

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *O.M. v. V.G.*,
2025 BCSC 209

Date: 20250210
Docket: E19253
Registry: Duncan

Between:

O.M.

Claimant

And

V.G.

Respondent

- and -

Docket: S20020
Registry: Duncan

Between:

P.G.

Petitioner

And

V.G. and O.M.

Respondents

Before: The Honourable Mr. Justice Veenstra

Reasons for Judgment

O.M., represented by counsel and
appearing in person:

R. Olorunjojon
(October 30–31,
November 1–3 and 6, 2023)

O.M.
(February 26, 2024)

L. Muratkina
(May 27–31, 2024)

Counsel for V.G.:

V. Hemminger

P.G., represented by counsel and appearing
in person:

J.A. Drozdiak
(November 6, 2023)

P.G.
(February 26 and May 27–31, 2024)

Place and Dates of Trial:

Victoria, B.C.
October 30–31,
November 1–3 and 6, 2023,
February 26 and May 27–31, 2024

Place and Date of Judgment:

Duncan, B.C.
February 10, 2025

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Introduction

[1] The primary issue at this trial of two related proceedings is the status of a residential property in Duncan (the “Duncan Home”), title to which is held in the names of V.G. as to 99/100ths and in the name of his brother, P.G., as to 1/100th. O.M., who is the former spouse of V.G., claims that his interest in the Duncan Home is a family asset. P.G. claims that he actually owns a 50% interest in the Duncan Home. The family and civil proceedings advancing these competing claims to the Duncan Home were heard together.

[2] In this case, some parts of the chronology were undisputed, including the following:

- a) V.G. emigrated from Ukraine to Canada in 2009;
- b) V.G. and O.M. met in Ukraine in April 2011, became engaged, went through a ceremony of marriage in Ukraine on September 3, 2011, and officially registered their marriage in Moldova on October 8, 2011;
- c) O.M. became pregnant with the parties’ child about a month after the ceremony of marriage;
- d) V.G. returned to his work in Canada from February to June of 2012;
- e) The parties’ child, A.G., was born in July 2012;
- f) V.G., O.M., and A.G. moved to Canada in August 2013, initially living with P.G. and his family;
- g) V.G., O.M. and A.G. travelled to Ukraine in May 2015, with V.G. almost immediately returning to Canada and O.M. and A.G. remaining in Ukraine;
- h) The Duncan Home was purchased in August 2017;
- i) V.G., O.M. and A.G. travelled to Canada in August 2018, and lived at the Duncan Home for the next several months;

- j) O.M. and A.G. left the Duncan Home on June 28, 2019, initially living in a transition home; and
- k) O.M. commenced family proceedings in the Provincial Court on July 2, 2019, and commenced one of the proceedings underlying this trial in the Supreme Court on July 22, 2019.

[3] Many of the issues in this case turn on the nature and status of the relationship between V.G. and O.M. between May 2015 and August 2018. V.G. argues that they separated either in May 2015 or at some point in 2016, and says that in any event they had separated prior to his acquisition of the Duncan Home in August 2017. O.M. says that they did not separate until June 28, 2019. This is significant as, pursuant to s. 84 of the *Family Law Act*, S.B.C. 2011, c. 25 [FLA], the Duncan Home will only be family property if it was acquired prior to separation.

Issues

[4] Three issues arise with respect to the Duncan Home and property division generally:

- a) Determining the date of separation of the parties;
- b) Determining P.G.'s interest in the Duncan Home;
- c) Determining the nature of any family debts; and
- d) Determining whether equal division of family property and debt as between V.G. and O.M. would be significantly unfair.

[5] The other financial issues that arise are:

- a) Whether there should be any imputation of income to V.G.;
- b) O.M.'s claim to spousal support.

[6] With respect to parenting matters, the parties to their credit have been successfully co-parenting A.G. in recent years pursuant to consent interim orders.

The only change sought is a request from V.G. with respect to the location of parenting exchanges.

Property Division

Facts

[7] As noted above, V.G. moved to Canada in 2009. His elder brother, P.G., had moved to Canada earlier and was living on Vancouver Island. V.G. obtained permanent resident status and, in about 2007, his Canadian citizenship. Since moving to Canada, he has worked in construction, with a primary focus on tiling work. He works as a sole proprietor.

[8] V.G. and O.M. met online in early 2011, at a time when V.G. was 36 and O.M. was 25 or 26 years of age. They had many things in common, as both were from Ukraine, V.G. had actually met one of O.M.'s aunts, and both were involved in the protestant Christian religious community. O.M.'s father was a pastor in his local community, and V.G. was part of establishing a Slavic Christian community in Victoria, in which he was a pastor. Both V.G. and O.M. spoke Russian as their first language.

[9] After two-to-three months of online communication, V.G. travelled to Odessa in April 2011 to meet O.M. After about three weeks, V.G. proposed marriage. O.M. accepted, and wedding plans were made. In late April or early May, V.G. returned to Canada, then came back to Odessa for the wedding.

The Initial Three-to-Four Years of Marriage

[10] As noted, the parties went through a ceremony of marriage in Ukraine in September 2011, then formally registered their marriage in Moldova in October 2012. O.M. became pregnant about a month after the wedding.

[11] V.G. gave evidence that they began to have disputes very soon after the wedding. He said that O.M. was constantly telling him what to do, expected to be treated as a princess, and that he did not appreciate this. O.M. did not give any

evidence about any issues in their relationship at the time and was not asked about it.

[12] In about February 2012, V.G. returned to Canada, leaving O.M. in Odessa. He said that as a permanent resident it was important for him to spend time in Canada, and that he returned to Vancouver Island and continued working. He returned to Odessa about three weeks before O.M. was scheduled to give birth.

[13] As noted above, A.G. was born in July 2012. V.G.'s evidence was that his relationship with O.M. worsened and that their days were marked with tension, arguments and conflict. O.M. did not give any evidence about any issues in their relationship at the time and was not asked about it.

[14] In October 2012, V.G. purchased some property in a rural area approximately 100 km from Odessa. The evidence as to this property seemed to shift as the trial proceeded and more documents were obtained during the course of the trial. O.M. when asked said that although she had never been to it, she understood there was a small dwelling that had no plumbing, and that V.G. had purchased it for US \$1,000. It appeared to be common ground that O.M. had, by 2018, sold the property. She said it was sold for US \$1,000, which was used for living expenses.

[15] Later in evidence, V.G. said that there was also a four-hectare parcel of potential agricultural land near the village where the dwelling was located, and that he had it subdivided and put two hectares in O.M.'s name. This was apparently due to local regulations that restricted an individual to having two hectares in their own name. It was not clear whether this was part of the same purchase as the dwelling in the village, and part of the same sale by O.M. as part of the \$1,000 she referenced, as the existence of a second plot of land was not put to her.

[16] V.G. said that his plan had been to develop a nut tree farm on the agricultural land, and that he intended this to generate an income that would be for the benefit of A.G. He felt that it was unreasonable for O.M. to have sold it, and opined that if had been developed in the way he planned with the planting of nut trees, it could have

become worth as much as US \$50,000. He gave no evidence of any effort on his part to develop the nut tree business he said he envisioned, or as to what costs would have been involved, how it would have been funded, and who would have operated it.

[17] V.G. said that at some point in 2012, a friend from Moldova convinced him to make what he was told was an investment in the stock market. He had US \$100,000 in savings, and borrowed a further US \$100,000 from another friend, Mr. Linevich, for a total investment of US \$200,000. He said that for the first few months he received some income from this investment, but that in early 2013, he learned that the entire scheme was a fraud. This was a major financial setback for him, as his entire investment was lost.

[18] In August 2013, V.G., O.M. and A.G. travelled to Canada, where the three of them shared a room in a house owned by P.G. for the next six months. They shared a kitchen and a bathroom with P.G. and his wife and children. O.M.'s evidence was that this was a very difficult time for her and A.G. and for her relationship with V.G. She said that it was difficult sharing the house with "complicated relatives", whose attitude toward both her and V.G. was not the best. She also said that it was a difficult time for her because her English was too poor and she did not have any friends.

[19] V.G.'s evidence with respect to difficulties during this time was generally consistent with that of O.M. He acknowledged that they were in a difficult position because he had lost everything in a bad investment, that they had only a very small space to live in, and that there was a lot of tension in their relationship. He said that they had fights and arguments, that at times, O.M. told him that she hated him, and that at times, she hit him.

[20] In the fall of 2013, A.G. became ill. She ended up in hospital on multiple occasions, including a couple of long stays. This led to a lengthy period of time in which doctors worked to determine the nature of the illness and appropriate treatments.

[21] In early 2014, V.G., O.M. and A.G. moved to a rental apartment in Colwood. V.G. said he had hoped that their relationship would improve once they had moved out of P.G.'s house, but that in his view, it did not. He said that he was working very long hours, including many Saturdays, in order to repay his debt and support his family. He said that O.M. was unhappy that he spent so little time with her and A.G. V.G. said that he tried to find a job for O.M., but that she insisted that she needed to care for A.G.

[22] At some point in late 2014 or early 2015, the parties invited a pastor to meet with them to talk about how to improve their relationship. V.G. said that this was at O.M.'s insistence, and that in his view, she shared with the pastor certain very personal information for which she should have sought his permission before sharing.

[23] V.G. said that in the first part of 2015, he and O.M. did not sleep in the same bed for several months. O.M. denied this, and said that there was no other bed available to them.

[24] Also at some point in early 2015, V.G.'s brother Paul stayed with them at the apartment for a few months.

[25] In early 2015, the parties had important decisions to make about A.G.'s health. Specifically, the doctor they were dealing with was promoting the treatment of her condition with hormones, and was unwilling to consider any other approaches. O.M. started looking for alternative solutions, and said that she found some that were not approved treatments in Canada but were available elsewhere including in Ukraine.

[26] In May 2015, a decision was made to have O.M. and A.G. return to Odessa. It appears to have been common ground that this was at the initiative of O.M. The parties' evidence as to this decision was otherwise quite different.

[27] O.M. identified two reasons for this decision. She said that first and foremost it was aimed at accessing alternative treatments for A.G. The second reason was

that she and V.G. were arguing from time to time, their relationship was far from perfect, and the fact of V.G.'s substantial debts contributed to the strain. O.M. said she had come to the conclusion that "our family life in Canada has no future", and that she hoped that V.G. would come to Ukraine with them. She also said that he had asked for time to figure out his financial situation.

[28] V.G.'s evidence was that the main reason O.M. wanted to return to Ukraine was that she did not like her life in Canada and wanted a divorce certificate. He recalled her saying that she hated her life in Canada, that she did not trust Canadian doctors, and that she was never coming back. He said he did not want A.G. to be without a parent, but that he felt that a child of her age requires a mother more than a father, and that when O.M. said she wanted to leave, he could not force her to stay in Canada. He said that he had to continue with his work in British Columbia because of his financial circumstances. His feeling was that O.M. forced him to take her and A.G. back to Ukraine.

[29] While returning to Ukraine, some of the parties' luggage was lost during a lengthy stopover in an airport in Europe, which led to a disagreement. V.G. said that during the ensuing argument, O.M. told him that she hated him and would never come back.

