not recovered any of the funds stated in the promissory notes, and has spent much more to support Mr. Mitchell and Ms. Wang during the marriage. I find that, realistically she did not expect to collect on these debts in 2021 at the time of separation. The same is true of the promissory note from 2016 for \$15,580 in relation to Mr. Mitchell's proof of assets for his immigration process.

[323] I have already addressed the promissory notes with respect to the Horseshoe Bay Condo. In my view, they were redundant assurances demanded by Ms. Li from Ms. Wang as further proof that Ms. Wang understood that the funds advanced were Ms. Li's. As I have found that Ms. Wang received those funds gratuitously, and understanding that these were for her

mother's purchase of the Horseshoe Bay Condo, and not for her own purposes, the promissory notes do not create any further legal obligation or debt owed by Mr. Mitchell or Ms. Wang.

- [324] I therefore need not consider the validity of these promissory notes. However, in the event that they are later found to be relevant, I find the evidence supports that Ms. Wang signed them when she says she did, and that Mr. Mitchell endorsed the earliest of these notes.
- [325] That leaves the promissory note of \$130,000 that was signed by Ms. Wang in February 2020 in relation to the funds advanced, and then contemplated to be advanced, by Ms. Li for the purchase of the Smithe Street Condo. I find that Mr. Mitchell was aware that this obligation was being created and consented to it. However, I find that Ms. Wang has only proven that Ms. Li transferred \$115,890 between January 2020 and March 2020 prior to the closing of the Smithe Street Condo for this purpose, and that only \$115,000 of this these transferred amounts were actually used to purchase the Smithe Street Condo. I find that the family debt is limited to the amount of Ms. Li's actual advances used for the Smithe Street Condo, and that this debt is owed by both Mr. Mitchell and Ms. Wang in equal measure.

Ms. Bojman's Loan

- [326] The evidence establishes that Ms. Bojman provided a \$50,000 cheque to Mr. Mitchell in March 2020. I find that these funds were advanced after Mr. Mitchell had paid the \$115,000 down payment towards the Smithe Street Condo. I reject Mr. Mitchell's argument that Ms. Bojman's funds were required for the Smithe Street Condo purchase, or put toward that purchase.
- [327] Rather, as Mr. Mitchell told Ms. Wang at the time, and later conceded in his closing submissions, this \$50,000 was an early loan or investment by Ms. Bojman in Mr. Mitchell's hedge fund company that was to become Squadra Capital. I find that Mr. Maze was unwilling to accept liability for these funds as a loan to Squadra Capital, and Squadra Capital was not yet registered to receive investment funds in any event. I find that Mr. Mitchell invested these funds in a trading account registered under Ms. Wahyuni's name with the intention of investing the funds, plus any profits he made from trading the funds, into Squadra Capital. I find that Mr. Mitchell then lost the bulk of these funds within a single day of trading when oil prices fell precipitously, leaving him with little to invest in Squadra Capital on his own behalf, or on behalf of Ms. Bojman.
- [328] It is apparent from Mr. Mitchell's evidence that Ms. Bojman has been very generous with Mr. Mitchell over the years. For example, she allowed him to keep the rental income from properties that he has assisted her in managing in Vancouver. Although Mr. Mitchell testified that Ms. Bojman has also been generous in not seeking any interest on her \$50,000, he argues that Ms. Bojman is still seeking to collect on the principal amount.

- [329] Mr. Mitchell provided a spreadsheet he created of amounts he says he repaid to Ms. Bojman prior to separation, and I understand him to claim the remaining approximately \$38,125 as family debt. The documentation and bank records relied upon by Mr. Mitchell to support his spreadsheet do not indicate on their face who these funds were paid to or their purpose.
- [330] I note that Ms. Bojman was originally listed as a witness for Mr. Mitchell, but was not called, and so I have no direct evidence of her intentions or the terms of her advance of \$50,000 to Mr. Mitchell. Nor do I have clear testimony from Mr. Mitchell as to her terms. No correspondence with Ms. Bojman was provided in evidence as to what her expectations were or are. Nor did Mr. Mitchell give evidence of any efforts he has made since June 2021 to repay Ms. Bojman. Given Mr. Mitchell's concession in closing submissions that these funds were related to his investment business at an early stage, and the evidence that his early investments were a near total loss, it is entirely likely that Ms. Bojman does not expect any return on her investment at this point. This concession also casts significant doubt on Mr. Mitchell's testimony in relation to the nature of this debt.
- [331] In all the circumstances and in the absence of reliable evidence on the purposes of the \$50,000 payment to Mr. Mitchell, the expectations of Ms. Bojman in relation to its investment or repayment, and how much has been actually repaid to Ms. Bojman before and after separation, I find that Mr. Mitchell has not proven that these funds constituted a debt owed by himself (or Squadra Capital) at the time of separation.

CRA Debt

- [332] Ms. Wang testified that she believes Mr. Mitchell applied for a CERB benefit while she was in China and that the CRA is now trying to collect these funds back from her. She testified that the CRA has indicated that it is prepared to await the conclusion of these proceedings to collect these funds. She says that she was living with her mother and the children in China at the time and did not apply for CERB herself. She believes that Mr. Mitchell must have done so using her CRA information, which he had full access to in Canada. Mr. Mitchell had no file with the CRA during the marriage. To support her allegations, she provides copies of the applications that were completed for a series of \$2,000 benefits in 2020. However, no correspondence from the CRA stating that a debt is owing by Ms. Wang in relation to these payments, on what basis, or in what amount was adduced in evidence. I would have expected there to be some documentary evidence of this demand by the CRA in the event that it was made.
- [333] I find that the evidence establishes that Mr. Mitchell likely did apply for CERB benefits under Ms. Wang's name during the marriage while Ms. Wang was in China in 2020. However, the evidence does not establish that the CRA has deemed those payments to have been improper, or that they were loans requiring repayment, that the CRA is now seeking to collect from Ms. Wang.

[334] For somewhat similar reasons to my findings with respect to the advance of funds by Ms. Bojman to Mr. Mitchell, I find that Ms. Wang has not established through sufficient evidence a family debt to the CRA in relation to these CERB payments.

Reapportionment

[335] Mr. Mitchell seeks a reapportionment of all the Canadian family property in his favour on the basis of his claims to the Chinese Companies and Chinese Properties. However, Mr. Mitchell has not made out his claim that either he or Ms. Wang owned those properties during the marriage, or that he is entitled to a reapportionment on the basis of an unjust enrichment.

[336] Ms. Wang seeks a reapportionment of the family assets 60/40 in her favour on the basis that Mr. Mitchell did not fully disclose all of his sources of income or wealth in these proceedings. She argues that I should make an adverse inference against him that he was hiding wealth and assets during the marriage, citing *Cunha v. Cunha*, 99 B.C.L.R. (2d) 93 at para. 15, 1994 CanLII 3195 (S.C.).

[337] I have found that the following assets are family property in this family case:

- a) Vancouver Food Trucks sole proprietorship, including the food truck itself, related bank accounts, and the regular revenue stream for that food truck;
- b) Mr. Mitchell's interest in Squadra Capital in the amount of \$10,412.74; and
- c) \$115,000 owed to Mr. Mitchell by Mr. Maze in relation to the Smithe Street Condo.

[338] Mr. Mitchell's evidence establishes that he opened three bank accounts with BMO in or about 2018 where he deposited revenues from the import/export business, including from Nutrifaster and Blade Buddy. Those accounts indicate more than \$300,000 of deposits that are largely unexplained (the Nutrifaster and Blade Buddy deposits are less than \$100,000 USD between them during this time). In his evidence, Mr. Mitchell was unable to account for where these funds came from or where they went, but he did testify that substantial amounts would have gone to Vancouver Food Trucks and other businesses he was involved in, and that when he closed the account in 2019, he paid the remaining \$36,000 or so into the joint account.

[339] Mr. Mitchell testified that he kept this account secret from Ms. Wang during the marriage because he wanted to protect himself in light of his view that the marriage was not stable at the time. I find that he was preparing for a potential divorce from Ms. Wang and did not want her to know about or have access to his income and assets.

[340] I also find that, throughout the trial, it became apparent that Mr. Mitchell had sources of revenue and wealth that had not been disclosed. This is the case with the post 2021 food truck leases, which he denied the existence of in discovery, and his lack of disclosure of the full revenues he receives in this regard. In closing submissions, he also mentioned another

bank account to explain where the import and export funds went before he opened the BMO accounts in 2018, though my understanding is that this was not an active account at the time of separation.

- [341] There are also indications that Mr. Mitchell has sources of wealth and income that have not been disclosed during this trial. For example, while swearing in his financial statement to an income of less than \$20,000 (after expenses) in most years since separation, based almost entirely on the rental of the food truck, he swears in his financial statement that he pays close to \$1,500/month in lease payments for his Tesla. In his testimony, he described how he loves to play golf, and because the children like to do what he does, he bought them each child-sized golf sets. Overall, I find that Mr. Mitchell's evidence with respect to his income is not commensurate with his lifestyle.
- [342] Having said that, I am not satisfied on a balance of probabilities that Mr. Mitchell had significant undisclosed assets at the time of separation that constitute significant unfairness requiring reapportionment of the family property. While he may have additional sources of income or financial assistance since separation, that is more appropriately considered in relation to post-separation support rather than property division.
- [343] I therefore direct that the above family property be divided 50/50 as between Ms. Wang and Mr. Mitchell.
- [344] The parties also owed \$115,000 to Ms. Li for her loan for the purchase of the Smithe Street Condo, and I find that is a family debt. Neither party has established a basis to depart from the presumptive equal division of debt under the FLA with respect to this debt.
- [345] I will address how this division will be done below when I review the orders I make in these proceedings.

PARENTING

- [346] Both Mr. Mitchell and Ms. Wang seek "primary custody" of the children. Neither sets out a clear parenting time regime for the children to see the other parent, though Ms. Wang suggests Mr. Mitchell could have 50% of all school breaks with the children. Both seek sole decision-making authority and sole parenting responsibilities under the FLA.
- [347] Mr. Mitchell argues that the children do not know who Ms. Wang is anymore, and Ms. Wahyuni has become their mother in every sense. He says that this is because Ms. Wang does not care enough about the children to make an effort to see them during her five hours-a-week court ordered parenting time, or to call them, even on their birthdays. He describes her as a neglectful and abusive wife and mother during the marriage, and an absent one since separation, who prioritizes materialism over parenting. He says that he was the primary parent during the marriage, and has been the sole parent (now with the support of Ms. Wahyuni) since separation.

[348] Ms. Wang acknowledges that she decided in March 2023 to cease exercising her interim five hours-a-week of parenting time, but she says that she did this because at that last exchange, Mr. Mitchell pushed her while she was 7 months pregnant, and the children were exposed to Mr. Mitchell's anger and violence which she considers harmful to them. She says that she made the sacrifice of seeing the children to spare them the harmful conflict they were experiencing each week during these exchanges, and instead sought primary care of the children through the courts. While she agrees that Mr. Mitchell was a good father to the children during the marriage, she says that she was the primary parent. She says that since separation, Mr. Mitchell has obstructed her parenting time with the children and alienated the children from her.

[349] Both parties allege that the other party chronically physically abused them. For her part, Ms. Wang concedes that she also participated in these physical fights in that she "fought back" physically. Mr. Mitchell says that he was the sole victim of Ms. Wang's persistent and unbearable physical and verbal abuse during the marriage, which culminated in her attack on him in June 2021 which led to the separation.

Legal Principles

[350] The best interests of the children are determinative of parenting, contact, and guardianship. The FLA sets out a non-exhaustive list of factors to be considered in this regard:

Best interests of child

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

(2) To determine what is in the best interests of a child, all of the child's needs and circumstances must be considered, including the following:

- (a) the child's health and emotional well-being;
- (b) the child's views, unless it would be inappropriate to consider them;
- (c) the nature and strength of the relationships between the child and significant persons in the child's life;
- (d) the history of the child's care;
- (e) the child's need for stability, given the child's age and stage of development;
- (f) the ability of each person who is a guardian or seeks guardianship of the child, or who has or seeks parental responsibilities, parenting time or contact with the child, to exercise his or her responsibilities;

- (g) the impact of any family violence on the child's safety, security or well-being, whether the family violence is directed toward the child or another family member;
 - (h) whether the actions of a person responsible for family violence indicate that the person may be impaired in his or her ability to care for the child and meet the child's needs;
 - (i) the appropriateness of an arrangement that would require the child's guardians to cooperate on issues affecting the child, including whether requiring cooperation would increase any risks to the safety, security or well-being of the child or other family members;
 - (j) any civil or criminal proceeding relevant to the child's safety, security or well-being.
- (4) In making an order under this Part, a court may consider a person's conduct only if it substantially affects a factor set out in subsection (2), and only to the extent that it affects that factor.

[351] With respect to parenting arrangements and responsibilities, s. 40 of the FLA provides that:

Parenting arrangements

40 (1) Only a guardian may have parental responsibilities and parenting time with respect to a child.