[30] It appears to be common ground that, within a matter of hours of their arrival in Ukraine, V.G. left O.M. and A.G. and, after a brief visit with his parents, returned to Canada. O.M.'s evidence was that she had wanted V.G. to stay with them in Ukraine, but that he said he could not see himself doing that because he was already integrated in Canada.

[31] V.G.'s evidence was that he saw this as the end of their relationship. He placed in evidence a transcript of what was said to be a recorded conversation in the Russian language between himself and O.M., that he said occurred in March or April of 2015 (a few weeks before he took O.M. and A.G. to Ukraine). I note that:

- a) nothing in the transcript identifies the time that it occurred,

- b) all of the other recorded conversations in evidence took place in late 2018 or the first half of 2019, rather than 2015, and
- c) the comments in the transcript fit well with what multiple witnesses said was under discussion in the spring or summer of 2019.

In any event, the transcript includes the following:

M: The recording is on, you can repeat what you just said. You said me to take you to Ukraine, while I go wherever I wish.

W: Yes.

M: Is that true?

W: That's true, because you ... I'm suffering here, I'm in pain here, and I'm dying here. That's why it's better to bring me back, and then let me be alone, and before that, divorce me. And so, we will be free as birds. And you won't suffer. Because you are suffering a lot, you are in pain ... [inaudible]

M: Do you want to say anything else?

W: I'm waiting for the divorce letter.

[32] O.M. specifically denied having said anything in 2015 about a divorce, or even about being as free as a bird. She said she told V.G. that she did not intend to return to Canada, but that she did not say the marriage was over. She said that her view at the time – which she had made known to V.G. – was that as a Christian, she considered divorce to be unacceptable. V.G. was her first partner and only husband and, while they argued frequently over many topics, divorce was not something she was considering.

[33] Before he left O.M. and A.G. in May 2015, V.G. provided O.M. with some cash. His evidence was that he provided her with enough cash to provide \$300 per month for living expenses, which he believed was plenty given the cost of living in Odessa. He thought the total amount was CA\$2,000. O.M. was not sure whether the monthly amount was \$200 or \$300, and thought the total amount was more like US \$1,200.

Living in Different Countries

[34] A.G. was just a couple of months away from her third birthday when she and O.M. began living in Odessa again. O.M.'s evidence was that they visited a number of medical specialists from and after their arrival in Ukraine, ultimately settling on a treatment that seemed to work for A.G. However, only a handful of medical records with respect to A.G. were in evidence and the first of them was from February 2016, with records continuing to the summer of 2017. O.M. did not agree with the proposition, put to her in cross-examination, that she did not seek out treatment until February 2016.

[35] V.G. said that in the first few months after he had left O.M. and A.G. in Ukraine, they had only a few communications. He expressed concern that O.M. had not apologized to him for calling him an idiot when their luggage had been lost on the way to Ukraine. V.G.'s insistence on receiving apologies from O.M. appears to have been a regular feature of their relationship.

[36] The first of a handful of Russian-language emails in evidence is dated August 11, 2015. By way of introduction, I would comment that the emails that were preserved and presented at trial were selected by V.G. in either 2017 or 2019 as those that he felt would assist with his case. None of the witnesses suggested that these were the only emails between the parties. My sense was that O.M., who had relocated from Ukraine to Canada, and then back to Ukraine, and again back to Canada, had much less in the way of access to records and documentation than did V.G. – whose primary residence at all material times was in Canada.

[37] It also became clear over the course of the trial that none of the parties had treated their pre-trial disclosure obligations particularly seriously, and there was a steady stream of new documents produced as the trial proceeded.

[38] I note as well that, when the trial began, only a few phrases from these emails had been translated into English. While it was initially suggested that what had been translated were the key parts, it became apparent early in the first cross-examination that it was going to be important to have the entirety of most of the emails translated.

[39] The email of August 11, 2015 (three months after the return of O.M. and A.G. to Odessa, and a few weeks after A.G.'s third birthday) states (translation):

Hello [A.G.'s] dad. I see that we have almost nothing to talk about anymore, so I am writing the main requests for [A.G.]. Regarding my needs, I closed the topic a long time ago. In addition to your money, we also lived on child benefits, which I received from the state until I was 3 years old. In addition to treating the child and getting started, there are many other needs (I don't take myself into account). I don't know your conscience, but you don't take into account the child's housing. Please note that you didn't say a word about where your child will live. The fact that she now lives with my parents is a gift from my parents. Utilities, etc. are not included in the minimum amount that I can allocate, but only for food! [A.G.'s] grandfather (who has 12 of his own!) gives [A.G.] an apartment to live in, but dad doesn't even give it for repairs!!!! Living in an apartment will be much more expensive, because now there is a lot for [A.G.] and me for free. The amount that I have left can last for a month at most. Why should I work and provide for my child. I need a nanny! Well, I myself will last here – I'm not alone here. Gradually, renovations are still being made in the apartment using your money (only enough for wallpaper). We still need to insulate the outer part, change the linoleum, and other little things. And this is the minimum for an apartment. Furniture is donated. **I definitely don't consider life in Canada for reasons in matters with the child (you know them well) and mine.**

I don't think that I completely bought (sic) my child's clothes for the fall in Canada, plus in the lost bag I most likely put her warm jacket and fur coat.

.....

Therefore, you read the information and I decline responsibility for not writing to you. For 300 dollars a month you can only eat here!!! And in Canada, for 300 dollars you only bought goods 1 or 2 times by going to the supermarket.

PS The child here is safe, happy, develops quickly, has improved health, character and quickly learned to speak. She's communicating! And if I hadn't reminded you for dad, she would have forgotten you. Which is what I noticed.

[40] The two phrases contained in the initial translations provided to the Court were the last sentence of the first paragraph and the first two sentences of the third paragraph (which I have bold-faced above). The translations are similar in sense, although not identical:

Life in Canada is not an option for me because of some reasons associated with the child (you know them well) and with me.

...

That's why, after you have read the information, I relieve myself of any responsibility resulting from not corresponding with you. One can only afford buying food here for 300 dollars a month.

[41] O.M. was asked about the comment about life in Canada not being an option. She explained that with respect to A.G., she felt more comfortable with the medical treatments available in Ukraine. With respect to herself, she felt that her relationship with V.G. was much better when they were both in Ukraine. This was in part because her family was around, and they were a positive influence, while in Canada, she was surrounded by V.G.'s relatives with no moral support and she found that hard.

[42] V.G. visited Ukraine briefly in either November or December of 2015. It appears to be common ground that he stayed with O.M. and A.G. in their apartment for two nights, then left for Moldova. O.M.'s evidence was that they spent time discussing their future and A.G.'s health, and that it was difficult for V.G. because he could see that A.G. was still very sick. She said that they slept in the same bed, but that she could not recall if they were physically intimate at that time.

[43] V.G.'s evidence is that he was open to restarting a relationship with O.M. because of his responsibility as a father, but that O.M. repeatedly told him that she would not come back to Canada. He was unable to recall whether the parties were intimate.

[44] It was common ground that V.G. left some more funds with O.M. during this trip. He thought it was about the same as what he had left six months earlier. O.M. recalled that it was a mix of Euros and dollars, but that most of the Euros turned out to be counterfeit.

[45] On December 31, 2015, O.M. sent an email to V.G. stating:

HAPPY UPCOMING NEW YEAR 2016!!!! P.S. We love and miss you.

[46] O.M. could not recall whether V.G. responded to this email. She did not agree that their communication by this time was quite limited. V.G.'s evidence was that he did not respond to it.

[47] O.M. was asked generally about her communication with V.G. in 2016. She said that there were times when they were in contact, and times when V.G. would not be in touch with her at all for a couple of months. She recalled that when they were in contact, they were discussing both their relationship and A.G.'s health. With respect to their relationship, she said that she was frustrated with V.G., that she loved him even though they had issues getting along, and that she was shocked that they had to live separately. She said that V.G. explained his position, and his conditions to continuing their relationship. She felt that V.G. was very focused on what he saw as O.M.'s mistakes or failings, and did not recognize any of his own. He seemed to think that if O.M. could correct her behaviour, their relationship might be able to continue. She disagreed with some of his views.

[48] The record contains two translated sentences from a lengthy email dated February 24, 2016. Unfortunately, the Court was not provided with a translation of the email as a whole. The sentences that V.G. had obtained a translation of are as follows:

A normal woman needs minimum things from a man which are flowers and his attention. What I needed is to be sure I wouldn't end up in prison.

[49] O.M. was asked about the reference to prison. She said that V.G. had threatened him with loss of her maternal rights, which was connected with prison in a way she did not fully recall the context of. V.G.'s evidence was that O.M. sometimes hit him when they had arguments, and this reflected her concern that he would have her thrown in prison for assault.

[50] On March 26, 2016, O.M. emailed V.G. saying: "[V.G.], please let's make peace." A further email from O.M. on April 30, 2016, said:

Can we finally stop living in the past and turn the page to live happily and fully? To start anew? Enough with the grudges already

[51] V.G.'s evidence with respect to the first email was that he felt it was like a manipulation, and did not respond to it. When asked about the second email, he said

that he responded to “one of these emails” by saying “I do not trust you”, but could not recall which email that was.

[52] At some point the British Columbia doctor who had been treating A.G. prior to her departure to Ukraine in May 2015 was in contact with the Ministry of Children and Family Development (“MCFD”), with concerns about whether she was receiving ongoing treatment for her medical conditions. It is not clear whether the doctor was told anything about A.G. going to Ukraine. It is not clear what inquiries the MCFD made after receiving the initial report. Neither party sought to obtain either the MCFD file or the provincial court file, and the only document disclosed by V.G. or P.G. with respect to the MCFD’s actions is a court order made on May 29, 2016, granting the MCFD a search warrant with respect to P.G.’s home in Duncan, BC, in order to search for A.G. It ordered that any parent or relative of A.G. disclose to the MCFD her whereabouts, and authorized the Director to remove A.G. for a medical examination.

[53] P.G. said that two police cruisers and a vehicle with social workers came to his house and interrogated his wife, threatening her with jail time if she did not give them the information they wanted. He clearly blamed O.M. for this having happened.

[54] I note that I am confident that the obtaining of a court order of the sort put in evidence in this case would not have been the first step taken by the MCFD to obtain information about the condition of A.G. Given the lack of information disclosed however, nothing else is known about what led the MCFD to obtain the order.

[55] On May 21, 2016, V.G. emailed O.M., forwarding a request from the MCFD for a Skype meeting on May 24, 2016, and commenting (translation):

Good evening,

Social services for child protection began to bother me in regards with [A.G.]. The doctors started sounding the alarm – the child had disappeared (we didn’t show up for a long time, they suspected that the child died, etc., and we are hiding it). The social service wants to make sure that the child is alive and that you are in Ukraine. I have told them this, but they want to see for themselves. They want to talk to you on Skype and see [A.G.].

The main points – we are alive and well, and we have an excellent doctor, and nobody is obligated to answer any other questions. You wanted to see the child – here she is and all the best to you.

[56] There is an email in response from O.M. on May 22, 2016, stating (translation):

Well hello. If you don't get in touch, I'll write then

First of all, why give out my phone number without asking? And now something dramatically depends on me. According to you, me and my family need treatment. And you began to say hello abruptly, and found me of great use. [V.G.], you are neither afraid of God nor ashamed of people. But this is not the case with God. And you didn't even thank me for picking up the phone and talking to the Canadians. [V.G.], stop being so brazen, unjust and deceitful.

I say this in all seriousness – if I don't have 5 thousand dollars on Monday, I'm telling the Canadian government the whole truth, I'll also tell them about the house in Duncan, about deception of your brother and about the terrible conditions for the child (let them go and see the room where our family lived – I have a lot of photos and videos, there is evidence) that you do not provide for the child, etc. I am very serious about this. And also, this request of yours should have been directed to my parents as I am fully dependent on them

It was God Himself who gave me a chance, and mind you, I didn't achieve this by war, etc. I will show them all the toys [A.G.] has and even the money you sent – it's very little ... And that you haven't resolved the housing issue for the child and perhaps you will face a Canadian prison. And also, you'd better call my parents and ask for their forgiveness for all the things you said to them. And promise them that you will resolve the housing problem. Otherwise, things will go as I have described. All the best.

[57] With respect to this email, O.M. explained that she was desperate for money because she was having to pay for A.G.'s medical treatment as well as living costs, and she could not work because she needed to care for A.G. Her recollection was that she did hear back from V.G., who told her that there was something he did not want her to tell the Canadian government, but she could not recall what it was.

[58] It is also not clear what request from V.G. should have been directed to O'M's parents. It appears that V.G. was seeking something other than to have A.G. appear by Skype, but in the absence of the communication that is being responded to, the context is unclear.

[59] V.G. gave evidence that he viewed O.M.'s request for \$5,000 as "simply extortion". He also said on cross-examination that at some point he told O.M. that he had received a number of child benefit cheques in respect of A.G. and that he could not cash them because they were in O.M.'s name. He was not sure if that was connected to the \$5,000 O.M. was asking for.

[60] O.M.'s evidence was that a Skype meeting went ahead on May 24, 2016, and that when the MCFD officials saw A.G. looking healthy and joyful, and able to answer questions together with her mother, they seemed to be satisfied.

[61] O.M. was not happy with some of what was said by V.G. during the Skype call. Her email of May 25, 2016, contains the first reference (at least among the emails that have been disclosed) to the word divorce (translation):

How you disgraced yourself once again. All of a sudden you started saying the words which weren't yours, about me deserting the family, leaving Canada, and you kept saying my words about vaccines and advantages of Ukraine for the child. About me having no* job)) I can work on the Internet without any documents, my boyfriend can support me and my child, moreover, I have many relatives here.

[V.G.], do you think everyone is so stupid and doesn't understand? And with your letter you once again proved who you are. I took and believed the words that it is not you who need this – I am in Ukraine, and you are in Canada and, supposedly, they have no claims against you. I only talked yesterday because I needed help from Susan. You used to ignore my calls and letters in every possible way, I offered you peace, you did not show any attention or care to the child and me – and now I am seriously thinking about divorce. You wanted it during my pregnancy, maybe you will get it. And you didn't give your consent for [A.G.] to live in Ukraine? Why didn't you say about this yesterday? Don't you want to remember your words – leave for half a year or a year? What court decisions are you talking about when there was no divorce yet? Yes, you allegedly tried to scare me ... But I took it and believed it. By law, let me remind you, the father must pay child support, no matter where he is. You have proven your "fatherly love" in practice, in life. Your money is much more valuable to you than the life of a child and family. I consider your last letter the lowest of all. I'm not extorting your money from you – I wanted to return [A.G.'s] money, it's her money and you have no right to spend it! You knew that she was even more in need of treatment! And what kind of fatherly love is there after that? Better say it in church. And if you don't see the enormous guilt towards my parents, it doesn't mean that it's really true. Your actions are being revealed to this day, and from the very beginning of our relationship you were like this, but I didn't see it. I was so naïve and gullible, now I understand why you wanted [A.G.] to be born in Moldova, why you didn't want to put a marriage stamp in my passport, etc.

And even more so, why God did not allow the child to be born in Canada ... It was God who protected and prevented, now I understand why ... If the Canadian authorities take on you, you will not be lucky.

P.S. Enrich your vocabulary, otherwise repeating my words and expressions is ugly.

[Highlighting indicates the portions originally placed in evidence. * indicates a difference in the translations – translation from V.G. says “no job”; translation from O.M. says “a job”]

[62] It seems clear that this email was written in response to one or more letters or emails from V.G. to O.M. However, the text it was responding to was not in evidence. There is clearly a context to the email and without that it is very difficult to analyse.

[63] O.M. was asked in cross-examination about the comment in this email that “my boyfriend can support me”. Her evidence was that she had no boyfriend in Ukraine. She said that, by May 2016, there was no more money from V.G. and her situation was becoming desperate. She met someone she had known from going to university, who mentioned that his company needed help. This person was described only as “Sergei”. O.M. decided to start working for his company because she needed money for living expenses and for medical expenses for A.G. The job involved working in an office. She realized after a short period of time that this person had a romantic interest in her, and she left the job after less than a month.

[64] O.M.’s evidence was that she had made multiple efforts to draw V.G.’s attention to his family in Ukraine by various methods, which had generally been unsuccessful. At this point, she was attempting to provoke jealousy. She described this time period in the middle of 2016 as a “very harsh period of our relationship”, as V.G. was not involved financially and was providing no support for either of them.

[65] The next email in the record is dated June 30, 2016. It has no subject and no text. Presumably it contains a letter from a medical clinic in Odessa confirming that A.G. was under a course of treatment with that clinic and had been with that particular clinic since April 2016. That letter was in evidence, although no explanation was given as to why it was obtained.

[66] The parties exchanged emails on July 10, 2016. The first email was from O.M., saying (translation) “I want to divorce.” V.G.’s reply, sent the same day, was (translation):

Long before the wedding, I offered to break off our relationship several times, but each time you insisted on continuing it. I didn’t get married to get a divorce. Best regards.

[67] The next communication placed in evidence was an email from O.M. sent on July 24, 2016, in which she said (translation):

Hello! A little news, well, and request. Apparently, more than once you received a reminder from different sources (including social services from Canada) about money for [A.G.], but you ignored it. Moreover, money was really needed for treatment! You sent little money until April (almost all the money went to [A.G.], except for utilities to pay for my parents’ apartment and very little for me), it was barely enough to live on. Well, besides the financial issue, there are many more such as relationships, etc. It’s already July. You knew that our parents provided for [A.G.] and me until recently. Dad had almost no way to provide for us when I unexpectedly met a religious classmate from the institute who needed workers, but I really needed money. Thank God he pays very well. I didn’t want to work. God takes care of [A.G.] and me through other people! There are plans to examine the child and cure him (sic) completely. **Well, and now request – I need the original marriage certificate, please send it soon. I can resolve the issue without him, but it will be easier for me with him. Thank you!**

[68] The partial translation that was initially provided included only the final sentences, which were translated to similar effect:

Here is my request: I need the original marriage certificate, please send me that one in the coming days. I can solve the issue without it but it will be easier if I have it. Thank you.

[69] O.M.’s evidence was that, prior to sending this email, she had consulted with a lawyer about what would be involved in obtaining a divorce. She understood that it would be much simpler to obtain a divorce with the original marriage certificate.

[70] It appears to be common ground that V.G. sent the original marriage certificate to O.M., mailing it from a post office in Victoria on July 26, 2016. O.M.’s evidence was that, in sending the certificate, V.G. commented that she should make sure he “was not brought out with his feet first”. I gather that this is a rough

translation of an idiomatic expression in the Russian language, the underlying notion of which is to make sure “that I don’t die”. She explained that she understood this was an indication that V.G. did not really want to let her go.

[71] O.M. sent a further email on August 3, 2016. Her evidence was that, at this time, she had not yet received the package containing the marriage certificate. She said (translation):

Hello. I won’t take too much of your time – there will be much fuss with divorce on the territory of Ukraine, my request to you: please come and we will go to Moldova together and get a divorce. I want to arrange my personal life. Yes, and you have long hinted and spoken openly a lot about divorce (and even wanted children from someone else). [V.G.], I forgave you. But I’m already burned out. I fought as best I could: I prayed, I humiliated myself, I begged you, I cried, I substituted the child and much more ... **Let’s part ways peacefully and try to forget the past.** I don’t want to hurt you, but you showed what kind of father and husband you are. You are more comfortable being alone, etc. Your silence did not lead to anything better, but on the contrary, made things worse. You wanted to wait for the moment when I would feel completely bad here and prove that I am nothing without you and my name is nothing. If I was your wife, this does not mean that I am your property, which has no rights at all. I am, first of all, God’s daughter, who is very dear to Him... **I won’t talk long about the past. I’m waiting for you or give me your marriage certificate.**

Well, if you decide to read this letter to others, mention your prison threats, your request to be a “tenant” in an apartment for 300 UAH per day and the rest ...

[Highlighted portions are those originally placed in evidence.]

[72] O.M. said that her final comments in the email reflected her belief that he was talking about her with family members and members of his church community

[73] V.G.’s evidence was that, after he had sent the marriage certificate to O.M., along with some money to help with the costs of obtaining a divorce, he thought he was divorced. It appears, however, that he did not receive any notice of a divorce proceeding or take any steps to determine whether any such proceeding had been commenced.

[74] O.M.’s evidence was that, although the marriage certificate arrived at some point after she had sent this email, she did not go to Moldova and did not take any

steps towards a divorce. Her evidence was that she decided she was not ready to move forward with such steps.

[75] At some point in 2016, V.G. filed his annual income tax return for 2015. Unfortunately, only the first page of the return was disclosed, so it is not known exactly when in 2016 it was filed. However, given the dates on O.M.'s notice of assessment and the Canada Child Benefit ("CCB") notice referenced below, I infer that it was filed during the final few months of 2016. V.G.'s tax return identified his marital status as of the end of 2015 as "married", and his address as P.G.'s home. V.G.'s tax returned, in respect of his spouse's income, O.M.'s 2015 income which was said to be \$1,920.

[76] The records also included a notice of assessment in respect of O.M.'s income taxes. The notice of assessment was issued January 12, 2017. It showed her income for 2015 as \$1,920 – the same amount as on V.G.'s income tax return. As well, the records also included a CCB notice dated February 20, 2017, advising that based on a net family income for 2015 of \$43,680, O.M. was entitled to a total of \$6,102 in CCB payments.

[77] V.G.'s evidence was that his tax returns were always prepared by a bookkeeper. He said that he had a discussion with his bookkeeper, and that because he did not have a "legal separation document" like a divorce certificate, his bookkeeper had told him that the "married" box had to be chosen. V.G. said he had no idea where the \$1,920 figure in O.M.'s income tax return (repeated in his own return) came from.

[78] In December 2016, V.G. decided to travel to Ukraine again. On December 31, 2016, he reserved an AirBnB in Odessa for a period of nearly three weeks (January 10–28, 2017). O.M.'s evidence was that the AirBnB unit was close to the apartment in which she and A.G. were living.