- (2) Unless an agreement or order allocates parental responsibilities differently, each child's guardian may exercise all parental responsibilities with respect to the child in consultation with the child's other guardians, unless consultation would be unreasonable or inappropriate in the circumstances.
- (3) Parental responsibilities may be allocated under an agreement or order such that they may be exercised by
 - (a) one or more guardians only, or
 - (b) each guardian acting separately or all guardians acting together.
- (4) In the making of parenting arrangements, no particular arrangement is presumed to be in the best interests of the child and without limiting that, the following must not be presumed:
 - (a) that parental responsibilities should be allocated equally among guardians;
 - (b) that parenting time should be shared equally among guardians;
 - (c) that decisions among guardians should be made separately or together.

- [352] All of these factors have some role to play in my determination of the appropriate parenting regime in the best interests of the parties' children. Many of these factors intersect and overlap, and I have considered them all to the extent possible on the evidence. I note that there is no expert evidence as to the parties' capacity to parent the children, or any direct indication of the children's views in this regard. The children are still young.
- [353] For the purposes of structuring these reasons, I will focus on five factors of particular relevance in this case: 1) any criminal proceedings relevant to the children's safety; 2) the history of the care of the children; 3) the impact of family violence on the children; 4) the ability of each parent to meet the needs of the children; and 5) the ability of the parents to cooperate on issues affecting the children.
- [354] Much of the evidence of Mr. Mitchell and Ms. Wang on the above points conflicts. I have considered all of the evidence, including the weight to be given to the various sources of evidence before me, which includes the testimony of Mr. Mitchell, Ms. Wang, their family members, and others who observed them with or without the children during the marriage. The evidence also includes some police documents, emails, and text messages between the parties, and reports by supervisors and family law counsellors who were not called to testify by either party, but upon which the parties nevertheless rely. I have reviewed these latter reports, and have given them weight in accordance with their reliability and necessity in this case.

Criminal Proceedings Pertaining to the Children's Safety

- [355] There are no outstanding criminal proceedings pertaining to the children's safety. Although Ms. Wang was arrested on June 2, 2021 on charges of assault, assault with a weapon, and forcible confinement in relation to Mr. Mitchell, I find that the charges that were then laid were stayed shortly thereafter.
- [356] Ms. Wang was then subject to a "recognizance after allegation" on an allegation of causing fear of injury to a person. That recognizance started in November 2021 and continued in place for a year. That recognizance restricted Ms. Wang's ability to communicate with Mr. Mitchell except pursuant to a court order, or in the presence of a lawyer, counsellor, or family justice counsellor.
- [357] In 2022, Ms. Wang also obtained a protection order against Mr. Mitchell, restricting his proximity to her.
- [358] None of these were in place at the time of the trial.

History of the Care of the Children

- [359] Both Mr. Mitchell and Ms. Wang allege that they were the primary caregiver to the children prior to separation. I shall therefore begin by setting out my factual findings in this respect.

- [360] I find that Ms. Wang was primarily responsible for the care of the children during the marriage.
- [361] I find that after S was born in May 2016 and through to H's birth in March 2019, Mr. Mitchell was dedicating his time to his entrepreneurial efforts, including the Nutrifaster account, Blade Buddy, and Vancouver Food Trucks. He was also managing properties for Ms. Bojman.
- [362] The parties did not have paid childcare during this time, and I find that Ms. Wang was primarily responsible for S's daily routines, meals, and care.
- [363] Mr. Mitchell would take S on outings to the park, and changed diapers. He was also the primary caregiver to S when Ms. Wang spent several weeks in China in 2017.
- [364] After H was born in 2019, Ms. Li and Ms. Liu assisted the parties to care for H for a month or so. After that, I find that Ms. Wang was again primarily responsible for the care of both children.
- [365] When H was approximately 7 months old, and S was three, H and S travelled to China with Ms. Wang where they lived with Ms. Wang and Ms. Li. I find that Ms. Li helped with the care of both children, and that they also likely had some hired help (though Ms. Li says that this was primarily to help with cleaning the home). Nevertheless, it is clear that Ms. Wang was primarily responsible for both children for the next 14 months before returning to Vancouver at the end of December 2020, when the children were 4 ½ years old and close to 2 years old.
- [366] During the first half of 2021, Mr. Maze testified that he got to know the children, as he was frequently at the Smithe Street Condo working with Mr. Mitchell on Squadra Capital. He testified that he and Mr. Mitchell worked long days on Squadra Capital, and Ms. Wang did most of the parenting and childcare during this time. I accept this evidence.
- [367] Upon separation, Mr. Maze testified that Ms. Wahyuni moved in to the Smithe Street Condo soon thereafter, and was referred to by Mr. Mitchell in front of the children as the "nanny." I accept his evidence that Ms. Wahyuni then took on the majority of the childcare responsibilities. Two months after separation, S started Kindergarten, and at some point H was enrolled in the daycare where he is still enrolled.
- [368] Since separation, Mr. Mitchell has had almost exclusive custody of the children, with Ms. Wang only having a few hours of parenting time a week, if that. Since March 2023, Ms. Wang has not exercised any parenting time with the children.

- [369] I conclude that Ms. Wang had primary care of the children during the marriage, and exclusive care of the children for 14 months between October 2019 and December 2020. Given their young ages at the time, this was a significant portion of the children's lives. While Mr. Mitchell likely missed the children during this time, I have accepted Ms. Wang's evidence that he was not strongly urging Ms. Wang to return with the children during this time, most of which time he was living with Ms. Wahyuni.
- [370] Since separation, I find that Mr. Mitchell has had primary care of the children.
- [371] I will note that Ms. Wang brought various applications for more robust parenting time since separation, and particularly since the family counselling sessions ended in early 2022. These applications have been opposed by Mr. Mitchell. On August 8, 2022, Ms. Wang was awarded stepped-up parenting time by interim order of Associate Judge Muir. This involved four shorter weekly visits with a supervisor before moving to 5-hour visits on Sundays for four weeks, and a further application and order for parenting time contemplated after that. On March 27, 2023, Ms. Wang brought an application for primary custody of the children, but that application was not heard before trial.
- [372] Mr. Mitchell says that Ms. Wang abrogated her parenting responsibilities by not pursuing or maintaining her court awarded parenting time, and harmed the children in doing so. Ms. Wang says that Mr. Mitchell obstructed her parenting time with the children at every turn, exposed the children to family violence at their exchanges, and alienated the children. I will address these issues below in relation to each parent's ability to parent the children.
- [373] I turn first, however, to the allegations of family violence in this case. I will address first the conflicting evidence with respect to spousal violence in the relationship, before turning to allegations of physical discipline of the children, and then to the incident giving rise to the separation.

Family Violence

- [374] The FLA defines "family violence" as follows:

"family violence" includes, with or without an intent to harm a family member,

- (a) physical abuse of a family member, including forced confinement or deprivation of the necessities of life, but not including the use of reasonable force to protect oneself or others from harm,
- (b) sexual abuse of a family member,
- (c) attempts to physically or sexually abuse a family member,
- (d) psychological or emotional abuse of a family member, including

- (i) intimidation, harassment, coercion or threats, including threats respecting other persons, pets or property,
- (ii) unreasonable restrictions on, or prevention of, a family member's financial or personal autonomy,
- (iii) stalking or following of the family member, and
- (iv) intentional damage to property, and
- (e) in the case of a child, direct or indirect exposure to family violence;

[375] Section 38 of the FLA sets out required considerations in assessing the best interests of the children in relation to family violence:

Assessing family violence

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

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

[376] The broad and inclusive language of these family violence provisions recognizes that harm to children may extend beyond physical violence: *Morgadinho v. Morgadinho*, 2014 BCSC 192 at para. 59. Furthermore, a single act of family violence may suffice to conclude a likelihood of it recurring in the future: *Dawson v. Dawson*, 2014 BCSC 44 at para. 44.

[377] Family violence need not be directed at a child to harm that child. In the recent decision of *Barendregt v. Grebliunas*, 2022 SCC 22, the Supreme Court of Canada provided further guidance regarding the scope of family violence as it relates to parenting determinations:

- [143] The suggestion that domestic abuse or family violence has no impact on the children and has nothing to do with the perpetrator's parenting ability is untenable. Research indicates that children who are exposed to family violence are at risk of emotional and behavioural problems throughout their lives: Department of Justice, Risk Factors for Children in Situations of Family Violence in the Context of Separation and Divorce (February 2014), at p. 12. Harm can result from direct or indirect exposure to domestic conflicts, for example, by observing the incident, experiencing its aftermath, or hearing about it: S. Artz et al., "A Comprehensive Review of the Literature on the Impact of Exposure to Intimate Partner Violence for Children and Youth" (2014), 5 I.J.C.Y.F.S. 493, at p. 497.
- [378] In some cases, a pattern of coercive and controlling behaviour is sufficient to find that family violence occurred and to consider its impact on the safety and well-being of the children involved: see *R.C.T. v. A.K.T.*, 2023 BCSC 654 at para. 176.
- [379] Both parties say that they were subject to physical and emotional abuse by the other party. Family violence between spouses after the birth of a child is relevant to the children's best interests. Even before the birth of the children, a pattern of family violence established by the evidence may have evidentiary relevance to asserted patterns of control or violence after the birth of the children.
- [380] Ms. Wang testified that her first physical altercation with Mr. Mitchell was shortly after their marriage in February 2013, when Mr. Mitchell claimed half of the wedding money gifted to her by her family for himself and put it into his own account. She says that on that occasion, Mr. Mitchell grabbed her hair and knocked her head against the wall.
- [381] She testified that similar physical altercations occurred throughout the marriage, and that in 2015, after Mr. Mitchell's beating left her bruised all over, she decided to apply for a divorce. At this point where the parties separated for a few months, with Mr. Mitchell returning to the United States, only to reconcile upon Ms. Wang discovering her pregnancy.
- [382] Ms. Wang testified that she and Mr. Mitchell "quarrelled" frequently throughout the marriage, which included physical altercations, and that Mr. Mitchell would grab her hair and hurt her. She testified that she was under considerable cultural pressure to stay in the marriage, particularly once S was born. She recognizes now that it was harmful to the children to be exposed to the violence between herself and Mr. Mitchell, and she wishes to protect the children from any further such conflict.
- [383] Ms. Wang also relies on the evidence of Ms. Li, who testified that Mr. Mitchell would beat Ms. Wang, which Ms. Li says she disapproved of. Ms. Wang also relies on the observation of Ms. Liu who testified that in the month or so after H was born, while Ms. Liu was in Canada to help care for Ms. Wang and H, Ms. Wang and Mr. Mitchell got into a physical fight while Ms. Wang was holding H. Ms. Liu testified that Mr. Mitchell hit Ms. Wang while Ms. Wang was holding H, at which point Ms. Liu took H out of Ms. Wang's arms. Ms. Wang also described this incident in her testimony.

- [384] Mr. Mitchell, testified that he was the sole victim of physical and verbal abuse throughout the marriage. While he did not specifically address or deny any of the incidents of physical violence described by Ms. Wang in her evidence, he testified that he was always the passive one in their altercations and that he accepted Ms. Wang's constant abuse without responding in kind. He testified that Ms. Wang's verbal abuse began early in the marriage and escalated to physical after they moved to Canada (with one exception). Ms. Wang's physical abuse mounted in 2018, when he started taking videos of Ms. Wang physically abusing him.
- [385] Mr. Mitchell denied engaging in any physical altercations himself, saying that he always attempted to calmly reason with Ms. Wang, attempting to withdraw when Ms. Wang became physically abusive. Only once, he says, did he smash a vase that was very precious to Ms. Li and Ms. Wang in Shanghai, which upset them greatly, and for which he was beaten further even as he tried to apologize.
- [386] Mr. Mitchell also described himself as the victim of the financial control and abuse of Ms. Wang and Ms. Li throughout the marriage.
- [387] In support of his allegations of abuse, Mr. Mitchell tendered three videos that he took of Ms. Wang during the marriage. I find that, although Ms. Wang knew that Mr. Mitchell would frequently hold up his phone and point it at her while they were fighting, she did not understand that he was making videos of her, and she did not appreciate what he was doing at the time.
- [388] Because these were surreptitious videos, I considered whether they could be admitted into evidence at all. In *C.C. v. S.P.R.*, 2022 BCSC 1057, Justice Gibb-Carsley warned about the dangers of admitting such evidence:
- [40] The practice of secretly recording a party for use in a family law proceeding should be discouraged. The practice is odious because it erodes trust and potential future cooperation between the parties and runs contrary to the fundamental objectives of family law, especially that of reducing conflict between the parties and maintaining and encouraging family relationships.
- [41] Further, even if a surreptitious recording is admitted, courts often give it little weight because the recordings are selective and inherently self-serving in favour of the person making the recording. Likely, the recordings lacks context regarding what happened before or after the recorded "snippet". For example, could the other party have been provoked unreasonably immediately before the recording was made? Was there a subsequent discussion that clarified what was expressed on the recording that was not recorded? Did the recording party say something equally problematic to what is recorded that was either deleted or not recorded? In my view, these examples demonstrate some of the pitfalls placing too great a weight on secretly-made recordings.

[389] Before ruling on the admissibility of these recordings, I required that they be played to Ms. Wang in cross-examination so that she could respond to their contents, and so that the official court translator could interpret them. Ultimately Ms. Wang did not object to their admissibility.

[390] These videos were central to Mr. Mitchell's claims of abuse by Ms. Wang, and that this abuse occurred in front of the children. I make the following findings regarding what those videos showed, and their context, based on all the evidence before me:

a) Video dated December 22, 2018

[391] Mr. Mitchell described this as a video of him escaping the spouse's Alberni Street condo on December 22, 2018 because Ms. Wang was being abusive and he wanted to take his laptop and work at a coffee shop. He described kicking down a barricade Ms. Wang had erected to keep him in the apartment while she went to the bathroom, and then her running down the hall and "pummeling" him with a "heavy object" while he tried to get the elevator doors to close, like in a "horror movie".

[392] I note that no part of this scenario was put to Ms. Wang when Mr. Mitchell put this video to her in cross-examination.

[393] Ms. Wang's evidence regarding what precipitated this video was that she was 7 months pregnant at the time, and Mr. Mitchell was regularly going out and leaving her to take care of S and the house herself. He was also "beating" her regularly. She believes that he was going to see his mistress on this occasion, and had intentionally angered her before video-taping her.

[394] The 7-second video clip shows Ms. Wang holding a ceramic mug and flinging it toward the videographer (Mr. Mitchell) who grunts and says, in Chinese, words to the effect of "hitting someone with such a heavy hitting thing." Ms. Wang then runs away and the elevator doors start to close. Mr. Mitchell can then be seen in the reflection of the elevator holding up his phone to make the video and holding a black work bag. Mr. Mitchell's tone is calm as he makes the recording, and the phone does not rise, lower, wobble, or falter throughout. It is not possible to tell whether Ms. Wang actually hit Mr. Mitchell from the video, but it does sound like the mug made contact with Mr. Mitchell (or possibly his work bag). It is not possible to tell what occurred immediately preceding this clip, or whether it is a complete copy of the recording.

b) Video dated December 23, 2018

[395] Mr. Mitchell's evidence about the second video clip is that it was recorded the following day, December 23, 2018. He testified that he was playing on the couch with S next to him on the floor and they were playing together with S's toys. He testified that Ms. Wang started blaming him for things and then "started wailing on me with a metal object" causing him significant pain. He testified that the greatest pain was the look in S's face.

[396] Ms. Wang testified that, though she does not recall this specific day, during this period, she and Mr. Mitchell had many fights. Mr. Mitchell would often provoke her, call her foul names in Chinese, and then play with his phone. She testified that this was part of a pattern of Mr. Mitchell "cursing" and "beating" her. After watching the video played in court, she agreed that she had not controlled her feelings properly. She agreed that it was not healthy for S to grow up in this toxic and abusive conflict.

[397] The video itself is 33 seconds-long. Ms. Wang is standing several feet away from Mr. Mitchell, who is filming the video. He appears to be on a couch or chair. S is on the floor next to, and slightly behind, Ms. Wang. Ms. Wang is talking loudly in a complaining tone somewhere between yelling and crying and saying Chinese words to the effect of "you never take care of the family" and "you take care of the child in such a poor way."

[398] Mr. Mitchell then says, in a calm tone, "Look at the child here" presumably referencing S who is watching her mother and is shown in the video. Ms. Wang turns and picks up an umbrella and swings it toward Mr. Mitchell, and from the video, it looks and sounds like she makes contact with the couch or chair where Mr. Mitchell is sitting a number of times. At one point, Mr. Mitchell raises an arm, presumably to protect himself and makes a noise of pain or impact. It is possible, but not clear, that Ms. Wang has hit Mr. Mitchell with the umbrella. Ms. Wang swings the umbrella in the air again somewhat futilely. Mr. Mitchell, in a calm tone, says words to the effect of "Stop beating people" and "Don't hit me," to which Ms. Wang responds "Why should I not beat you" and accuses Mr. Mitchell of breaking the family, going out to "play" every day, and not taking care of S.

[399] Ms. Wang is visibly pregnant. S is not close to Mr. Mitchell, and there is no interaction between Mr. Mitchell and S shown in this video. S continues to look at her mother and say "mummy" throughout the video.

c) Video dated October 11, 2019

[400] Mr. Mitchell testified that this video was taken in the context of a discussion about his mother coming to visit. Ms. Wang then "totally lost it" and Mr. Mitchell retreated to the bedroom and made a recording. Ms. Wang started shouting and threw a "hard plastic object" at him and hit him in the bed.

[401] Ms. Wang says that she has no particular recollection of this exchange and that similar fights happened frequently, but that this video only shows a small part of what the fight would have involved. She says that she would not have acted this way without some provocation by Mr. Mitchell.

[402] In this 9-second video, a baby can be heard crying in the background, and S, a little older now, comes to the door of the room where Mr. Mitchell seems to be lying down while filming. S leaves, and Ms. Wang then comes to the door and throws something at Mr. Mitchell yelling, "What are you doing treating me like this" in Chinese. Ms. Wang is very upset, standing at the door of the room, yelling in a high-pitched voice. Ms. Wang

complains about how Mr. Mitchell's mother treats her, and Mr. Mitchell says something slightly angry-sounding in Chinese that the interpreter was unable to interpret, and Ms. Wang screams "Noooo" as she walks away from the bedroom door.

[403] It is apparent that this video shows only a small part of a broader altercation between the parties.

d) Video dated January 1, 2023

[404] Mr. Mitchell provided no evidence of his own regarding this video. In cross-examination of Ms. Wang, he put it to Ms. Wang that this was in January 2021, that H was present, and that she threw cutlery at him.

[405] Ms. Wang agrees that H was present at this time, though she says S was asleep. She testified that Mr. Mitchell was attempting to provoke her while making this video and making "bad gestures" at her. She also agreed that she had picked up a spoon in the video, and while not shown on this clip, she also threw the knife block into the garbage. She testified that she wanted to protect herself from Mr. Mitchell by throwing away the knives.

[406] This is a short video clip taken while Ms. Wang stands in front of a sink. The video largely consists of Ms. Wang complaining loudly about having to clean up all day, and that this is not what she wants to do every day. Mr. Mitchell, at the outset of the clip, is not visible, but I accept that he is holding his phone and taking the video. He states that he is sweeping the floor, and also says in a calm voice, "go take a rest." Then Ms. Wang starts pointing toward the camera and telling Mr. Mitchell to put away his cell phone. At one point, she picks up a spoon and throws it on the floor at her own feet. At one point, Mr. Mitchell says "don't hit." There is no indication that anyone is hitting him or anyone else.

Findings based on Surreptitious Video Recordings

[407] Surreptitious recordings are selective and inherently self-serving in favour of the person making the recording. Such recordings also likely lack context since they do not show what happened before or after the recording: C.C. at para. 41. I find that these dangers are all present in these recordings.

[408] I find that in all these videos, Mr. Mitchell is clearly cognizant that he is creating a record that will show him in what he thinks is the best possible light, while capturing Ms. Wang in a distressed and angry state. His calm statements such as "hitting someone with a heavy hitting object" and "don't hit," while holding up his phone and recording, are incongruent with the extremity of the trauma and injury he testified to be suffering in these videos. Rather, while capturing something that really happened, these videos have the tenor and hallmarks of a construction. In addition, I am not confident that Mr. Mitchell has included the complete version of these videos. In any event, all the videos suffer from the obvious deficiency of only capturing a small part of what is clearly a much larger argument between himself and Ms. Wang.

- [409] Mr. Mitchell's own conduct in making these videos during these altercations is not neutral or entirely passive. I find that in these particular videos, Mr. Mitchell is exercising a level of control over the situation through his act of filming Ms. Wang.
- [410] Overall, I find that these videos demonstrate that Ms. Wang would lose her temper with Mr. Mitchell and throw, swing, or fling things at him. Sometimes she would throw something (like cutlery) on the floor. If these videos are representative, as Mr. Mitchell suggests they are, Ms. Wang would generally also keep some distance between herself and Mr. Mitchell in doing so. These events were not uncommon, and sometimes the children would be present.
- [411] With respect to Mr. Mitchell's purpose in creating these videos, I find that he was doing so for the same reason he opened a secret bank account between 2018-2019: in anticipation of a separation and to use them against Ms. Wang in negotiations and court proceedings. Indeed, he used the existence of these videos soon after separation to threaten Ms. Li, stating in a text message to Ms. Li that "showing videos to the judge is doable it's just that the consequence on Wenchen will be pretty serious."
- [412] In creating these videos, I find that Mr. Mitchell participated in the staging of evidence that is designed to provide only a partial version of the truth. I find that these videos deliberately do not show the whole altercation, or Mr. Mitchell's own part in it, and artificially shows him as a passive participant even as he exercises a level of control inherent in the making of the videos.

Determination Regarding Family Violence During the Marriage

- [413] Having considered all the evidence before me regarding family violence during the course of the marriage, I accept Ms. Wang's evidence that there were frequent physical altercations between herself and Mr. Mitchell throughout the marriage from its outset. I find that both spouses would hit and hurt each other. I accept Ms. Wang's evidence that in some of these altercations, Mr. Mitchell grabbed her hair and knocked her head against the wall or floor. Once the children were born, they would have been present in the residence for at least some of these altercations.
- [414] In making this finding, I should note that I recognize the Court must be careful not to fall into stereotypical thinking about physical violence and abuse, and must consider each case on the evidence. In this case, there are many reasons that I find I must reject Mr. Mitchell's testimony regarding his entirely passive role in the frequent physical altercations during the marriage. These include his tendency towards exaggeration and embellishment with respect to his allegations of abuse, his aggressive and controlling behaviour in court, and his threatening and aggressive behaviour outside of court.
- [415] I will address each of these reasons briefly.

Mr. Mitchell's Embellishment and Exaggeration of His Abuse

- [416] Mr. Mitchell's testimony regarding Ms. Wang's physical abuse of him in direct examination was substantially different than anything he put to Ms. Wang in his cross-examination of her. While this affects the weight of this evidence, it does not preclude its admissibility. However, throughout Ms. Wang's case, Mr. Mitchell presaged much of his argument and evidence, and repeatedly confronted Ms. Wang with his version of events in his cross-examination of her. The emergence of new allegations for the first time in Mr. Mitchell's evidence is therefore notable.
- [417] In particular, I note that Mr. Mitchell's evidence regarding the context of the 2018 videos provided by Mr. Mitchell in his direct evidence, and not put to Ms. Wang when these videos were presented to her, were exaggerated well beyond what is supported by the videos themselves. The December 22, 2018 does not support Mr. Mitchell's evidence that he had just kicked down a barricade and was desperately trying to get the elevator doors to close as Ms. Wang pursued and assaulted him: instead, it appears as if he has been calmly waiting for Ms. Wang to appear at the still-open elevator door with his camera ready and already recording. Ms. Wang has run away from him by the time the elevator doors are closing.
- [418] Similarly, Mr. Mitchell significantly overstated his engagement with S and her proximity to Mr. Mitchell in the December 23, 2018. Far from being with Mr. Mitchell, S is sitting near and somewhat behind her mother. Mr. Mitchell does not engage with S at all, beyond pointing out during the video that S is present in the room for this altercation.
- [419] Mr. Mitchell also used the term "abuse" so loosely throughout the trial, that his allegations of "abuse" must be coloured by this. For example, he described himself as a victim of "abuse" throughout the trial, and would frequently stop the trial to complain that he was the victim of abuse in relation to various aspects of the proceedings, including Mr. Maze's presence in the courtroom, and other circumstances that fall well outside the ambit of family violence.
- [420] Twice, Mr. Mitchell stopped the trial to argue that Ms. Wang and Ms. Li were abusing him with their answers to his questions in cross-examination. He argued that this was the same kind of "abuse" he suffered throughout the marriage. In neither case were Ms. Wang or Ms. Li responding in a way that could be said to be abusive. While Ms. Wang and Ms. Li were evasive at times in their answers, it was Mr. Mitchell that I had to caution with respect to the tone of his cross-examinations.

Mr. Mitchell's Aggressive and Controlling Behaviour in Court

- [421] Mr. Mitchell's evidence that he would accept Ms. Wang's verbal and physical abuse calmly and without escalating or responding in kind throughout the marriage was inconsistent with his inability to regulate his temper in court in response to much lesser provocations.