[79] The parties had different evidence as to who slept where during this visit. V.G.'s evidence is that he had gone to Odessa mainly to spend time with A.G. and to

talk with O.M. about the future. For V.G., talking about “the future” meant looking into whether there was any possibility she and A.G. would come back to Canada. He said that when he told O.M. he was coming, she asked that he bring with him her remaining belongings that had been left in Canada – which he saw as not a very good sign. He said that while he was in Odessa, he stayed at the AirBnB and that O.M. stayed with him there for two nights.

[80] O.M.’s evidence was that she was surprised that V.G. had rented the AirBnB, but that she understood he was concerned about their apartment being too small, and also concerned that O.M. would not have been welcoming. But once he came to them and realized that he was welcomed, O.M. said that V.G. stayed at their apartment for all but two nights, when O.M. and A.G. stayed with him in the AirBnB.

[81] O.M.’s evidence was that the AirBnB had minimal kitchen equipment and that she cooked most of their meals at the apartment, while V.G.’s evidence was that the AirBnB kitchen was well-equipped and he cooked meals there.

[82] At some point during the trip, the parties met with a Pastor Nikolay who tried to help them overcome their differences. V.G. said that his “heart was open” because he and O.M. had a daughter, and that in his view, she needed a father. He said that Pastor Nikolay encouraged him to do whatever possible from his side to fix his relationship with O.M.

[83] At some point during this trip, it was decided that O.M. and V.G. would travel to Egypt together. His flight back to Canada – which had originally been scheduled for January 28 – was delayed. A.G., whose health had improved somewhat by this point, stayed with her grandmother in Odessa. It was common ground that V.G. and O.M. were intimate on more than one occasion during the trip to Egypt and also while V.G. was staying in Odessa. Otherwise, their evidence differed with respect to the Egypt trip. V.G. said that their relationship fell apart within a couple of days of arriving in Egypt. He said that during this visit, he saw a text O.M. had sent to a friend saying that she was “very sorry that A.G. had such a father”. O.M., on the other hand, said that their time in Egypt was a wonderful vacation – there was no

fighting, and the two of them just had a really good time together. O.M.'s passport stamps indicate that they spent February 2–9 in Egypt.

[84] O.M. was asked why, if the relationship seemed to be significantly improved by this time, she and A.G. did not return to Canada in early 2017. Her evidence was that A.G. was still under treatment and steadily improving, and that her relationship with V.G. was “still recovering” and that he was not at that time encouraging her to move back to Canada. V.G., on the other hand, said that in his view A.G.'s health was, by this point, back to 100%.

[85] On February 15, 2017, O.M. emailed V.G. as follows:

I miss you and [A.G.] misses you too (she doesn't even take apart the house from the construction). God comforts me a lot though.

I want to talk to you. I already have a laptop but I don't have the opportunity to talk on Skype yet. I love you and I'm waiting. God bless.

[86] O.M. said she most likely received a response to this message, but she could not remember what it was. V.G. said that he did not respond to it.

[87] Dealing generally with their relationship in 2017, O.M.'s evidence was that after the trip to Egypt, she felt more energy and willingness to keep fighting for their family, but that it was hard to do from a distance. She said they were still fighting, that V.G. was continuing to make statements to her about what he expected from her in order to keep the relationship, that he was very clear that it was his way or no way, and that the distance made things harder. However, the relationship was not as strained as before the visit of early 2017.

[88] V.G.'s financial disclosure, for several accounts, dates back to early 2017. His day-to-day account was an “All Inclusive” account (“TD Account 6962”). V.G. also had a savings account (the “TD Account 7139”) – one that was initially set up as his personal savings account. By 2017, the account had been made a joint account with P.G., although the evidence indicated that P.G. had few dealings with the account prior to 2020. By late February 2017, V.G. was holding over \$70,000 in TD Account 7139, plus just over \$8,000 in TD Account 6962.

[89] On February 27, 2017, V.G. transferred funds into a US dollar account (the “TD US\$ Account”). The total amount was US \$17,000. It appears that part of the money came from TD Account 7139, although given the different currencies, that is not entirely clear. In any event, on February 27, 2017, the funds in TD US\$ Account were used for two wire transfers in the amounts of US \$10,000 and US \$7,000. The US \$7,000 amount was sent to a Ms. Bobrovska in Ukraine. [It is not clear where the other US \$10,000 was sent.]

[90] This was the first of four wire transfers to Ms. Bobrovska. A further US \$5,000 was sent on March 29, 2017, another US \$2,500 was sent on June 16, 2017, and a final US \$2,000 was sent on July 17, 2017.

[91] The evidence did not include any correspondence between V.G. and Ms. Bobrovska. However, V.G.’s evidence was that Ms. Bobrovska was O.M.’s sister, who he had talked to when visiting Ukraine earlier that year. He said that Ms. Bobrovska had told him she was knowledgeable about chicken farming, and that if he invested US \$10,000 with her, she could make the original investment back within a year or a year and a half. He said that he asked Ms. Bobrovska to invest this money in a chicken farm, and to use the income to support A.G. He said that as new expenses arose, he ended up having to send US \$16,500 in total.

[92] V.G. explained that because O.M. had said that she was never going to return to Canada, he felt that investing in a chicken farm was an “easier” way for him to support A.G. He said that by this time, he did not trust O.M., and did not discuss this with her. He said that he sent this money despite being “in debt” and “trying everything possible to keep [his] head above water”.

[93] V.G. said that eventually, Ms. Bobrovska stopped returning his calls, that he tried to contact her and she disappeared. Thus, he viewed this money as having been lost.

[94] O.M.'s evidence was that the money sent to Ms. Bobrovska was not related to a chicken farm or to support for A.G. Rather, she said that V.G. was buying some property in Ukraine for himself personally.

[95] I note that there were further outgoing US \$10,000 wire transfers from V.G.'s TD US\$ Account on March 8 and March 18, 2017. With respect to one of these, V.G. explained that it was a loan to a friend in Ukraine. A further US \$5,000 was sent to that friend in late May 2017. By the beginning of April 2017, the cash balance in TD Account 7139 was down to \$40,000.

[96] In late May 2017, O.M.'s brother, S.M., travelled to Canada where he spent six months living with V.G. and assisting him with tiling work. S.M. said that during this visit, they had a few conversations about O.M. His recollection was that V.G. told him that O.M. should apologize to some of his friends in order to restore relationships, and he wanted her to change her character and become more calm.

[97] The record at trial included three further emails from O.M. to V.G. during the balance of 2017, all sent within a period of six weeks. The first of these three was sent on May 22, 2017. It is not clear what if anything happened between the email of February 15, 2017 (quoted above) and this one, but as can be seen the tone and content are very different. The email is lengthy. It begins as follows (translation):

I alone am to blame for the fact that I married a man who did not love me a bit. I saw this beautifully and got married anyway, that's why I suffer, and also my daughter. She is not guilty at all, but suffers for a long time. Despite the fact that I heard a nasty speech about that daughter-in-law in my ears from my fiancé, I still got married. What a low and stupid act. How can you go for such a humiliation, decide on such a serious step – to unite your life with a man who did not see a girl in me at all. I did not bring him joy, but sadness, he was not interested in either my appearance or soul, nothing. And I saw it, just to create a look, outwardly connect lives. I saw it. And what is interesting, I expected another, if I am an empty place for him or like a passerby on the street, how can I fall in love? No way. There was no respect for me, no condescension, no understanding that I was a girl who was created by God the Creator. And where does that attitude come from, when there is a different type of woman in your head, a ready-made picture, what do you want? And here the face is completely different, nothing to do with the expected! Nothing.

[98] After comments about their child's illness, and advice they obtained from a pastor, O.M. continued:

Well, he is a pastor and the reviews about him are good. But [O.M.] does not see what is before her eyes, here he is, that good man, but in real life something is not right. As I wrote in the last correspondence, that I will not go further in our relationship and now I affirm. Because I will no longer tolerate a sick family. And this I call arranging a house. And I don't know how to live. And your problem is not solved by a trip to Egypt or something petty. I offered you ways to solve your personal problem, but you laughed at it. Then live as you know without me, what do you want in this life, I have not understood until now. I pi ala specifically and clearly for you. And I don't want much at all, I have much more modest and real desires than some.

[99] O.M. then expressed concerns about V.G. sharing her letters with others, expressed regret that she had been married, and continued:

Do not write to me, I do not want any more attention from you, no words, no deeds, nothing. I endured and waited for an understanding of your dirty, vile, treacherous state to come in your head. I don't know what's in your soul, or you see it, but it's a shame to admit everything, or you don't see it at all, or you're afraid for your reputation, or something yet. ... Live your full life. Make your plans and go to them. I no longer want to have anything to do with you, it is very disgusting and disgusting to me. Only if you know the answers to my two questions, but you don't know them – when will all this end (wild and terrible relationships and child illnesses) and why did I endure so much pain before for some petty goals and pleasures.

[100] The second of the three emails was sent two weeks later, on June 5, 2017 (translation):

[V.G.], please try to treat me the way you want me to treat you. I know that maybe you don't want any relation to yourself, I know it hurts and it hurts a lot. Please don't push me away this time too – we all want not justice, but more mercy. I confess I see myself, too, some kind of non-family, like you. We are similar to you in this. Thank you for [S.M.], that you create all the conditions for him to be satisfied. I know that it is not easy for you. And me too ... Thank God, my daughter's gums finally have a healthy color, I give other medicines ... And inside I change, though it is with great effort ... I even went to the sea with [Ms. Bobrovska] ... it was hard overcome your grievances ... And there are changes with relatives!

I am writing, and I understand that I would not have written anything like this before ... much new ... but not yet approved. My favorite pastime is to kneel, and even more just to kneel and listen silently ... there are no words from pain and misunderstanding, so I just keep silent ... it lifts me up.

Please help me! I really need you. I don't rely on people thought. I feel bad without communication with you. Please don't push me away. I recently began to understand important things ...

The most difficult thing was to push your negatives and mistakes aside and take care of yourself. And the struggle is constant to look at your affairs ... Help me, please. I know that you may not have room left for me because of the pain, and I too would have pushed away earlier. Let's together. Please Let's forget the past, even though it's impossible to forget now. And it hurts me. Believe me.

Forgive me for my retreat in marriage, but I have sinned But if you hadn't allowed a lot first, you wouldn't even think to do it! I beg you, forgive me, and if you want details, let's talk at the meeting. Please, in the midst of pain, try to understand me, as I do. But I don't want to write to you about you, I want to meet you ... I pray, believe me, only after the retreat was made, I began to treat your past affairs more gently I was also very hurt and I don't know how to solve it. .. may just forget and never come back. I beg you, let's try together ...

And for the church, if necessary, I will try to make a video with my speech ... I don't know how it will be, but I'm taking steps towards peace ... and even though I write strong words, I'm all still weak ... Help me please ...

[101] O.M. was asked about various statements in this email. She said that she was seeking more understanding from V.G. In her view, he had very clear and firm convictions as to what is right and wrong and how things should be done, but she wanted him to understand her perspective as well.

[102] With respect to the reference to her brother S.M., she explained that she was thanking V.G. for inviting S.M. to come to Canada for a period of time.