- [422] At numerous times throughout the trial, when things were not proceeding as Mr. Mitchell wished, he would lose his temper. When asked to control himself in the courtroom, Mr. Mitchell would often say words to the effect that this was not possible, that the Court was asking him to try to be someone he was not, and that this was just who he was.
- [423] Over the seven weeks of trial, Mr. Mitchell demonstrated strongly controlling behaviours. He sought to control every aspect of the trial evidence--objecting almost constantly to the other parties' direct examinations or their interpretation by the official court interpreter, coughing loudly through parts of Ms. Wang's testimony when he was not objecting to it, glaring at other participants in the trial, interrupting the proceedings with commentary and argument (including when his own witnesses were in cross-examination), and purporting to rule on objections in place of the Court. The only time that the trial was able to proceed without his continuous interruption was when Mr. Mitchell was directing his own evidence.

Mr. Mitchell's Threatening and Aggressive Behaviour Outside of Court

- [424] Mr. Maze, Ms. Moir, Mr. Kugler, as well as Ms. Wang and Ms. Li, testified that Mr. Mitchell was prone to outbursts of rage in relation to small infractions, and provided several examples. I find that Vancouver Food Trucks was given a warning about their continued use of the commissary kitchen after Mr. Mitchell lost his temper with another user of the facility. I accept Mr. Maze's evidence that Mr. Mitchell would lose his temper with strangers, including a parking attendant.
- [425] Mr. Mitchell also threatened witnesses and parties in these proceedings.
- [426] On June 13, 2021, Mr. Mitchell sent messages to Ms. Li about showing videos in Court that he said would have serious consequences for Ms. Wang, seemingly in respect of restricting or removing her parenting time. He threatened litigation against Ms. Li in China for unlawfully employing him, and for having unapproved structures on her properties. He states that "[a]ll the evidence and bills and statements" are in his possession, and that Ms. Li had "[n]owhere to run".
- [427] A few weeks before the start of the trial, I find that Mr. Mitchell sent a text to Mr. Chen threatening to expose an alleged affair he claims Mr. Chen had with Ms. Li (who is nearly 70, and 20 years Mr. Chen's senior) if Mr. Chen testified. I note that he then repeated this allegation (having not put the allegation to Mr. Chen or Ms. Li) in his testimony. In his text to Mr. Chen, Mr. Mitchell suggested that Ms. Liu, Mr. Chen's wife, and their child would not want this to come out and that Mr. Chen should "think it over carefully before opening his mouth."

[428] Mr. Mitchell told Mr. Maze when they were unable to reach a resolution outside of court that he was going to make sure Mr. Maze's mother, Ms. Moir, lost her house. I find that Mr. Mitchell's actions have in fact compromised Ms. Moir's ability to keep her own house as a result of the mortgage guarantee she provided on the Smithe Street Condo, and Mr. Mitchell's refusal to leave the Condo or to contribute to its ownership costs.

Conclusion on Mr. Mitchell's Credibility on Family Violence

[429] On all the evidence, I do not find Mr. Mitchell's testimony credible that his response to Ms. Wang's verbal and physical abuse during the marriage was never to engage or reciprocate. This evidence is not reconcilable with the evidence before me in this trial or his behaviours before me in court.

[430] I also found that Mr. Mitchell's evidence on this issue, and other matters, to be riddled with misrepresentations, half-truths, and inconsistencies on material points, only some of which I have detailed in these reasons. He was impeached on his affidavit and discovery evidence on key points. He stated that the Court had ruled in his favour on issues where that had not occurred, and regularly complained to the Court about conduct by other parties that he himself had just engaged in. Ultimately, I found that I could not rely upon Mr. Mitchell's evidence on any contentious issues where there was credible evidence to the contrary.

[431] Even excluding the striking contrast between his testimony and conduct at trial, the evidence before me establishes that Mr. Mitchell was controlling and physically violent with Ms. Wang during the marriage. As such, I accept Ms. Wang's evidence on these points.

[432] I find that the children were exposed to family violence perpetrated by both Ms. Wang and Mr. Mitchell during the marriage.

Violence Against the Children

[433] In addition to exposure to family violence as between their parents, Mr. Mitchell alleges that Ms. Wang beat the children. He provides no direct observations of this in his evidence, but relies on WeChat messages sent by Ms. Wang to him during the 14 months that Ms. Wang had both children with her in China between October 2019 and December 2020.

[434] These allegations and texts were put to Ms. Wang. Ms. Wang agreed that she did slap the children on their hands to discipline them while in China. There was also an occasion where she agrees that she hit S "harder than usual." I do not accept Ms. Wang's evidence that this was also just a slap on S's hands--even a hard one. Even with possible translation issues around the wording of her text to Mr. Mitchell, I find that Ms. Wang is expressing remorse for what was likely something closer to a hard spanking.

- [435] In the discharge report prepared by Westcoast Family Centres in September 2021, relied upon by both parties, the author notes a concern that both parents use inappropriate physical discipline.
- [436] However, I find that both parents no longer use physical discipline, and that this is not an ongoing risk to the children based on the evidence before me.
- [437] Ms. Wang is now the mother of a one-year-old child with her new partner, Mr. Blouin. I accept his evidence as to her care and gentleness with her youngest son. Both Ms. Wang and Mr. Blouin demonstrated that they have understood and put into practice the lessons of the course they took on parenting after separation.
- [438] I find that the evidence as a whole, including the supervisor reports of Ms. Wang's interactions with the children since separation, indicate that Ms. Wang has made significant efforts to protect the children from further family violence since separation, including their exposure to the conflict between herself and Mr. Mitchell.

The June 2, 2021 Incident

- [439] I turn then to the altercation that precipitated the separation between the parties.
- [440] Mr. Mitchell testified that on June 2, 2021, Ms. Wang assaulted him "at knifepoint," threw knives at him in front of the children, and injured his neck. In cross-examination, he elaborated further: that Ms. Wang "beat the living hell" out of him, "slashed" his neck, and that this occurred for "several hours in front of the children." He denied that Ms. Wahyuni was his girlfriend at the time, saying that he and Ms. Wang were in counselling.
- [441] Ms. Wang testified that, after a difficult day where she had had a tooth extracted, Mr. Mitchell announced that he was going to go see his girlfriend. They started to argue. Mr. Mitchell hit her while they were in the kitchen and "grabbed" her head and "knocked it on the floor" making her mind "unclear". Ms. Wang admits to picking up a knife, but says that it was in self-defence and she did not intend to hurt Mr. Mitchell with it. She testified that Mr. Mitchell forced her into the bathroom, still holding the knife, but not wanting to fight. They exchanged more "ugly" words about Mr. Mitchell not loving her anymore and wanting to see his girlfriend. Mr. Mitchell left the apartment, but came back not long after. He said "let's separate," and Ms. Wang agreed.
- [442] After that, the police came to the house. Mr. Mitchell told Ms. Wang not to tell them anything, and to let him explain everything. She was taken out onto the porch by the police and asked what happened, but she said that she was tired and confused and asked to go to sleep. Less than an hour later, Mr. Mitchell was still talking to the police, and he told them to take her away. She was taken out of the condo by the police, which the children saw. Mr. Mitchell said "Thank you sir" as they left.

- [443] Ms. Wang was then taken to jail overnight, and only later came to understand that she had been accused of attacking Mr. Mitchell with a knife and trying to hurt him. She admitted to grabbing and holding the knife, but not to intending to hurt Mr. Mitchell with it. She denied using the knife against Mr. Mitchell, or causing the scratches to his neck. She testified that she believed Mr. Mitchell took a picture of his neck with scratches on it when he briefly left the apartment and before the police arrived.
- [444] Mr. Mitchell tendered photos showing his neck bruised and scratched, and the police records in evidence include Mr. Mitchell's allegation that Ms. Wang "tackled, punched, and scratched" him. There is no allegation in the police materials that Ms. Wang "slashed" Mr. Mitchell with a knife.
- [445] Unfortunately, for the reasons stated above, I believe Mr. Mitchell capable of making false reports and constructing evidence against Ms. Wang. I do not believe his evidence in relation to this altercation, and I find that any physical violence was most likely mutual.
- [446] I find that while Ms. Wang held up a knife to Mr. Mitchell that evening, she did so in the context of, and in response to, Mr. Mitchell's own physical violence towards her. I find that she did not intend to injure Mr. Mitchell, and did not do so. I find that Ms. Wang was arrested because Mr. Mitchell cautioned her not to speak to the police, and she did not explain her situation. I find that Mr. Mitchell did not disclose his own violence when speaking to the police, and overstated Ms. Wang's part in the altercation.
- [447] I find that this was the precipitating cause of Ms. Wang being removed from the children, and being restricted in her access to them for the last three years.

Ability to Parent: Disinterest vs. Alienation

- [448] The main argument advanced by Mr. Mitchell as to why he should be awarded primary custody of the children with no parenting time awarded to Ms. Wang is that Ms. Wang is not interested in seeing the children. He says that she was not an attentive parent during the marriage, and that after the separation, she has abandoned them by not following through with family counselling and not exercising her parenting time.
- [449] He says that the children have been harmed by her apparent disinterest and inconsistency, and they need to be protected from that in the future.
- [450] Ms. Wang says that she loves and cares deeply about the children and has tried to see them as much as Mr. Mitchell will allow her to, but that Mr. Mitchell has consistently obstructed her from being able to spend any meaningful time with them. She says that Mr. Mitchell has made each exchange for her parenting time a source of conflict, and that he engages the children in the conflict during his own parenting time. She says that after a particularly high conflict exchange in March 2023, where Mr. Mitchell pushed her, she decided that it was so harmful to the children to be exposed to this level of conflict between their parents, that she was prepared to forego parenting time to protect them from that. It is on this basis

that she seeks primary custody of the children for herself.

[451] I will begin by addressing Mr. Mitchell's allegations that Ms. Wang was a disinterested parent during the marriage, and then after separation.

[452] I will then turn to Ms. Wang's allegations that Mr. Mitchell is harming the children by engaging them in the conflict between their parents and alienating them from her.

Ms. Wang's Alleged Disinterest Pre-Separation

[453] Mr. Mitchell called a number of his family members to recount a time when the spouses were visiting his grandparents in California and they saw S playing by their grandparent's pool unattended. They all blamed Ms. Wang for her inattentiveness in allowing this to happen because they say Ms. Wang was supposed to be watching S at the time. They generally all praised Mr. Mitchell's care of and engagement with the children.

[454] For the most part, I found that the testimony of Mr. Mitchell's family members, particularly his mother and sister, was highly influenced by their love of Mr. Mitchell and lack of love for Ms. Wang. Mr. Mitchell's mother's animosity towards Ms. Wang was palpable. His sister exaggerated the time that she had spent with Ms. Wang and the children during the marriage, which I find was minimal.

[455] Other than this incident, which was not put to Ms. Wang in any event, Mr. Mitchell's allegations of disinterest by Ms. Wang largely consists of argument and allegations that Ms. Wang would prefer to shop than take care of the children. The evidence, however, establishes that Ms. Wang did the majority of the daily caretaking of the children throughout the marriage when they were infants and toddlers.

[456] I find that Mr. Mitchell has not established that Ms. Wang was not a capable mother prior to separation.

Ms. Wang's Alleged Indifference Post-Separation

[457] Ms. Wang has not sought to exercise her five hours-a-week of parenting time since March 2023. Mr. Mitchell says that this is because she does not care about the children. Ms. Wang says that it is because she cares for the children so much that she is unwilling to subject them to the conflict between them during those exchanges. She also says that Mr. Mitchell has obstructed her from seeing the children since separation.

[458] I find that the evidence establishes that, although Mr. Mitchell claims to want to facilitate the children's time with their mother, in fact Mr. Mitchell has obstructed Ms. Wang in arranging for, and exercising, parenting time with the children. I find that the evidence establishes that Ms. Wang loves her children a great deal.

- [459] Immediately upon her release in June 2021, Ms. Wang was prohibited from seeing the children pursuant to the MCFD safety plan until further discussion with the MCFD social worker. She was able to see the children for two hours a week with an MCFD social worker starting in July 2021. Not long after, the MCFD lifted the requirement for supervision during Ms. Wang's parenting time.
- [460] For approximately 6 months after separation, Ms. Wang had to arrange parenting time through Mr. Mitchell. I find that Mr. Mitchell placed significant conditions on that parenting time, including that he be present. I find that Mr. Mitchell would also try to use this time to negotiate his legal position and financial arrangements with Ms. Wang.
- [461] In September 2021, Mr. Mitchell attempted to hug and kiss Ms. Wang during her parenting time. When she pushed him away, he accused her of assault and called the police. His cross-examination of Ms. Wang in relation to that visit was of particular concern:

Q: You did not hit me then?

A: I did not hit you. You were trying to hug and kiss me and I pushed you away. That is not hitting

Q: I do love you as the mother of my children, and so when I hugged and kissed you I did not deserve to be pushed away and hit

A: I just pushed you away. You did not ask if you could do this. I did not want to hug or kiss you. I wanted you to keep your distance

Q: Did I ever have to ask for your consent to hug or kiss you during the marriage

A: But we were separated

Q: But we weren't divorced

A: We were separated

Q: So, you did not hit me that day, Ms. Wang?

A: I did not hit you. 100 percent sure. [inaudible]

Q: Are you getting upset, Ms. Wang? Why are you getting raising your voice, Ms. Wang?

A: Because I am telling the truth. In the park that day, in front of everyone, you wanted to hug me, to kiss me. When you tried to hug me, I pushed you away. You say this is heavy this is hard? And you call this hit?

Q: Ms. Wang, we were married for approximately ten years, and I do love you because you are the mother of my children. So I put it to you that after separation, attempting to hug you and kiss you is not something that deserved to be pushed away and hit. Is that right?

A: I never hit you, I just pushed you away. When you tried to hug me and kiss me, have you asked my opinion or consent? If I do not want to hug, I do not want to kiss you, I want you to keep your distance. Can you respect my wish?

[462] This was far from the last time that one of the parties called the police during a parenting time exchange.

[463] Between July and the end of September 2021, Mr. Mitchell and Ms. Wang were enrolled in a 12-week family preservation service. Upon discharge from that program, the assigned family counsellor raised significant concerns about the parties' ability to communicate without conflict in the best interests of the children, and noted that the failure of these communication skills would continue to be a barrier for the children to see their mother. The parties were referred to FLA counselling through Westcoast Family Centres for 6 months starting in November 2021.

[464] As a result of the recognizance she entered into in November 2021, Ms. Wang was restricted from contacting Mr. Mitchell, and she was no longer able to arrange parenting time through him. I find that Ms. Wang, who speaks English but not particularly well, believed that the FLA counselling that started in November 2021 was meant to help her establish parenting time arrangements with Mr. Mitchell during the counselling period and going forward.

[465] However, Ms. Wang only saw the children twice during this counselling program for less than a total of two hours. On both occasions, the counsellor, Ms. Johnson, was present. In her discharge report in April of 2022, Ms. Johnson notes that she told Ms. Wang that she could not rely on the counselling service to facilitate her parenting time, and that Ms. Wang needed to engage a third party to coordinate parenting time with Mr. Mitchell. I accept Ms. Wang's evidence that she had misunderstood the purpose of this counselling program, and that it was only after the discharge from the program, where no progress had been made on arranging a regular parenting schedule, that she realized she needed to proceed to court to apply for regular parenting time.

[466] I find that Ms. Wang's counsel then sought to establish a regular parenting regime. When discussions with Mr. Mitchell's counsel in this regard were unsuccessful, she applied to court seeking shared regular parenting time. Mr. Mitchell opposed, taking the position that Ms. Wang should only have limited and supervised access to the children.

[467] Ultimately, Ms. Wang's interim parenting application was heard in August 2022, and Associate Judge Muir ordered interim stepped-up parenting time, with four weekly visits of supervised parenting time, followed by regular unsupervised parenting time from 11 a.m. to 4 p.m. on Sundays, with the exchanges to be facilitated by Ms. Li (both parties were under no contact conditions at this point). The order contemplates the potential for an expansion of Ms. Wang's parenting time after four months, upon agreement or further application.

- [468] I find that Mr. Mitchell obstructed this ordered parenting time, first by not proceeding with parenting time on the second week of the ordered weekly supervised visits, saying that the second week had not been properly coordinated with him. After the first two ordered supervised parenting sessions, Mr. Mitchell raised an objection to Ms. Wang's hired professional supervisor, and refused to allow the children to go with their grandmother who had come to pick them up at the scheduled time, because Ms. Wang would not retain his preferred supervisor on the spot. The children were present for, and witnessed, this conflict, and were unable to see their mother that day.
- [469] Ms. Wang relented and hired Mr. Mitchell's chosen supervisor for the next two supervised visits, which finally concluded in September 2022.
- [470] On Christmas day in 2022, Mr. Mitchell refused to let the children get out of his car for their Sunday parenting time with their mother until he had confronted Ms. Wang about Mr. Blouin being present during her parenting time. I find that the children witnessed this conflict. I find that Mr. Mitchell's direct engagement with Ms. Wang was contrary to the protection order in place at the time. Eventually, both Mr. Blouin and Mr. Mitchell called the police, and two hours into Ms. Wang's scheduled parenting time, the police allowed Ms. Wang to take the children for the remaining time. At the request of the police and to de-escalate the conflict, Mr. Blouin agreed not to take part in this visit.
- [471] In late December 2022, Ms. Wang brought another application for increased parenting time, and a declaration that she had been denied parenting time. Associate Judge Vos heard Ms. Wang's application in January 2023 and reaffirmed the five hours of parenting time every Sunday, and ordered that Mr. Blouin not be present for the parenting time for a period of one month. Associate Judge Vos also declared that Mr. Mitchell had wrongfully denied Ms. Wang parenting time, and ordered make-up parenting time.
- [472] I find that the order prohibiting Mr. Blouin from being present during parenting time for one month was in response to Mr. Mitchell's allegations that Mr. Blouin was a "dangerous man," allegations which Mr. Mitchell repeated during this trial. Mr. Mitchell testified that the children are afraid of Mr. Blouin after they saw him yelling and chasing Mr. Mitchell in Horseshoe Bay in April 2022. I do not believe Mr. Mitchell's version of that encounter, and I find that, if the children are concerned about Mr. Blouin, it is only because they are responding to Mr. Mitchell's own animosity towards Mr. Blouin.
- [473] I found Mr. Blouin's testimony to be both credible and reliable about this incident, and more generally. I prefer it to the evidence of Mr. Mitchell and Ms. Wahyuni where their evidence conflicts.

- [474] In this regard, I reject Mr. Mitchell's evidence that he was in Horseshoe Bay in April 2022 only because S asked to play at that particular park. This was shortly after Ms. Wang closed on the Horseshoe Bay Condo, and Mr. Mitchell had brought an ex parte application to try and stop that transaction from closing. Furthermore, it would have been apparent to Mr. Mitchell upon driving into Horseshoe Bay that the park in that community was closed for construction.
- [475] I find that on that occasion, Mr. Mitchell drove past the closed park, and parked in the parkade for the Horseshoe Bay Condo. He saw Ms. Wang at the parking entrance to the Horseshoe Bay Condo and waved his phone at her, then proceeded into the parkade and parked. I find that, if Mr. Mitchell was with the children at that time, he left them in the car (perhaps with Ms. Wahyuni), and walked up to the top level of the parkade at the Horseshoe Bay Condo.
- [476] I find that Ms. Wang called Mr. Blouin upset and afraid that Mr. Mitchell was at the property. Mr. Blouin asked Mr. Mitchell why he was there and asked him to leave the property, saying that he could not be there because of the peace bond. I find that Mr. Mitchell reacted aggressively and began taking pictures of Mr. Blouin. I accept Mr. Blouin's evidence that he did not raise his voice or shout profanities at Mr. Mitchell, nor did he chase Mr. Mitchell.
- [477] Later, during one of Ms. Wang's parenting times, S asked Mr. Blouin whether he had chased her father down the street. Mr. Blouin responded that he had not, and that he had nothing against her father, and would never get in the way of her father loving her, and her loving her father. I find that there is no foundation to Mr. Mitchell's allegations that Mr. Blouin is a dangerous man or a criminal.
- [478] In any event, for the one month required by Associate Judge Vos' order, Mr. Blouin continued to drive Ms. Wang to downtown Vancouver for her parenting time, and wait the five hours for her to complete her parenting time, and drive her back. I accept his evidence that every exchange was extremely stressful for Ms. Wang, trying to meet Mr. Mitchell's various conditions and worrying about whether there would be another conflict or denial of parenting time. I accept his evidence that every time she came home after dropping them off with Mr. Mitchell, she would be sad and crying.
- [479] After the March 2023 exchange, which was Ms. Wang's last, Mr. Blouin also became concerned that these exchanges were also unsafe for Ms. Wang, who was pregnant at the time and who had had a miscarriage the previous year.

The March 2023 Incident

- [480] Ms. Wang decided to stop exercising her weekly parenting time on Sundays, and to instead seek primary custody of the children through the court, after the children's exchange on March 12, 2023.

- [481] I accept the testimony of Ms. Wang and Mr. Blouin that, on this occasion, they left West Vancouver with lots of time to drop the children off on time, but got caught in traffic coming from West Vancouver to the exchange location at the Vancouver Public Library. Although they texted Mr. Mitchell that they were on the way, they were still approximately 20 minutes late to drop off the children.
- [482] I find that when they arrived, Mr. Mitchell began banging on their car as soon as they arrived. Mr. Blouin asked Ms. Wang to stay in the car, and got out first to try and calm Mr. Mitchell down. Mr. Mitchell was agitated and holding his phone. When Ms. Wang opened the door to help the children get out, the locks to the car disengaged and Mr. Mitchell was then able to open the children's door, letting the dog out of the car. Mr. Mitchell then pulled S from the car.
- [483] I find that when Ms. Wang got out to try to help the children get out, Mr. Mitchell pushed her. She was 7-8 months pregnant at the time. Ms. Wang then got back into the passenger seat, and Mr. Blouin became very upset. He told Mr. Mitchell that he had just assaulted Ms. Wang and he knew about Mr. Mitchell's previous criminal record. Mr. Blouin said words to the effect that he was going to call the police and get Mr. Mitchell another conviction on his record.
- [484] Mr. Mitchell produced and played a video he recorded of this interaction in court, which includes Mr. Blouin's threat to call the police, but does not show Mr. Mitchell pushing Ms. Wang. Mr. Mitchell says that this is because he never pushed Ms. Wang and the video proves this. Mr. Mitchell says that the video clip he played in court shows the entire interaction between them.
- [485] I find that it is more likely that Mr. Mitchell has only produced for the Court the portion of the video that favours his version of events, and that this is not the entire video or entire interaction. I note in this regard that when the video clip that Mr. Mitchell produced starts, Mr. Blouin's dog is already out of the car and Mr. Blouin is going to fetch the dog. I find that the video is incomplete, and that Ms. Wang had likely already attempted to get out of the car, been pushed, and returned to the passenger seat when this video clip begins. Her actions shown in the video demonstrate a lack of aggression on her part--she is avoiding Mr. Mitchell and trying to help H out of the car as quickly as possible.
- [486] After this event, Ms. Wang decided that the exchanges with Mr. Mitchell were unsafe for her and harmful to the children.
- [487] Ms. Wang also testified that she is worried that if she tries to visit S at school, that Mr. Mitchell would hear about this and S would suffer as a consequence. This is the reason Ms. Wang says she has avoided interacting with the children over the past year, and instead put her hopes in her applications for primary parenting.

[488] Overall, I find Mr. Mitchell's allegations that Ms. Wang is indifferent to the children and has not exercised her parenting time with the children because of this indifference are unfounded. To the contrary, I find that Ms. Wang has continuously expressed her desire to see the children since separation. Mr. Mitchell has resisted and obstructed reasonable and regular parenting time for the children to see their mother.

[489] I turn then to Ms. Wang's allegation that Mr. Mitchell should not have regular parenting time because of his efforts to separate and alienate the children from their mother.

Mr. Mitchell's Alleged Alienation

[490] I find that Ms. Wang did not pose a safety threat to the children after the separation, and that, so long as she and Mr. Mitchell did not engage in conflict in front of the children, there was no legal foundation for Ms. Wang's parenting time to have been so curtailed after separation.

[491] Instead, the obstacle to the children spending time with their mother were restrictions on Mr. Mitchell's and Ms. Wang's communications, which they were unable to overcome, even with the assistance of their respective lawyers and 9 months of family counselling.

[492] Mr. Mitchell is responsible for his part in the children not seeing their mother, including the altercations he engaged in during Ms. Wang's parenting time, and resisting and opposing her efforts to arrange for more parenting time, detailed above. I find there is no foundation for his position that Ms. Wang required supervision during her parenting time, or that the children would be at a risk of harm in her presence.

[493] Mr. Mitchell also denied Ms. Li's request to see the children when she was in Vancouver during the trial, unless he could be present. I note that there is no foundation for the proposition that it is unsafe for Ms. Li to spend time with the children. Ms. Li was the chosen person to conduct the exchanges between the parents in 2022. Ms. Li also helped care for the children in her home for over a year when they were younger.

[494] Mr. Mitchell has also expressed to Mr. Blouin that he would never let the children have a relationship with their new brother.

[495] Other aspects of Mr. Mitchell's conduct raise concerns for the Court.

[496] The first is Mr. Mitchell repeated statements in court that Ms. Wahyuni is now the children's "mother," or is more their mother than Ms. Wang is. Ms. Wahyuni also testified that she lets the children call her "Mommy" and has plans to fight to become the children's guardian. The fact that Mr. Mitchell does not appreciate the implications for the children of this mindset is troubling to the Court.

[497] There is also some indirect evidence of the children's continued exposure to the ongoing conflict between Mr. Mitchell and Ms. Wang while in Mr. Mitchell's care.