[103] With respect to the paragraph that dealt with sinning, her evidence is that she believed throughout their marriage that V.G.'s weak point was other women, and that she would see him talking to other women in an inappropriate way and gazing at other women when they were around. She said that she had never cheated throughout their marriage, but that she had shared with V.G. that she had worked for a man for one month who really liked her, but that when she realized that man had further intentions towards her, she left that job and ceased any interactions with him. However, V.G. considered even being in close contact with another man for a few weeks was a form of cheating.

[104] With respect to doing a “video for church”, O.M.’s evidence was that she understood V.G. had shared negative information about her with the people of his church in Victoria, seeking to establish that O.M. was the one who had damaged their relationship, and that she was offering to make a video in order to help restore relationships.

[105] V.G.’s evidence was that he did not respond to the June 5, 2017 email. O.M. was not asked whether there had been a response.

[106] The final of the three 2017 emails in evidence was dated July 1, 2017. In it, O.M. said (translation):

And I still love you anyway. Although I don’t know how to live with you after everything. God willing. He will not treat you the way you treated me!!! He gives you health, work and everything for life every day, and teaches you very patiently and recently opens up important things to you. Be blessed.

[107] V.G.’s evidence was that he did not respond to the July 1, 2017 email. O.M. was not asked whether there had been a response.

[108] V.G.’s evidence was that when he called A.G. on her fifth birthday in July 2017, she asked him to buy an apartment for “us” in Odessa. He suggested that it was probably O.M. who had suggested this to A.G. None of this was put to O.M. when she was giving evidence.

[109] As noted above, the Duncan Home was purchased in August 2017. The details of the transaction will be canvassed in the next section of these reasons for judgment. O.M.’s evidence was that V.G. did not tell her about the purchase, nor did he ask her input with respect to it, although V.G. had previously discussed with her the idea of buying a home in Canada. O.M. said that she learned about the house purchase from S.M., who continued living with V.G. until November 2017.

[110] At some point, 2016 income tax returns were filed for both V.G. and O.M. Unfortunately, only the first page of V.G.’s income tax return was disclosed. However, it appears likely that these returns were not filed until some point in 2018, given that:

- a) O.M.'s notice of assessment was issued on December 17, 2018; and
- b) The CCB notice for benefit payments from July 2017 to June 2018 (which would have been based on family income for 2016) was dated January 18, 2019.

[111] In any event, it is noteworthy that V.G.'s 2016 income tax return certified that as of the end of 2016, his marital status was married, his wife was O.M., and her income for the year was \$720. O.M.'s notice of assessment also reflects her income for the year as \$720.

[112] V.G.'s explanation for the "married" status on this return was the same as for his 2015 return – that he told his bookkeeper that he had no legal documentation to show that he was separated, and that his bookkeeper filled out the form showing that he was married. He said he had no idea where the \$720 income figure for O.M. came from.

[113] At some point in 2017 or 2018, O.M. sold the property in Ukraine that V.G. had purchased in her name back in 2012. Her evidence was that it was sold for about US \$1,000, which she understood was what V.G. had initially purchased it for, and that the money was used for living expenses.

[114] O.M.'s evidence was that A.G.'s health continued to improve, and that after the end of 2017, no further treatments were required.

[115] O.M.'s evidence was that the parties continued to have occasional communications, and that in January 2018, she was angry because she felt that V.G. was blaming her for many things including the illness of their child and the state of their relationship, and she felt that he wanted her to refurbish her personality and become completely submissive to him. On January 16, 2018, she emailed V.G., saying:

I am not your wife anymore! My life with you is a thing of the past though it is impossible to treat it as a life together. I can thank you only for some minor things. And I can't thank you for the pain, disappointment and sorrow I had when living with you. Alas! This is the end. Your dream came true.

[116] O.M.'s evidence is that they continued to correspond over the next few months, and that V.G. started sending her messages on her phone when she was working night shifts. She said that those messages indicated his interest in trying to keep their relationship.

[117] V.G., on the other hand, said that it was O.M. sending him messages, asking him to come to Ukraine, and saying that they could talk about Canada. He also said that O.M. indicated that she would be willing to help V.G. get rid of his debt – which in his mind meant that she would be willing to go to work. [This latter point was never put to O.M.]

[118] Although each party gave evidence about messages sent in the first half of 2018, neither put any of those messages in evidence.

[119] In mid-June 2018, V.G. returned to Ukraine where he stayed for several weeks. He said his decision to go to Ukraine was in significant part related to A.G., but that he also wanted to continue discussions with O.M. A number of photographs were in evidence, which showed O.M., V.G. and A.G. at a number of events in the Odessa area together. O.M.'s evidence was that, at the time, she had a bedroom at her parents' house, and that V.G. stayed with her there. O.M.'s evidence was that the relationship was much more positive at this time and they got along well. The photographs, at least on their face, portray a happy family spending quality time together.

[120] V.G.'s evidence was somewhat different. He said there was a mix-up as to where to meet in Odessa, and that when they did meet up O.M. started to yell at him, told him she hated him, and to go back to Canada. V.G. said that notwithstanding this, he recognized that O.M.'s permanent resident status was due to expire if she did not return to Canada, and he saw this as a final opportunity to get A.G. back to Canada. He said that despite the tension, he agreed to bring O.M. and A.G. back to Canada.

[121] V.G. said that when he was in Ukraine, in early August 2018, he met Mr. Linevich, the friend from whom he had borrowed money four years earlier that he had lost in the fraudulent investment. He said that he explained to Mr. Linevich that he needed more time to repay the loan because he had purchased property with his brother, and that Mr. Linevich asked him to sign an IOU indicating that he continued to owe US \$75,000. This IOU was not in evidence at trial.

[122] V.G., O.M. and A.G. returned to Canada in mid-August 2018, arriving in Duncan on August 11, 2018.

Purchase of the Duncan Home

[123] On Friday, July 28, 2017, V.G. entered into a contract of purchase and sale (the “CPS”) to purchase the Duncan Home for \$409,000. The agreement provided that a deposit of \$10,000 would have to be paid one day after final subject removal, and that the completion date would be August 21, 2017. In an addendum, the parties confirmed that “the Buyer is aware that the property has been vacant for the last 10 years”. The agreement was “subject to a new first mortgage being made available to the Buyer on or before August 11, 2017 at current rates and terms”.

[124] P.G. was not a party to the CPS. The evidence of both V.G. and P.G. was that they had been talking about purchasing a property together for some time. Both of them testified that V.G. had discovered the property on the morning of July 28, and that the vendors had advised that they would consider any offers received by the evening of July 28. Both said that because P.G. was not available to come and sign documents, P.G. told V.G. to go ahead and sign the CPS.

[125] On Wednesday, August 2, 2017, P.G. deposited \$15,000 into a bank account in the name of himself and his wife. He was unable to say where the \$15,000 came from. He then transferred \$24,000 from that account to TD Account 7139 – as noted above, this was a joint account in the names of V.G. and P.G., although it appears to have been used almost exclusively by V.G.

[126] On cross-examination, O.M. was taken to affidavits in which she said V.G. had told her that much of the \$24,000 had been borrowed by P.G. from his father-in-law, and ultimately repaid to him. O.M. confirmed that this was what she had been told by V.G., but acknowledged that she had never seen any documents proving this.

[127] On Thursday, August 3, 2017, V.G. applied for a mortgage loan from TD Bank, which is the bank at which he did all of his banking. Prior to doing so, he had made three deposits into TD Account 6962 of \$25,000, \$6,300 and \$1,230. After those deposits, the balance in TD Account 6962 was \$44,622.

[128] V.G.'s application for personal credit shows his primary assets as being his TD Account 6962 balance of \$44,622, TD Account 7139 balance of \$24,000, and some \$9,994 in his TD US\$ Account. The application confirmed that he had been working in his current position as a sole proprietor since December 1, 2012, and that his income was \$52,637. The document does not indicate any substantial debts. Specifically, it does not indicate any debt owing to Mr. Linevich or anyone in Ukraine.

[129] V.G. also signed a TD Bank form of privacy agreement on August 3, 2017.

[130] The TD Bank file with respect to this mortgage loan was obtained from the bank and disclosed part-way through the trial of this matter. It was not until that file was obtained that it became clear that V.G. had made his own application for a mortgage on August 3, 2017. The file does not show what happened to this application. V.G. denied having been told that his application was not sufficient for the mortgage loan he was seeking.

[131] A further mortgage loan application was made on Saturday, August 5, 2017. This application was supported by two applications for personal credit – one completed by V.G., the other completed by P.G. V.G.'s application was the same as the one he had completed two days earlier (other than a \$100 change in his credit card balance). P.G.'s application confirmed that he already owned a house, and that his annual income was over \$90,000.

[132] On Wednesday, August 9, 2017, the parties to the CPS, as well as P.G., all signed an Addendum providing that:

The parties agree that the buyer's brother, PG, will be added to this contract as buyer with the same joint and several rights and obligations of the buyer as if they were an original party to this contract and without releasing in any way the original buyer from their obligations under this contract.

[133] On Friday, August 11, 2017, V.G. and P.G. signed a mortgage loan agreement with TD Bank, providing for a five-year closed insured variable interest rate mortgage loan, with a principal amount of \$404,092 and an interest rate of prime less 0.65% (at the time, the effective rate was 2.45%). That same day, V.G. and P.G. signed a further addendum to the CPS by which they confirmed that the financing condition had been removed.

[134] A cheque for the \$10,000 deposit, drawn on TD Account 6962, was processed on Tuesday, August 15, 2017.

[135] Crease Harman LLP were retained to complete the transaction. Unfortunately, their solicitor's file with respect to the transaction was not requested until either shortly before or during the trial of this matter, by which time the file had been destroyed and was no longer available.

[136] However, during one of the breaks in the trial, V.G. was able to find a copy of the Buyer's Statement of Adjustments prepared by Crease Harman LLP. That document, which was dated August 21, 2017, showed that the amount required to complete the purchase was \$18,697.55.

[137] The sum of \$18,697.55 was withdrawn from TD Account 6962 on August 21, 2017 to create a bank draft. This is the only withdrawal from any of the accounts in evidence in or about that time, and I infer that this represented the funds paid to Crease Harman LLP in order to complete the transaction. V.G. was asked about this withdrawal, but could not remember what it was for.

[138] The \$24,000 that P.G. had deposited in TD Account 7139 on August 2, 2017, remained in the account throughout this process and for months thereafter.

[139] V.G. was asked in cross-examination about his various earlier affidavits in which he had said that he contributed only \$10,000 to the purchase and that P.G. had put in \$24,000. He responded that he was unable to remember exactly what happened in 2017 because it was so long ago.

[140] The transaction was completed on August 21, 2017. Title was placed in the names of V.G. and P.G. as tenants in common, with V.G. holding a 99% registered interest and P.G. holding a 1% registered interest. V.G. moved into the Duncan Home shortly after completion, while P.G. has continued throughout to live elsewhere.

[141] P.G.'s evidence was that he and V.G. had a verbal agreement that they would each beneficially own 50% of the Duncan Home. He said they were two main reasons for V.G. to be shown as holding a 99% interest. The first was that he understood that because he already owned a house with a substantial mortgage, he was afraid that they would not qualify for a mortgage if he was shown as a 50% owner. The second was that they understood that the property transfer tax would be reduced, since V.G. was a first-time home buyer.

[142] V.G.'s evidence was to similar effect. He said that he understood they would save money on taxes, given that he was a first-time buyer, and also that "my understanding also was that if we registered that way we have less chance of actually losing a chance to be approved for a mortgage".

[143] Both P.G. and V.G. denied that P.G. had been added to title because V.G. could not qualify for a mortgage on his own. P.G. was adamant that V.G. could have purchased the house without P.G.'s help, but that because they had a goal of fixing the house up, V.G. needed his help both for the costs of renovations and for his skill-set as a heating technician and other matters related to work of a mechanical nature.

[144] It is clear from the Buyer's Statement of Adjustments that the parties paid the full amount of property transfer taxes – that is, that no claim was made for a reduction based on V.G. being a first-time home buyer. V.G.'s counsel suggested to

him on re-examination that perhaps his lawyers had later refunded an overpayment of taxes to him, but V.G. said he could not recall that having happened.

[145] As noted above, the \$24,000 that had been deposited by P.G. into TD Account 7139 remained there. The only transactions in that account between August 2 and October 2, 2024, were a deposit of \$6,118.20 on August 24, 2017 (the source of which is not apparent from the documents provided) and a transfer that same day of \$6,118.20 to TD Account 6962.

[146] V.G. arranged for automatic withdrawal of mortgage payments from TD Account 6962. The first payment of \$298.17 was withdrawn on September 1, 2017, and then \$987.53 was withdrawn on September 15 and 29, 2017, and continuing thereafter during the balance of the five-year term of the initial mortgage.

[147] On October 2, 2017, the sum of \$4,000 was transferred from TD Account 7139 to TD Account 6962. Those funds were used that same day to make a credit card payment. The remaining balance of \$20,000 in TD Account 7139 remained untouched until April 2018.

[148] On April 27, 2018 – more than eight months after the completion of the Duncan Home purchase – the sum of \$5,300 was withdrawn from TD Account 7139, leaving a remaining balance of \$14,708. The documents in evidence do not indicate where that money went. There were other cash withdrawals that same day (two cash withdrawals of \$5,000 each) from TD Account 6962.

[149] V.G. denied that any of the \$24,000 that P.G. had put into TD Account 7139 on August 2, 2017, was repaid to him.

[150] With respect to TD Account 7139, there were no further transactions until September 2018.

Living Together in Duncan

[151] As noted above, V.G., O.M. and A.G. arrived in Duncan on about August 11, 2018, and began living together in the Duncan Home.

[152] It was common ground that V.G. had received a number of cheques with respect to the CCB, all of which were payable to O.M. On August 19, 2018, the two of them opened a joint bank account at the Bank of Montreal and deposited \$14,123.64. V.G. acknowledged that he used these funds for expenses, but said that his intention was that the funds would be replaced and kept for A.G.'s future.

[153] Also, on August 30, 2018, V.G. paid a \$50 fee to Citizenship and Immigration Canada. His evidence was that this was a fee to renew O.M.'s permanent resident status.

[154] As noted above, there was some \$14,700 in TD Account 7139 after the April 2018 transaction. The next transactions in the account were on September 18, 2018, when there was a deposit of \$8,532.38 (the source of which was not identified in the documents) and a transfer of \$36,757.09 from TD Account 6962, giving a balance in TD Account 7139 of \$60,000. Of these funds, \$7,700 was used on October 2, 2018, to pay a credit card bill. There were various smaller in- and out- transactions over the next few weeks, leading up to a payment to the Canada Revenue Agency ("CRA") of \$23,702.35 on December 7, 2018. After that payment, \$25,000 remained in TD Account 7139. V.G. explained that he was using the account as his own personal savings account, so that when he had excess cash around, he would earn interest on the money. Several of the in- and out- transactions match transactions in TD Account 6962 (on which little or no interest was earned). After this series of transactions, there were no further transactions in TD Account 7139 (other than monthly interest on the \$25,000 balance) until May 2019.

[155] The other financial matter of note is that, at some point (presumably in the fall of 2018), income tax returns for 2017 were filed for both V.G. and O.M. As with the previous returns, only the cover page of V.G.'s tax return was disclosed. It shows his marital status as married, his spouse as O.M., and O.M.'s income as \$0. With respect to O.M.'s income taxes, her notice of assessment was issued December 27, 2018, and it showed her total income as \$0. Both V.G.'s 2017 tax return and O.M.'s notice of assessment showed their address as the Duncan Home, as did a CCB

statement issued to the parties in January 2019 showing their CCB entitlement for the July 2018 to June 2019 payment period.

[156] As with the 2015 and 2016 tax returns, V.G. explained that it was his bookkeeper who decided to show his marital status as married, and the bookkeeper said to do so because there was no legal document to prove a separation. V.G. again said he had no idea where the \$0 amount for O.M.'s income came from.

[157] The parties had dramatically different evidence with respect to their relationship after their return to Canada in 2018.

[158] O.M.'s evidence was that her relationship with V.G. was good for the first several months after she and A.G. returned to Canada. She said that she and V.G. slept together in the master bedroom, and that A.G. had her own room on the same floor. She said that they did many activities as a family, including going to church, cycling, swimming, and spending time together. She said that after their return to Canada, A.G. attended school and V.G. was busy working. She produced numerous photos of the three of them engaging in various activities, including singing in church at Thanksgiving.

[159] O.M. acknowledged that she and V.G. had one significant fight in late November 2018, during which she hit V.G. She said that was the only time she ever hit him. She acknowledged that there were "several different periods and some changes" in the relationship – I understand that to be to the effect that there were ups and downs, but that they continued on as a family. She said that their relationship continued reasonably well until the spring of 2019, when V.G. began insisting that she needed to see his psychologist – whom she did not trust.

[160] A witness, Ms. Chayka, who was a member of the same church community as the parties in Victoria, spoke of meeting them in about September 2018. She recalled seeing V.G. and O.M. in a jewelry store in which she worked at a shopping mall in Victoria, and that they were holding hands, walking very close together and looking like a very cute couple. This was the first time that she had seen O.M.

[161] Ms. Chayka recalled that she and other people in the church had previously felt sorry for V.G., because it was presented to them that V.G.'s wife and daughter were living in Ukraine. She was very happy for V.G. when she met O.M. and A.G. at church. She recalled herself and her husband being invited for dinner with V.G. and O.M. at the Duncan Home and having a lovely evening with them. She said there were no signs of significant issues between V.G. and O.M.

[162] V.G.'s evidence was different. He said that for a short period of time after they came back, things seemed okay and there were no fights. He agreed that, for a period of time, he and O.M. shared the master bedroom. However, he said that, after a short time, he began to experience verbal abuse and negative emotions, that sometimes he would sleep downstairs in a living area in the basement, and that during the winter, when it was cold, he would sometimes stay in A.G.'s room while A.G. slept in the master bedroom with her mother.

[163] V.G. said that the reason they were shopping for a ring in the fall of 2018 was that O.M. no longer liked her original ring because it had been chosen by P.G.'s wife, who O.M. did not like. He said that although they looked at new rings, they did not actually purchase one.

[164] V.G.'s evidence was that the various pictures that were in evidence, all of which seemed to show the three of them happily engaged in family activities, were all created for A.G.'s benefit, and did not reflect the true state of their relationship.

[165] V.G. disagreed that he, O.M. and A.G. attended church regularly. He acknowledged that he was one of the pastors of the congregation, but he said they only attended infrequently. He said that when at church, they tried to create an image of a happy family, even singing together during services, but that this was all a sham. He said that, when he later told the congregation that he had deceived them about his relationship with O.M., he felt compelled to resign as a pastor.

[166] V.G.'s evidence was that, by October or November of 2018, he had begun asking O.M. to go back to Ukraine. He said he told her she could go either with or

without A.G. He said that, at one point in the fall of 2018, O.M. had asked him to buy a new cell phone for her, which he thought was too expensive. He said he called O.M.'s father and asked him to take her back. He said that the father told him that, if he purchased an apartment for O.M. in Ukraine, then she would come back. He said that after the conversation, O.M. came downstairs to where he was sleeping, kicked him, and asked him why he phoned her father. O.M. was not asked about this event during her evidence.

[167] The evidence included a transcript of portions of an argument that V.G. said occurred on November 24, 2018. When the transcript was put to her on cross-examination, O.M. did not deny it. V.G. explained that, during the course of the argument, he had gone to the bathroom and turned on the recording app on his phone. The argument appears to be about whether a Canadian passport application should be signed for A.G, and about a woman that O.M. accused V.G. of having stared at, and includes a comment from V.G. of “why are you hitting me”.

[168] The evidence included another recorded conversation in the Russian language, which V.G. said was probably in about October or November. Throughout the conversation, O.M. advises that she does not want to talk, and asks V.G. to leave her alone, but he persists. Their conversation included a discussion about which of the two of them was “ruining” A.G., and a suggestion by V.G. that O.M. had called him a “tramp”. As well, there was a statement as to which there were different translations. One translation, tendered in evidence by V.G., said that O.M. had said she would “blow [V.G.’s] brains out”. The interpreter at trial interpreted the same Russian words as “drive you crazy”. In the recorded conversation, V.G. asks O.M. how she will do this – to which she responds (as translated) “in a very slow and biting way”.

[169] When asked about the difference between the translations, V.G. (who testified in English and appeared to have strong English-language skills) said that “it’s not a big difference, or like a crucial contradiction” between the two versions. He said that there are no words for “drive you crazy” in Russian. On cross-examination,

he agreed that the Russian text does not involve putting a gun to a person's head and pulling a trigger; rather, he suggested that it means "I will do terrible things and you will lose your mind in the end".

[170] It was common ground that in about January 2019, the parties began renovating the basement of the Duncan Home. This involved P.G. spending more time at the house, as he installed a heat pump. P.G. described the house as an unpleasant place to be. O.M. said that having P.G. there was difficult. She said that, in early 2019, "third parties" started to get involved in her relationship with V.G.

[171] On March 11, 2019, S.M. returned to Canada. He did extensive work with V.G. on the basement renovation over the next few months.

[172] S.M.'s evidence was that when he returned, O.M. and V.G. were sleeping in the master bedroom, A.G. had her room, and S.M. stayed in the third bedroom. He said that he did not witness anything unusual; rather, his observation was that, like most families, O.M. and V.G. had some conflicts and some joys. He observed them going for walks or to the swimming pool. He also acknowledged that they had some arguments.

[173] There is also a photograph in evidence of O.M., V.G., A.G. and S.M. all singing together at the front of the church in Victoria. S.M.'s evidence was that while he was there, they went to church almost every Sunday.

[174] On April 5, 2019, V.G. transferred \$25,000 from the Bank of Montreal joint account, which contained all of the CCB funds received, to his Bank of Montreal line of credit. He explained that he and O.M. had agreed that he could use the money to cover things that were urgent, as long as he paid it back.