- [498] Soon after separation, S's dance teacher asked Ms. Wang why S said that she tried to kill Mr. Mitchell. I have found that Ms. Wang did not try to kill Mr. Mitchell, and the fight on June 2, 2021 was not something the children witnessed directly. I am very concerned that this allegation was communicated to S by Mr. Mitchell.
- [499] There is also evidence that early attempts and video visits between the children and Ms. Wang were cut off by Mr. Mitchell telling the children that it had been "enough" and telling the children to hang up on Ms. Wang during the call.
- [500] One of the professional supervisors recorded Mr. Mitchell telling S, when she was sad to be leaving her mother after her parenting time in 2022, words to the effect that "if seeing her mom doesn't make her happy, she should let them know "
- [501] In other supervised visits in 2022, when S was six years old, S asked her mother repeatedly for her passports--an issue of contention between Mr. Mitchell and Ms. Wang at the time. I do not believe Ms. Wahyuni's evidence that S raised the issue of her passports herself after going to Kindergarten one day.
- [502] The children seem to know not to speak about Ms. Wang in front of their father at all (he says that the children never mention their mother), and during the trial, S reportedly told Mr. Mitchell that seeing him with all the court materials was "triggering."
- [503] I find that the children have not been appropriately shielded from their parents' conflict, even after separation and in the sole custody of their father. Nor have they been supported in their need for connection to both their parents, and to their maternal grandmother. I find that the children's important connection to their mother has been damaged by Mr. Mitchell since separation.

Cooperation Between the Parents

- [504] One thing both parties agree upon is that they are unable to effectively co-parent. I agree.
- [505] I find that a parenting regime that requires Mr. Mitchell and Ms. Wang to regularly communicate about parenting decisions is only likely to expose the children to further conflict between their parents, which is already a source of harm to them.

Conclusion on Parenting

- [506] I am satisfied that both Ms. Wang and Mr. Mitchell truly love the children. In addition, both have invested significant amounts of time in raising the children as primary caregivers, with Ms. Wang being the primary caregiver before separation, and Mr. Mitchell being the primary caregiver since separation.
- [507] I find that Mr. Mitchell's primary parenting role since separation has been, to a significant extent, a result of his placing the blame for family violence solely on Ms. Wang, when I have found that Mr. Mitchell was also physically violent with Ms. Wang throughout the marriage. It is also a result of Mr. Mitchell obstructing Ms. Wang's parenting time since

separation in various ways, which I find also prevented what should have been a significant stepping-up of parenting time for Ms. Wang in the absence of any danger of ongoing harm to the children in her care.

- [508] Indeed, ongoing harm to the children continues to stem from the conflict between Mr. Mitchell and Ms. Wang. Specifically, I find that while the family violence they witnessed and experienced during the marriage is no longer a daily factor for them, it remains a source of ongoing harm because of the conflict between their parents that the children continue to experience at parenting time exchanges. I find that Mr. Mitchell is the primary perpetrator of this ongoing harm, and I remain concerned that he may be incapable of restraining himself from the confrontational conduct that he continued to exhibit at exchanges up until the last exchange on March 12, 2023.
- [509] Ms. Wang's choice to spare the children (and herself) from that conflict by going without seeing the children at all for a year has, no doubt, also been harmful to the children, though it is difficult to say which is the greater harm in that regard.
- [510] Finally, while the evidence does not establish any ongoing risk of physical harm to the children by either of their parents while in their care, Mr. Mitchell's separation of the children from their mother, his lack of acknowledgement of the importance of Ms. Wang (and her family) in their lives, and Mr. Mitchell's apparent exposure of the children to the conflict and litigation issues with their mother, leaves me concerned that this harm continues in his primary care.
- [511] Nevertheless, despite my concerns listed above, I do not consider it in the children's best interests to completely remove Mr. Mitchell's presence from their lives, or reduce their time with him to intermittent visits or holidays only. By all accounts, the children love and are strongly bonded with Mr. Mitchell. He walks them to school and daycare, and picks them up. He takes them on outings. He loves them deeply, and I am sure the children love him.
- [512] The children are entitled to have both of their parents firmly in their lives to the extent that this is still possible. That has not occurred with Mr. Mitchell as their primary custodian, and Mr. Mitchell is primarily responsible for that. It is also clear that shared parenting responsibilities will be unworkable, and is likely to only expose the children to further conflict.
- [513] Ms. Wang's willingness to give up her parenting time over the last year indicates that she understands how important it is to spare the children from conflict, even to the point of the children losing this very important connection. The supervision reports also indicate a good understanding of the need to protect the children and maintain their relationship with both parents on Ms. Wang's part.

- [514] I therefore find that it is in the children's best interests to entrust Ms. Wang with this responsibility, while making very clear orders intended to avoid attempts at negotiation or manipulation that have resulted in the children's exposure to conflict between their parents and the obstruction of Ms. Wang's parenting time.
- [515] Furthermore, although the children are still young, they have already in their young lives lived solely with one parent or the other for periods of over a year. For the years after separation for which I have supervision reports, I find that they still managed to maintain their bonds with each parent during this time.
- [516] Overall, I consider it in the best interests of these children that they have fewer transitions with more extended periods of time with each parent, with Ms. Wang having the primary decision-making responsibilities with respect to the children. I detail the parameters of that decision-making below in my summary of orders.
- [517] After a period of adjustment, I also consider it in the best interests of the children to have a shared parenting regime.
- [518] However, I find that it is first necessary for the children to have the opportunity to re-establish their bond with their mother for a transitional period of time, and for both parents to demonstrate that they can effectively participate in a co-parenting regime.
- [519] My specific orders are detailed below. Essentially, I order that Ms. Wang have six weeks of continuous parenting time starting while S is still in school to allow for a transition with no contact between Mr. Mitchell and Ms. Wang. This will take the children through July 2024, and Mr. Mitchell will then have the children for the balance of the summer through August, and will take them into the first days of the new school year.
- [520] Ms. Wang's parenting time shall start at the end of each child's school day on September 4, 2024, which will likely be earlier than 3 p.m. during this first week of school.
- [521] For a period of three months starting September 4, 2024, Ms. Wang will have parenting time for two weeks, and Mr. Mitchell shall have one week.
- [522] Provided that Ms. Wang exercises her parenting time consistently, and Mr. Mitchell does nothing to obstruct Ms. Wang's exercise of parenting time during this three month period, the parties will move to a shared parenting regime in December 2024.
- [523] In December 2024, Mr. Mitchell and Ms. Wang will then alternate parenting weeks throughout the school year.
- [524] The week-on/week-off schedule will continue through winter and spring breaks unless the parties can otherwise agree in writing. Summers shall be divided, with the parent picking up on the last week of school having parenting time for five weeks continuously, and then the other parent having five continuous weeks into the new school year.

- [525] The children will then go back to the week-on/week-off parenting schedule with Wednesday exchanges for the school year and winter and spring breaks.
- [526] If one or both of the children do not attend school or daycare on a Wednesday exchange day for illness or other reasons, the parent with the children will nevertheless bring the child to their school or daycare for the 3 p.m. exchange (short of the child being hospitalized) unless the other parent agrees in writing to another time or location for the exchange. Any medications or other physical comforts the child requires will be packed with the child.
- [527] It is to be expected that the children may be worried or even resistant to this change in their routine, particularly given S's comments to Mr. Mitchell during the trial. Mr. Mitchell needs to understand that it is in the children's best interests not to be exposed to this litigation and to have a healthy relationship with their mother. His role as the children's father will be to prepare the children for this transition in a positive manner, reassuring them that they will be fine, and that their mother loves them. He must also ensure and instruct his family members to do the same, including Ms. Wahyuni. Ms. Wang shall also prepare the children in the same way when it is time to return the children to Mr. Mitchell's care, and the same instructions given to her family.
- [528] Finally, although police enforcement are an extraordinary remedy and should rarely be granted, Mr. Mitchell's past conduct at parenting exchanges is of sufficient concern to me that, should the children not be ready and waiting at school for Ms. Wang's initial parenting time starting in June 2024, I grant Ms. Wang leave to seek orders pursuant to ss. 231(4) and 231(6) of the FLA to ensure that the children are delivered to Ms. Wang in a timely way.

SUPPORT

Child Support

- [529] Child support is determined by the Guidelines income of the parents under the Federal Child Support Guidelines, SOR/97-175 [Guidelines].
- [530] Both parties seek child support from the other. Both say that they have minimal to no income to pay child support, and seek to impute income to the other party.
- [531] I will therefore first consider the income of each party and whether additional income should be imputed.

Ms. Wang's Guidelines Income

- [532] Mr. Mitchell says that Ms. Wang should be imputed an income of \$120,000.

- [533] Ms. Wang says that she has had no employment income since separation, and is unlikely to have any income in the near future. She is a housewife and mother, and that was her agreed upon role at the outset of the marriage. Mr. Mitchell was expected to be the breadwinner, and when he was unable to earn income, both parties were supported by Ms. Li.
- [534] Since separation, Ms. Wang did attempt to do some work and training, but she says that her limited English, education, and skills meant that she was unable to find or keep any employment.
- [535] Since 2022, Ms. Wang has been financially supported by her new partner, Mr. Blouin. Ms. Li is no longer a significant source of financial support for Ms. Wang.
- [536] Since March 2023, Ms. Wang has been raising her infant son. She was pregnant during the trial and is expecting another child in October 2024. It is likely that Ms. Wang will remain a stay-at-home mother for some time into the future.
- [537] Ms. Wang's declared income since separation has been negligible.
- [538] Mr. Mitchell seeks an order that Ms. Wang be imputed an income based on his claim that she is the beneficiary of a family trust, and that Ms. Li's support of her throughout the marriage was income generated by this trust. I have found that no such trust exists. Mr. Mitchell has not established that Ms. Wang is entitled to trust income, or ongoing financial support from Ms. Li.
- [539] Furthermore, I find that Ms. Wang is no longer receiving regular support from Ms. Li in any event, and that she will likely continue to be out of the labour market for some time with her 1-year-old and anticipated baby.
- [540] At some point, Ms. Wang will be expected to find employment to make best efforts to support her children. However, I find that at this time, given her lack of educational credentials, poor English skills, and child-rearing responsibilities, this will be some years in the future.
- [541] I find that Mr. Mitchell has not established any other grounds upon which I would impute a current or retroactive income to Ms. Wang pursuant to the Guidelines.
- [542] Nevertheless, I have decided not to compel Mr. Mitchell to divide the revenues of over \$60,000 annually he received from the family business, Vancouver Food Trucks, between separation and trial. One half of that income, which is income generated by a family asset, is substantially more than Ms. Wang would have owed in child support had I imputed some base or nominal income to her during this period. By August 2022, Mr. Mitchell had been granted interim orders making him primarily responsible for the children, and I find it fair that he be permitted to retain these earnings, particularly in light of Ms. Wang's inability to contribute to the children's costs and care during this time.

Mr. Mitchell's Guidelines Income

- [543] Mr. Mitchell's only source of income that he has disclosed since separation is the rental income from the food truck. I find that this income was \$48,000/year in cash and an additional \$12,000 in restaurant, hotel, and spa services, plus ongoing undisclosed servicing income.
- [544] By the time of trial, Mr. Mitchell was collecting \$4,500/month in rent and another \$1,600/month in in-kind services, for a total of \$73,200 annually in cash and benefits. The lease also provides for 5% of profits generated by the food truck during its lease. This income was provided in a highly tax-advantaged manner to Mr. Mitchell, allowing him to avoid traditional income taxes and deduct substantial personal expenses for tax purposes.
- [545] Section 18 of the Guidelines provides that where a spouse is a shareholder, director, or officer of a corporation and their Line 15000 income does not fairly reflect all the money available to that spouse for the payment of child support, the court may, in addition to relying on s. 17, include all or a part of the corporation's "pre-tax income."
- [546] With respect to the availability of a corporation's pre-tax income for support purposes, the jurisprudence places the onus on the payor spouse to establish, through evidence, the reasonableness of deductions and the need for working capital to sustain the corporation that should be excluded from this calculation: *Hausmann v. Klukas*, 2009 BCCA 32 at paras. 51-52, leave to appeal to SCC ref'd, 33101 (11 June 2009); *Wiebe v. Treissman*, 2017 BCSC 1523 at para. 94; *C.M. v. V.M.*, 2016 BCSC 2144 at paras. 39-40; and *M.T. v. J.S.*, 2023 BCCA 64 at paras. 8-9. In the absence of "clear and substantiated evidence" that the corporation's pre-tax income is needed to sustain the company as a viable enterprise, and it is therefore not available to the payor spouse, the court should presume that all of the pre-tax corporate income is available to the payor for child support purposes.
- [547] I find that Mr. Mitchell has not established any basis for a reduction to his revenues for the full amounts received from the Hotel for the leased food truck in calculating his income.
- [548] I also noted above my concern that Mr. Mitchell has not disclosed the additional revenues he is receiving through his ongoing contract to service the food truck. Nor has he established that he was not entitled to any of the profit sharing provided under the disclosed contracts.
- [549] I also noted my concern that Mr. Mitchell has undisclosed sources of income. Spending approximately \$1,500/month on lease payments for a vehicle, playing golf, and being able to afford golf club kits for children that will outgrow them in a matter of months does not mean that Mr. Mitchell is necessarily wealthy. But it does suggest a level of resources not disclosed in his income tax statements that suggest that his income has been less than \$20,000 annually.