[175] There were a number of significant transactions in V.G.'s various bank accounts in late April and early May 2019. On April 23, 2019, V.G. deposited US \$15,000 to his TD US\$ Account, the source of which is not apparent on the evidence. On May 8, 2019, he deposited a further US \$85,000 into that account (the sources of which I will discuss below). V.G. then attempted to send a wire transfer

that same day for US \$100,000. His evidence was that this was an effort to pay a portion of the funds he continued to owe to Mr. Linevich. That wire was returned on May 10, 2019. He attempted again to wire funds on May 15, 2019, but that was again returned (less a \$10 fee) on June 24, 2019. Finally, on July 15, 2019, he obtained a US dollar bank draft for \$100,000, which was not returned to the account.

[176] Going into May 2019, TD Account 6962 had a healthy balance of over \$65,000, the sources of which include a \$25,000 deposit made on April 4, 2019. On May 8, 2019, V.G. transferred \$25,000 from TD Account 7139 and also deposited \$25,000 from his Bank of Montreal line of credit. He then used CA\$115,056 from these assembled funds to purchase a bank draft. Although it was not clearly stated in the evidence, I infer that this bank draft was the source of the US \$85,000 deposit to V.G.'s US\$ Account on May 8, 2019 – which, as noted above, formed part of the money V.G. said he used to repay Mr. Linevich.

[177] O.M.'s evidence was that in May and June of 2019, the relationship between V.G. and herself began to deteriorate rapidly. She blamed this in part on V.G. pressing her to either see his psychologist or go back to Ukraine. She said that V.G. was trying to deter her from getting documents like a British Columbia driver's licence, telling her that she would not need them because she was going to go back to Ukraine.

[178] V.G. denied this, saying that he had actually provided O.M. with a book with information she would need in order to get a driver's licence, but that her desire to get a driver's licence did not make any sense because she did not have a valid permanent resident's card or Canadian passport which she would have needed. [It is not clear how to reconcile this with V.G.'s evidence that he had paid to renew O.M.'s permanent resident card in the fall of 2018.]

[179] O.M. said that, at some point in May, V.G. began sleeping in the basement, and that this went on for several weeks.

[180] S.M. recalled overhearing a conversation in early June 2019, when O.M. was outside planting some trees in the yard. He said that he was upstairs in the house with a window open, and heard V.G. ask O.M. why she was planting the trees, when she was going to be leaving for Ukraine. V.G. did not recall this conversation.

[181] O.M.'s evidence was that her final week at the Duncan Home was "like hell" because V.G. and P.G. were openly talking about how to get her to move back to Ukraine. She said she offered to find alternative accommodations for herself and A.G., but that V.G. insisted that she had to go back to Ukraine. She said that V.G. took the car she had been using and parked it at his brother's house, and also cut off cellular service for the phone that she had been using. She at one point cycled with A.G. to a McDonald's restaurant to be able to access Wi-Fi, and later obtained a Wi-Fi password from a neighbour.

[182] Both O.M. and P.G. gave evidence as to a conversation they had on or about June 27, 2019. The conversation involved P.G. showing a copy of the Duncan Home property tax notice that was in his name. P.G. said that he was doing so to prove that he was an owner of the Duncan Home, and had the right to tell her to leave. O.M. said that P.G. told her he owned 90% of the Duncan Home. She also said she understood P.G. was asking her to get V.G. to pay the bill. P.G. denied that, pointing out that the mortgage payments that V.G. was making to the TD Bank included a component for the estimated amount of property taxes.

[183] O.M. said that she had been told by V.G. that P.G. was only a 1% owner of the Duncan Home, and she believed V.G. on that point. V.G. denied ever having told O.M. anything about who owned the Duncan Home.

[184] A further recording in evidence included a discussion in the Russian language in which V.G. pressed O.M. to go see his psychologist. O.M. agreed that she and V.G. had discussions in which he wanted her to see his psychologist, but that she did not want to. She agreed that they had one discussion on about Friday, June 28, 2019. In the recording, V.G. referenced a supposed mental health condition that he had concluded O.M. had, and threatened to report his views to the police and to

child services, saying that even if he did not do it, P.G. would. O.M. did not recall such a threat having been made to her.

[185] S.M. also gave evidence that the car O.M. had been using was taken away about four days prior to matters coming to a head, and her cellular service being cut off about two days prior. He recalled V.G. telling O.M. that she had to return to Ukraine, and telling her that she would lose A.G.

[186] On June 28, 2019, V.G. purchased a plane ticket for S.M. to return to Ukraine on July 1, 2019. S.M. said that he had intended to stay for six months, but that V.G. told him he had purchased a ticket and that S.M. was to leave.

[187] On or about June 28, 2019, O.M., A.G., and S.M. went to a neighbour's home and called the police. O.M. said that she did so because she had seen suitcases out and was very worried that V.G. would take A.G. to Ukraine, knowing that O.M. would have no choice but to follow them so as not to be separated from A.G. She said that V.G. had been telling A.G. for several days that she was going back to Ukraine. V.G. denied this, and said the only travel arrangements he had made at this time were for S.M.

[188] O.M. and A.G. were taken to a transition home and did not return to the Duncan Home. O.M. says that June 28, 2019 is the date of separation.

July 2019 Onward

[189] On July 2, 2019, staff from the transition home assisted O.M. with preparation of an application to the Provincial Court for a protection order. On July 3, 2019, O.M. was granted an *ex parte* order giving her all parenting time and sole parenting responsibilities until further order of the court.

[190] Also in early July 2019, V.G. went to the RCMP. and made complaints of assault as against O.M. That led to her being arrested, although no criminal charges were pursued.

[191] On July 10, 2019, O.M. withdrew the sum of \$645 from the Bank of Montreal joint account, which was all that remained of the CCB payments. As well, at some point in the summer of 2019, she filed a 2018 income tax return. Her notice of assessment was issued on August 29, 2019, and the address on the notice is that of the transition home. The notice of assessment shows nil income for 2018.

[192] On July 22, 2019, action E19253 was commenced in the Duncan Registry. This is one of the two proceedings being tried before me. It asserted, among other things, that the Duncan Home was family property. The next day, a certificate of pending litigation was filed against title to the Duncan Home. O.M. also claimed spousal support and various parenting orders.

[193] At some point in the summer of 2019, O.M. moved to Victoria with A.G. She did not seek V.G.'s consent before doing so.

[194] On August 23, 2019, V.G. applied to the Provincial Court and obtained an order for parenting time. Initially, he had only three hours of parenting time on weekends. That same day, V.G. also filed a Response to Family Claim and Counterclaim in this action, asserting that the parties had separated on May 8, 2015, and that O.M. had taken A.G. to Odessa in May 2015 without his consent.

[195] On January 3, 2020, P.G. deposited \$2,000 into TD Account 7139. P.G. said that this was his contribution as a 50% owner of the Duncan Home to the mortgage and other related costs. He said that he had not previously contributed to such payments, but that was because he and his brother had agreements that each would contribute to costs as and when they were able, that he was supporting his own child's university costs so was short of cash, and that he had also been contributing by way of renovations. P.G. expressly denied that there was any connection between him starting to make such payments in January 2020 and O.M.'s filing a claim in July 2019 that the Duncan Home was family property.

[196] Since 2020, P.G. has continued, from time to time, to make \$2,000 deposits to TD Account 7139.

[197] A Views of the Child was prepared and, in April 2020, filed in the provincial court proceedings. There was a period of time, during the first year or so of the COVID pandemic, when V.G. did not have parenting time. O.M.'s evidence was that this was initiated by V.G., who was continuing to work in construction. Eventually, however, through further interim orders, V.G. obtained regular weekend overnight parenting time and shared parental responsibilities.

[198] On June 24, 2020, P.G. commenced the second of the two proceedings being tried before me, petition S20020 filed in the Duncan Registry, by which he claimed a 50% interest in the Duncan Home.

[199] Since the summer of 2021, A.G. spends most weekends with V.G. Generally, either O.M., her brother, her father, or a friend, will drive A.G. from Victoria to Mill Bay, where V.G. will pick her up on Friday afternoon. She generally returns to Victoria mid-day on Sundays.

[200] For a period of time after leaving the Duncan Home, O.M. received social assistance. However, she eventually found employment.

[201] On December 2, 2021, V.G. travelled to Moldova and obtained a decree of divorce.

[202] There was somewhat of a hiatus in the two proceedings now being tried. In May 2022, O.M. obtained new counsel who filed a Notice of Intention to Proceed and a Notice of Trial, scheduling the trial for October 2023.

[203] In April 2023, V.G. filed an application seeking an order dismissing O.M.'s claims with respect to the Duncan Home on a summary trial. That application came on for hearing before Justice Saunders on May 15, 2023. Justice Saunders adjourned the application generally, while expressing the view that the matter was unsuitable for summary trial.

[204] Leading up to the trial of this matter, there were discussions with P.G.'s counsel as to the relationship between the two actions and whether findings of fact

at a trial of action E19253 would be accepted in petition S20020. At the start of the trial on October 30, 2023, counsel indicated that they believed they had an understanding with P.G.'s lawyer. However, it became apparent a few days after commencement of trial that this was not the case, and that P.G. anticipated that if O.M. was successful at the trial of action E19253, she would have to relitigate the same facts in his proceeding.

[205] After a discussion with counsel for all of the parties, including P.G., on November 6, 2023, I gave directions for the proceedings to be tried together, and for P.G.'s counsel to have certain rights to cross-examine witnesses who had already given evidence.

[206] After some issues arising from a change of counsel on O.M.'s part, the trial resumed in May 2024. By the time the trial resumed, P.G. was self-represented.

Positions of the Parties

[207] O.M. argued that the parties separated on June 28, 2019, when she and A.G. moved out of the family home. She says that at no time prior to that did she have a settled intention to separate, and that her emails over the years she was in Ukraine, and her actions when V.G. visited Ukraine – considered as a whole – reflect efforts to get V.G.'s attention and rescue their relationship. She notes that at all material times prior to July 2019, the parties filed income tax returns indicating they were married. O.M. submits that in law, a marriage can continue to exist even if the relationship between the parties is not happy or functioning well.

[208] O.M. submitted that the property owned by the parties as of June 28, 2019, is family property as to which each spouse is presumptively entitled to an undivided one-half interest regardless of use or contribution. She acknowledged as well that debts acquired during the relationship, and existing at the time of separation, are family debt. O.M. said that the Duncan Home is family property, and acknowledged that the mortgage is family debt. She disputed P.G.'s claims to anything more than a 1% interest. She submitted that V.G. has not proven that he owes anything further to his friend in Ukraine. She submitted that there is no other family property or debt of

substance, and that the Duncan Home, net of related mortgage debt, should be equally divided between the parties.

[209] V.G. argued that the parties separated in May 2015 when he left O.M. and A.G. in Ukraine. He said that at that time, O.M. had no plans to return to Canada and he had no plans to live in Ukraine. Alternatively, V.G. said that the parties separated in 2016, when O.M. sent emails about a divorce, including a request that V.G. send her the marriage certificate for purposes of obtaining a divorce, and V.G. complied with the request. He argued that the filing of tax returns showing the parties continued to be married was an error on the part of his bookkeeper and did not reflect his actual understanding of his marital status.