- [550] Mr. Mitchell also testified that he had secured a job in April 2023 at CIBC Wood Gundy. He tendered the job offer letter into evidence, which indicates a position as an administrative assistant with a base salary of approximately \$50,000. However, he testified that that job also included a corner office and significant additional financial incentives, commissions or bonuses, and that after these were taken into account, he expected to make \$350,000 per year to start, and considerably more than that into the future.
- [551] Mr. Mitchell says that he accepted that job, but the position was revoked because he was not cleared by CIBC's head office on the basis of a stated conflict of interest. Mr. Mitchell believes that CIBC became aware of his criminal record (which he blames on Mr. Maze). He says that it should not be assumed that he could obtain a similar job at another investment firm because CIBC would likely have told others about his criminal record and that his reputation is now ruined.
- [552] Mr. Mitchell did not provide any evidence of other efforts he has made to secure a similar job (or any job), or his rejection from those positions. While I understand that his conflict with Mr. Maze and CIBC, as set out in the Partnership Proceedings, might create a conflict of interest for a position at CIBC Wood Gundy, I find that Mr. Mitchell has not established that he could not secure a similar job, even if less prestigious or lucrative than the one he describes.
- [553] Ms. Wang seeks to impute an income of \$80,000 to Mr. Mitchell, which I consider entirely reasonable in all the circumstances, even in the event that the food truck is sold pursuant to this order. I make that imputation.

Spousal Support

- [554] Mr. Mitchell seeks spousal support in a lump sum of \$300,000 (together with reapportionment of property) based on his assertions of Ms. Wang's trust-based income and wealth.
- [555] I find that Mr. Mitchell has not established a basis for spousal support, given Ms. Wang's lack of income upon separation. His testimony at trial that both he and Ms. Wang shared in family trust income during the marriage that they both were still entitled to would not have supported a spousal support award in any event, even if accepted.
- [556] Ms. Wang seeks spousal support from Mr. Mitchell between separation in June 2021 and her relationship with Mr. Blouin at the end of 2021. She does not quantify this claim.
- [557] Ms. Wang's claim is essentially a retroactive claim for only a few months. At this time, Mr. Mitchell was paying all the expenses for the children, and her mother continued to provide her with financial support, as she had before separation.
- [558] I decline to make a retroactive spousal support award in these circumstances.

SUMMARY OF ORDERS

[559] I am satisfied that Mr. Mitchell and Ms. Wang have established the grounds for divorce. Mr. Mitchell and Ms. Wang are divorced from one another. The divorce will take effect on the 31st day after the date of this order.

Parenting Orders

[560] Mr. Mitchell and Ms. Wang shall share parenting of the children.

[561] Between June 19, 2024 and September 4, 2024, there will be a transition period. During this period, Ms. Wang's parenting time shall start on Wednesday, June 19, 2024, and shall run until Wednesday, July 31, 2024 at 3 p.m. The pick-up location shall be at Crosstown Elementary at 3 p.m. for S and sometime between 3 and 5 p.m. at H's daycare at Vancouver's Library Square.

[562] Mr. Mitchell will ensure that S is dropped off at Crosstown Elementary and that H is dropped off at his daycare the morning of June 19, 2024, and that both institutions have a copy of this order and are aware that the children's mother will be picking them up that day. He will provide reassurance to the children if they require it, and provide them with anything they need that morning for the transition.

[563] Should the children not be ready and waiting at Crosstown Elementary and at the Library Square daycare for Ms. Wang's initial parenting time to commence at the specified times on the afternoon of June 19 2024, I grant Ms. Wang leave to seek orders pursuant to ss. 231(4) and 231(6) of the FLA to ensure that the children are delivered to Ms. Wang in a timely way.

[564] Mr. Mitchell's next parenting time will commence on July 31, 2024 at 3 p.m. to the September 4, 2024 drop-off at school or 9 am if there is no school drop off that day. The July 31, 2024 exchange shall occur at Library Square in Vancouver at 3pm, unless Mr. Mitchell and Ms. Wang otherwise agree in writing.

[565] Ms. Wang's parenting time shall start at the end of each child's school day on September 4, 2024, or at 9 am if there is no school for one or both of the children that day.

[566] For a period of three months starting Wednesday, September 4, 2024, Ms. Wang will have parenting time for two weeks, and Mr. Mitchell shall have parenting time for one week.

[567] Provided that Ms. Wang consistently exercises her parenting time, and Mr. Mitchell does nothing to obstruct Ms. Wang's parenting time, starting on December 11, 2024, Mr. Mitchell and Ms. Wang will begin alternating parenting weeks on a week-on/week-off basis with exchanges every Wednesday at 3pm.

- [568] If Mr. Mitchell and Ms. Wang can come to some agreement regarding a variation to this schedule, including for school winter and spring breaks, they may do so. Otherwise, the exchanges will continue on alternating Wednesdays through school breaks at 3 p.m. The location of the exchanges shall be at the children's school, even when school is not in session, unless Mr. Mitchell and Ms. Wang can agree in writing otherwise.
- [569] Summer holidays shall be shared, with the parent picking up the children on the Wednesday of the last week of school keeping the children for five weeks, and the other parent keeping the children until the first Wednesday of the next school year. Exchanges shall continue to be at 3 p.m. at the children's school grounds unless Mr. Mitchell and Ms. Wang are able to agree otherwise in writing.
- [570] Unless otherwise specified in this order, or agreed in writing by Mr. Mitchell and Ms. Wang, pick-up and drop-off of the children shall be at the children's school on Wednesdays, with the parent completing their parenting week dropping off the children on time for school on Wednesday morning, and the parent starting their parenting week picking the children up after school on Wednesday afternoons.
- [571] If a child is not feeling well and is not attending school on a Wednesday, the parent completing their parenting time shall nevertheless bring the child to the school playground at 3 p.m. that Wednesday for the exchange (short of the child being hospitalized), with whatever medications or material comforts the child requires, unless Mr. Mitchell and Ms. Wang agree in writing to another arrangement.
- [572] Neither Mr. Mitchell nor Ms. Wang shall remove the children from Canada without the written consent of the other parent or court order. I shall remain seized of any such application. Furthermore, I direct that no such applications may be made before January 1, 2025.
- [573] The parties shall surrender the children's passports to the Vancouver Supreme Court Family Registry within 7 days of this order. This shall include their Canadian passport, and any passport that may have issued by another country.
- [574] Mr. Mitchell and Ms. Wang are the guardians of the children pursuant to s. 39(1) of the FLA and may exercise the parenting responsibilities set out in s. 41 of the FLA as follows:
- a) During their own parenting time, Mr. Mitchell and Ms. Wang may exercise the parental responsibility of making day-to-day decisions affecting the children, provided that the guardian must advise the other parent of any matters of a significant nature affecting the children;
 - b) During their own parenting time Mr. Mitchell and Ms. Wang may each make decisions about where the children will reside with them, provided that they live within the geographical boundaries of the Metro Vancouver Regional District, subject to further written agreement or court order;

- c) Ms. Wang shall have the parenting responsibilities set out in s. 41(d)-(l) of the FLA. Before exercising these parenting responsibilities, Ms. Wang shall consult with Mr. Mitchell in writing. If the parents cannot agree, Ms. Wang shall have final decision-making authority with respect to these parental responsibilities; and
 - d) If Mr. Mitchell disagrees with a decision made by Ms. Wang on an important parenting decision, he may apply for directions pursuant to s. 49 of the FLA.
- [575] Many of the conduct orders already in place, including that the parties shall not speak negatively about the other parent to, or in front of, the children, are still required and shall remain in place.
- [576] Mr. Mitchell shall prepare the children for the parenting time exchanges in a positive manner, reassuring them that they will be fine, and that their mother loves them. He must also ensure and instruct his family members to do the same, including Ms. Wahyuni.
- [577] Ms. Wang shall also prepare the children in the same way when it is time to return to Mr. Mitchell's care, and the same instructions given to her family.
- [578] I order that neither party will:
- a) question the children about the other parent or time spent with the other parent;
 - b) discuss with the children any inappropriate adult, court, or legal matters; or
 - c) blame, criticize, or disparage the other parent in front of the children.
- [579] In addition, I consider it necessary to restrict communication between the parties to written communications only, by electronic message or email, and such communications to be restricted to information pertaining to the children's health and activities, parenting decisions, and arrangements.
- [580] Further, neither party will attend at, or enter, the place of residence of the other party.
- [581] I impute an income of \$80,000 annually to Mr. Mitchell.
- [582] I decline to impute any income for child support purposes to Ms. Wang at this time.
- [583] I find that Mr. Mitchell is required to pay child support to Ms. Wang of \$1,239 on the basis of an \$80,000 imputed income and a shared parenting arrangement.
- [584] Despite having no income of her own, Ms. Wang has agreed to sharing the special expenses for the children equally. I consider that this is a reasonable concession, and I order the s. 7 expenses for the children to be shared equally between Mr. Mitchell and Ms. Wang.
- [585] Going forward, by no later than June 1 of each year, the parties will exchange copies of:
- a) Their respective income tax returns including all attachments, and their respective Notices of Assessment for the previous tax year;

- b) By no later than March 15 of every year, Mr. Mitchell shall also provide the most current year-end financial statements for any sole proprietorship, partnership, or any other corporation in which he has an interest; and
- c) Should either party seek a review of the child or spousal support payable under this order, or a future order, on the basis of a change in income, they shall advise the other party by June 30 in that calendar year, or within 30 days of receiving all of the required financial and income information, whichever is later.

Property Division Orders

- [586] I declare that Mr. Maze's interest in the remaining Squadra Capital funds is \$9,361.50, and that he is entitled to retain this amount from the orders placed in his account by way of the Consent Order entered during the trial.
- [587] I declare that Mr. Mitchell's interest in the remaining \$10,412.74 representing Mr. Mitchell's investment in and share of the Squadra Capital is family property and shall be divided equally between Mr. Mitchell and Ms. Wang. Ms. Wang is entitled to \$5,206.37, representing her half interest in this family property. Mr. Mitchell has already received a portion of his funds. He is entitled to an additional \$4,155.13 from these funds.
- [588] I order Mr. Maze to pay to Ms. Wang \$5,206.37 for her half share of Mr. Mitchell's interest in Squadra Capital from the Consent Order funds. However, I have also ordered that Ms. Wang pay costs to Mr. Maze in this proceeding, and Mr. Maze may set off those costs from this amount once they are assessed or agreed to.
- [589] Because Mr. Maze has been substantially successful in this action, I order that he may retain the remaining \$4,155.13 belonging to Mr. Mitchell, to be set off against his costs entitlement against Mr. Mitchell in this litigation, as set out below.
- [590] Mr. Mitchell's sole proprietorship, Vancouver Food Trucks, is ordered to be divided equally between Ms. Wang and Mr. Mitchell, after paying any costs associated with the sale of this business, and addressing the outstanding legal claims against this business.
- [591] Ms. Wang shall have conduct of sale of Vancouver Food Trucks, including the food truck. She shall seek to sell the food truck together with its lease with the Hotel, though this will likely require an assignment of the lease by the Hotel. If the Hotel is not prepared to do that, then Ms. Wang may sell the food truck alone.
- [592] Mr. Mitchell shall cooperate with the sale process, including making the food truck, Vancouver Food Truck bank accounts, financial statements, leases and other arrangements with the Hotel available to Ms. Wang and any broker she retains for the purposes of selling the business and/or the food truck. Mr. Mitchell, Mr. Maze, and any other party interested may make an offer to purchase the business or the food truck as part of this process.

- [593] The proceeds of sale of Vancouver Food Trucks, after all brokerage and sales costs are paid, or the food truck itself, shall be placed into court, and any consent or application for them to be dispersed shall be on notice to Mr. Mitchell, Ms. Wang, Mr. Maze and Mr. Kugler.
- [594] The order I made at the conclusion of trial requiring that the assets of Vancouver Food Trucks and the food truck itself not be sold or dispersed pursuant to s. 91 of the FLA until this order is made shall continue with the exception of the sale authorized by Ms. Wang pursuant to this order.
- [595] Pursuant to s. 97(2) of the FLA, I order that the Smithe Street Condo be sold as soon as possible, with Mr. Maze having conduct of the sale.
- [596] Mr. Maze shall be entitled to retain the proceeds of sale of the Smithe Street Condo, subject to payment from the net proceeds of \$115,000 in family property.
- [597] I order that that Mr. Maze pay \$115,000 from the net proceeds of the Smithe Street Condo (or up to that amount if the net proceeds are below this amount) to Ms. Wang, and that Ms. Wang transfer those funds to Ms. Li to satisfy the family debt associated with this loan in the amount of \$115,000.
- [598] Although Mr. Maze seeks to retain the \$115,000 loaned by Mr. Mitchell in set-off against what Mr. Mitchell owes him in lieu of rent, damages, and legal costs since January 2022, I find that this is not a remedy available to Mr. Maze in this family law proceeding. First, I find that the entirety of Mr. Mitchell's contractual debt in that regard was incurred post-separation--it is therefore not family debt. However, the \$115,000 is family property (and family debt), as the obligation to pay back the funds to Mr. Mitchell existed at the time of separation, even if it had not yet crystallized, and was acknowledged at trial by Mr. Maze.
- [599] Furthermore, those funds are also owed by way of a family debt to Ms. Li, who loaned those funds to the spouses.
- [600] I have found that Mr. Mitchell has no beneficial interest in the Smithe Street Condo. It is on the basis of this claimed beneficial interest that Mr. Mitchell has resisted all efforts to have him leave the Smithe Street Condo. It follows from these reasons that Mr. Mitchell has no lawful right to continue to occupy the Smithe Street Condo, and has not had such a right since the end of December 2021.
- [601] Despite Mr. Mitchell's significant overholding, I would allow Mr. Mitchell until June 30, 2024 to move out of the Smithe Street Condo. Mr. Mitchell himself argued that the Smithe Street Condo is not the best location to raise the children (he would have liked to sell the condo and move into the Horseshoe Bay Condo had he been successful in his claims), but said he would have waited until S finished her school year first. I expect that Mr. Mitchell may also need some time to restore the Smith Street Condo to a good and marketable condition, which I order him to do.

- [602] In the interim, I order that Mr. Mitchell allow Mr. Maze and/or his agents to enter and inspect the Smithe Street Condo upon 24 hours notice, and to cooperate with realtors, should Mr. Maze choose to list the Smithe Street Condo for sale before June 30, 2024.
- [603] I am advised that there may be a number of CPL's currently registered against the Smithe Street Condo by Ms. Wang and Mr. Mitchell. Mr. Mitchell has advised that he also has a CPL registered against the Smithe Street Condo in the Partnership Proceedings.
- [604] I am not aware of the basis of the registration of Mr. Mitchell's CPL against title to the Smithe Street Property in the Partnership Proceedings, and that action is not before me. However, to the extent that the CPL is based on a beneficial claim pursuant to a trust claimed by Mr. Mitchell over that property, these reasons dispose of that issue. To the extent that the CPL is maintained on the basis of an interest in land not compensable by damages, I note Mr. Mitchell's position before me that he intended to sell the Smithe Street Condo if he was successful in these proceedings.
- [605] If the presence of one or more CPL's on the Smithe Street Condo is a barrier to the sale of that property, Mr. Maze may make an application for the removal of those CPL's, and may request to appear before me for that purpose.
- [606] Mr. Mitchell may keep his watch, but shall return Ms. Wang's diamond ring within 15 days of this order.
- [607] I have addressed the family debt of \$115,000 owed to Ms. Li above. Ms. Wang shall be responsible for repaying this debt to Ms. Li from the proceeds of the sale of the Smithe Street Condo.

COSTS

- [608] Ms. Wang and Mr. Maze have both been substantially successful in these proceedings, and generally they are entitled to their costs against Mr. Mitchell. I would put this proceeding at the more than ordinary difficulty scale, which makes a small difference to a few of the family tariff items.
- [609] Mr. Maze seeks special costs against Mr. Mitchell on the basis of his reprehensible conduct throughout the litigation, including prolonging the trial with his conduct. Mr. Maze also seeks his costs against Ms. Wang and Mr. Mitchell.
- [610] While Ms. Wang sought special costs throughout the trial, she indicated that, given the onerous process involved in assessing such costs, she may be content with ordinary costs in the end if she is substantially successful.
- [611] Mr. Mitchell has also sought special costs against Ms. Wang and Mr. Maze. Given his lack of success in this trial, such an award would not follow the event, though I will address his allegations of contempt and reprehensible conduct that might give rise to an independent special costs award below.

[612] Finally, I note that I am seized of the costs issues in Ms. Li's discontinued action in debt, originally set to be heard with this trial.

[613] I will therefore address each of the above costs issues to the extent possible on the record before me, and provide further directions on each.

Ms. Wang's and Mr. Maze's Claims for Special Costs

[614] Mr. Maze and Ms. Wang argue that there should be an order for special costs against Mr. Mitchell for several reasons, including that his conduct significantly prolonged the trial, that he made allegations of criminality, fraud, and deceit that were not made out, and that he threatened participants in these proceedings.

[615] I find that Mr. Mitchell's conduct during the trial added significantly to the length and difficulty of the trial. His frequent asides, commentary, and argument during the testimony of others were disruptive to the trial process. Mr. Mitchell was often argumentative and confrontational with the other parties and the Court in the courtroom. He accused Mr. Maze of criminal behaviour, Ms. Wang and Ms. Li of fraud, and he cast aspersions on counsel. Mr. Mitchell was cautioned with respect to these allegations, and he did not make them out at trial.

[616] Although Ms. Lee (Ms. Wang's counsel) and Mr. Maze were not entirely above the fray in this respect, I find that Mr. Mitchell's behaviour in the court was particularly egregious. Mr. Mitchell was frequently unable to control his temper in court, and his conduct significantly prolonged the trial, including his threats to delay the trial by leaving the courtroom when cautioned about his behaviour.

[617] Mr. Mitchell also directly and indirectly threatened and intimidated witnesses and parties in this proceeding.

[618] The above conduct is of the kind that would ordinarily attract a special costs award against Mr. Mitchell. However, I am not prepared to accede to Mr. Maze's and Ms. Wang's plea for special costs without a further hearing on this issue in which Mr. Mitchell has the opportunity to address whether these costs should be awarded against him in light of these reasons. Because special costs are also much more onerous to assess and collect, I would give Mr. Maze and Ms. Wang the opportunity to consider whether they wish to pursue this option.

[619] Therefore, should Ms. Wang or Mr. Maze seek such an order, I direct that they prepare, serve and provide to my attention an application in that respect within 45 days of receipt of these reasons, with a copy to Mr. Mitchell. Should I receive submissions in this regard, I shall issue further instructions for the filing of responsive materials, and the hearing of the application if necessary.

[620] If there are other issues related to costs not addressed in these reasons which any of the parties wish to raise, such as the impact on the costs award of a formal offer to settle, I direct that the party wishing to raise that issue shall prepare, serve on the other parties, and provide to my attention a copy of their application with respect to that issue within 45 days of these reasons.

[621] I will now address the remaining costs issues argued before me at trial.

Joint and Several Costs to Mr. Maze

[622] Mr. Maze seeks his costs jointly and severally against Mr. Mitchell and Ms. Wang, or any other costs order that would allow him to collect his costs from either of these parties. He argues that Ms. Wang first named him in the family claim, and Mr. Mitchell named him in the counterclaim. He has been successful in defending his legal and beneficial interest in the Smithe Street Condo against them both.

[623] I find that Mr. Maze has been substantially successful against Mr. Mitchell's claims at trial for a beneficial interest in the Smithe Street Condo and a greater interest in Squadra Capital.

[624] Had Ms. Wang pursued her claim in the Smithe Street Condo as family property beyond the pleadings stage, I would have made this award. However, Ms. Wang acknowledged in writing to Mr. Maze that she was making no claim for a beneficial interest in the Smithe Street Condo in a letter requested by Mr. Maze in March 11, 2023. Although she maintained an alternative position in the event that Mr. Mitchell was successful in asserting his beneficial claim, I find that Mr. Maze's participation in this trial was required entirely due to Mr. Mitchell's assertion in his counterclaim of a beneficial interest in the Smithe Street Condo as family property.

[625] I therefore decline to make Mr. Maze's costs joint and several against both Mr. Mitchell and Ms. Wang. Mr. Mitchell is required to pay Mr. Maze costs from the filing of his counterclaim through to trial. Ms. Wang is required to pay costs to Mr. Maze in relation to his initial response to the family claim, and for any costs in relation to her claim up to March 2023.

Mr. Mitchell's Allegations of Reprehensible Conduct

[626] Mr. Mitchell's arguments in favour of costs were largely predicated on his substantial success in this litigation. That has not been achieved.

[627] However, I have also considered whether the issues raised by Mr. Mitchell could ground an independent costs award against Mr. Maze or Ms. Wang in relation to reprehensible conduct on their part, regardless of their substantial success in this litigation.

- [628] Mr. Mitchell argues that Mr. Maze misled the Court with respect to the entry of the Consent Order requiring CIBC to deposit the remaining funds in the Squadra Capital account into Mr. Maze's account. Mr. Mitchell argues that Mr. Maze misled the Court with respect to that account also being Mr. Maze's personal account. Mr. Mitchell filed a separate contempt motion during the trial in this regard, which I indicated would not be heard until these reasons were released as the issue was squarely before me at trial.
- [629] While it would have been preferable if Mr. Maze had explained that the account that held the mortgage for the Smithe Street Condo was also his personal account and linked to a home line of credit, I find that Mr. Maze did not mislead the court in providing the account information that from which the mortgage on the Smithe Street Condo is drawn. Mr. Maze complied with the Consent Order as consented to and made by the Court. This was an interim measure, and without prejudice to the ultimate distribution of these funds, pursuant to which Mr. Maze has been ordered to pay out some of those funds to Ms. Wang. Mr. Mitchell has not been prejudiced by this order. Mr. Mitchell's contempt application brought in the last days of trial on this issue serves no further purpose.

Against Ms. Wang and Mr. Maze

- [630] Mr. Mitchell also argues that Mr. Maze and Ms. Wang "colluded" prior to and during this trial in an attempt to unlawfully remove him from the Smithe Street Condo and to thereby destabilize his ability to provide a home for the children.
- [631] Given that I have found that Mr. Mitchell has unlawfully been occupying the Smithe Street Condo since January 1, 2022, and that Ms. Wang properly conceded Mr. Maze's beneficial interest in that property, the foundation for Mr. Mitchell's argument has not been made out. In any event, I find that there was no collusion for improper purposes as between Ms. Wang and Mr. Maze in these proceedings.

Against Ms. Wang

- [632] Mr. Mitchell also brought contempt proceedings against Ms. Wang in September 2023 for alleged breach of the term of the January 13, 2023 order of Associate Judge Vos that the parties re-engage with FLA counselling. That application was originally heard by Justice Murray in September 15, 2023, and that order was made in the absence of counsel for Ms. Wang. That order has since been vacated by Justice Murray.
- [633] Mr. Mitchell's allegations in this respect were also argued before me at trial, and both Mr. Mitchell and Ms. Wang testified and provided documentary evidence with respect to the ordered FLA counselling. I have reviewed Ms. Wang's and Mr. Mitchell's correspondence with the FLA service in this respect. I find that, Ms. Wang was already seeking to reinstate FLA counselling when this order was made, and that she continued to follow up with Westcoast Family Services throughout January and February 2023 to put this counselling in place. After the March 12, 2023 incident she advised Mr. Mitchell and Westcoast Family

Services that she could no longer participate in counselling with Mr. Mitchell and she was not pursuing her ordered weekly parenting time.

- [634] On the evidence before me, Ms. Wang did significantly more than Mr. Mitchell to pursue the resumption of family counselling between January and March 2023. Mr. Mitchell requested that Ms. Johnson, their previous counsellor, be assigned to the file, and provided narrow availability for family counselling sessions on the basis that he worked until 4 p.m. every weekday (although at trial his evidence was that he had no regular employment). In any event, I am satisfied that Ms. Wang is not responsible for the family counselling not proceeding up to March 12, 2023, and that after that date, Ms. Wang was no longer excersizing her weekly parenting time for the reasons set out above.
- [635] I find that Mr. Mitchell has not established Ms. Wang's conduct in this regard to have been contemptuous or reprehensible. Mr. Mitchell has not established a basis for an independent special costs award against Ms. Wang.

CONCLUSION

- [636] This was a very difficult trial for all involved. Mr. Mitchell and Mr. Maze represented themselves on matters of great importance to them, and Ms. Lee conducted the trial on behalf of Ms. Wang in her second language. The trial was at daily risk of descending to a level of incivility and rancour verging on contempt capable of derailing the proceedings altogether, and extending the trial well beyond the seven weeks that it took (which was more than double the three weeks originally scheduled).
- [637] This required a great deal of trial management throughout the trial, including enforcing reasonable time estimates made by the parties, preventing cross-examination from descending into argument, and enforcing rules of evidence to contain the evidence within the limits of relevance.
- [638] I consider the matters in this trial to be of some urgency, and the trial was conducted in view of the need for it to complete within a reasonable time. Because of the immediate effect of some of the orders I have made, and because of the difficulty the parties have had to date in settling and entering orders made in these family proceedings, I have taken the unusual step of waiving the signature of the parties on the order, and endorsing the order directly.
- [639] To further assist in the orderly implementation of these orders, I shall remain seized of future applications in these proceedings.

"Marzari J. "

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Prepared on 29 October 2026 · Esheria