[210] In the alternative, if the Court concludes that the parties had not separated at the time the Duncan Home was purchased:

- a) V.G.'s actual beneficial interest was only 50%, not the 99% represented on title; and
- b) It would be significantly unfair to equally divide that interest in the Duncan Home, given that:
 - i. The Duncan Home was purchased without O.M. even knowing about it – she only found out about it because S.M. told her;
 - ii. It is V.G. who has made all mortgage payments since the Duncan Home was purchased, with some assistance from P.G. beginning in 2020 – O.M. never contributed funds to either the purchase of the home, the mortgage costs, or the costs of renovations; and
 - iii. V.G. has devoted significant effort, much of it after June 2019, to improving the property by renovating it – and P.G. has made significant contributions toward those renovations as well.

[211] V.G. says that if the Duncan Home is found to be family property, then an unequal division can be effected either by:

- a) Valuing the house as of the 2019, based on the October 2, 2019, appraisal of \$410,000, less the then-mortgage of \$387,000, or
- b) If the house is to be valued at the time of trial, O.M. should receive substantially less than 50% of the equity in the home. V.G. submits that an appropriate allocation to O.M. would be either 10% or 20%.

[212] The current appraised value of the Duncan Home is \$810,000, and the mortgage balance is about \$340,000, leaving equity of \$470,000. V.G. says that if one deducts the \$24,000 owed to P.G. (the amount he deposited into TD Account 7139 in 2017), the net equity is \$446,000, of which V.G.'s 50% interest is \$223,000. A 10% share of this would be \$22,300.

[213] In any event, V.G. says that any division of family property must also account for family debts, and he says that he continues to owe the equivalent of CA\$272,000 to Mr. Linevich, with that debt dating back to 2012. V.G. argues that if this debt is properly taken into account as a family debt, then there is no net family property to divide.

[214] V.G. also says that O.M. has failed to properly account for the property he purchased in Ukraine and had placed in O.M.'s name. He disputes O.M.'s evidence that she sold it for only \$1,000.

[215] P.G. argues that O.M. and V.G. were separated prior to the purchase of the Duncan Home, and thus it never became family property. He says that he is a 50% owner of the Duncan Home, pursuant to his verbal agreement with V.G., even though he is only shown on title as a 1% owner. He says that it was reasonable for him to rely on a verbal agreement given that he was dealing with his brother who he trusted. He says that he would not have purchased his interest in the Duncan Home had he not been convinced that V.G. and O.M. were separated, and he says that V.G. shared with him his various emails with O.M. prior to his decision to be part of the purchase. He says that the \$24,000 he put in TD Account 7139 was his contribution to the purchase price, and that it does not matter whether V.G. actually

used those funds for the purchase or simply used them for other purposes months later. He denies ever having been repaid any of those funds. He also says he made numerous contributions to the property, including by way of renovations and improvements as well as in the form of the several \$2,000 payments he made to V.G. starting in January 2020.

Reliability and Credibility

[216] In this case, the reliability and credibility of all three parties is in issue.

[217] Reliability and credibility are related but distinct concepts. The distinction between them was considered in *R. v. Morrissey* (1995), 22 O.R. (3d) 514 at 526, 1995 CanLII 3498 (C.A.), cited in *United States v. Bennett*, 2014 BCCA 145 at para. 23:

Testimonial evidence can raise veracity and accuracy concerns. The former relate to the witness's sincerity, that is, his or her willingness to speak the truth as the witness believes it to be. The latter concerns relate to the actual accuracy of the witness's testimony. The accuracy of a witness's testimony involves considerations of the witness's ability to accurately observe, recall and recount the events in issue. When one is concerned with a witness's veracity, one speaks of the witness's credibility. When one is concerned with the accuracy of a witness's testimony, one speaks of the reliability of that testimony. Obviously a witness whose evidence on a point is not credible cannot give reliable evidence on that point. The evidence of a credible, that is, honest witness, may, however, still be unreliable. ...

[218] In considering these matters, the evidence of a witness must be assessed for "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.).

[219] A frequently cited list of factors in assessing evidence as to both the veracity of a witness and the accuracy of that witness' evidence is found in *Bradshaw v. Stenner*, 2010 BCSC 1398 at para. 186, aff'd 2012 BCCA 296. It includes:

- a) The ability and opportunity of the witness to observe events;

- b) The firmness of their memory;
- c) Their ability to resist the influence of interest to modify their recollection;
- d) Whether their evidence harmonizes with independent evidence that has been accepted;
- e) Whether the witness changes their evidence during cross-examination (or between examination for discovery and trial) or is otherwise inconsistent in their recollection;
- f) Whether their evidence seems generally unreasonable, impossible or unlikely;
- g) Whether the witness has a motive to lie; and
- h) The demeanour of the witness generally.

[220] A trier of fact may accept none, part or all of a witness' evidence and may attach different weight to different parts of a witness' evidence: *Gill Tech Framing Ltd. v. Gill*, 2012 BCSC 1913 at para. 28.

[221] I have some concerns with the evidence of O.M. Her position seemed to change with respect to whether she had a bank account in Ukraine. During a break in the trial, V.G. and P.G. hired a private investigator in Ukraine who – through methods that were not explained – was able to get a photograph of what appeared to be a Ukrainian banking profile. Faced with this, O.M. seemed to acknowledge that she may have had a bank account, but she said she had no electronic access and was unable to obtain electronic access from outside of Ukraine. At the very least, this showed a cavalier attitude toward her disclosure obligations. That said, it is not clear to me that O.M. had the means to accumulate any financial assets of significance. It was clear that throughout their relationship, one of the irritants was that V.G. believed that O.M. should be working, while O.M. was of the view that she should be focused on care of A.G.

[222] The other point of concern with O.M.'s evidence was her affidavits sworn in the Provincial Court in July 2019, which included among other things allegations that V.G. had told her he was intending to take A.G. to Ukraine. As I understand her evidence at trial, O.M. said that V.G. had made clear he wanted her to go back to Ukraine with or without A.G., and had not specifically said he was going to take A.G. there. However, it was her fear that he would take A.G. to Ukraine in which case she would have no choice but to travel there herself, given that both she and V.G. knew that she would never allow herself to be separated from A.G.

[223] O.M.'s explanation for this was that the affidavits were prepared in English by staff at the transition home, and by a lawyer they arranged to help her, all of whom were trying to communicate with her in English at a time when her ability to communicate in English was minimal. In my view, at the very least, those affidavits demonstrate a lack of care in providing evidence to the court.

[224] I do not find some of the other points raised by V.G.'s counsel with respect to O.M.'s credibility particularly convincing. It is clear that some of O.M.'s evidence was based on what she had been told by V.G. – for example, that the \$24,000 that was P.G.'s "contribution" to the property was largely a loan from P.G.'s father-in-law that had been repaid. That does not impact on her credibility. As well, her understanding of what P.G. was trying to say to her shortly before she left the Duncan Home in late June 2019, and the reason he was showing her a property tax notice, could well be a misunderstanding. O.M. was cross-examined extensively about the layout and kitchen equipment in the AirBnB unit that V.G. rented in January 2017. It was common ground that O.M. spent minimal time there, and it would not be appropriate to fault her for a lack of detailed recollection about it nearly seven years later.

[225] I note that there were a number of points of evidence, of varying degrees of significance, with respect to which V.G. gave evidence but which were not put to O.M. during her cross-examination. Neither party raised concerns with respect to the rule in *Browne v. Dunn* (1893), 6 R. 67 (H.L.) at 70–71. As noted in *North America Construction (1993) Ltd. v. Yukon Energy Corporation*, 2018 YKCA 6 at paras. 15–

23 and 62, the rule is one of fairness and not one of exclusion. Given the way this trial was subject to long breaks between witnesses, it was not until after the trial was complete that the matters not put to O.M. became apparent. I have noted in the narrative above several of the points as to which V.G. gave evidence but which were never put to O.M. It would in my view be unfair in the circumstances to draw any inferences from the fact that O.M. did not give evidence on those points. Overall, I do not see any of them as being decisive.

[226] V.G. and P.G. were both very slow in disclosing financial records. Rather, they sought repeatedly to have the court decide the case based on assertions like the following from V.G.'s affidavit of April 7, 2022:

17. On or about August 21, 2017, P.G. and I jointly purchased the Property. P.G. personally contributed \$24,000 towards the purchase of the Property and I personally contributed \$10,000.

[227] This evidence was highly misleading. Both V.G. and P.G. were forced to backtrack and recharacterize their evidence as further documents came from TD Bank and it became clear that V.G. in fact funded both the \$10,000 deposit and the amount required by the conveyancing lawyer to complete the purchase.

[228] Both V.G. and P.G. gave evidence that one of the primary reasons for P.G. to show as a 1% owner of the Duncan Home was in order to get the benefit of a reduction in Property Transfer Tax (PTT), given that this was the first home V.G. had purchased in British Columbia. However, once the statement of adjustments was obtained and produced mid-trial, it became clear that no reduction in PTT was claimed. While this may well reflect a failure to claim something that could have been claimed, it is my view that had this actually been something the parties had at top of mind at the time of the purchase of the Duncan Home – as opposed to an after-the-fact justification – it would have been dealt with at the time.

[229] Similarly, V.G. had no explanation for why he initially applied for a mortgage for the Duncan Home on his own. He denied that P.G. was added to the purchase contract, and was part of the second mortgage application, simply because V.G.

could not qualify for the mortgage of over \$400,000 on his own (his reported salary at the time of his mortgage application being just over \$50,000).

[230] I also had great concerns with V.G.'s evidence about the debt said to be owing to Mr. Linevich. His initial evidence was that he had invested US \$200,000 in the fraudulent investment in 2012, of which US \$100,000 was borrowed from Mr. Linevich. He gave evidence that when it became clear that the investment was lost due to fraud, he had agreed to fix the amount payable on the loan including interest at \$125,000. He said he worked long hours from 2013 onward in order to try to repay the debt. He said that when he visited Ukraine in 2018, he signed an IOU confirming that the remaining amount was US \$75,000. He then explained a US \$100,000 transfer to Ukraine in 2019 as a payment to Mr. Linevich. He now claims that US \$100,000 remains outstanding. This makes no sense.

[231] I note as well that V.G.'s banking information includes numerous bank drafts and wire transfers, albeit in amounts less than the one US \$100,000 payment. He claimed to have invested some US \$16,500 in a chicken farm, and loaned US \$15,000 to another friend, at times when he was scrambling to repay Mr. Linevich. None of this makes any sense.

[232] V.G.'s evidence with respect to this debt is wholly unbelievable.

[233] V.G. gave evidence in some of the affidavits dealing with parenting matters that O.M. took A.G. to Ukraine in May 2015 without his consent. That was clearly untrue.

[234] Much of V.G.'s evidence with respect to the purchase of the Duncan Home was repeated by P.G., and gives rise to similar concerns with respect to P.G.'s credibility.

[235] P.G. went on at great length as to how much work he has done on the Duncan Home. When he testified at the resumption of trial, he brought with him a document he had prepared that morning which he said reflected his estimate of the value of all his work. It included a substantial claim with respect to plumbing work.

P.G. acknowledged that he does not have any qualifications as a plumber, but that he feels knowledgeable and capable of doing that work. He asserted that he had redone almost all of the plumbing in the house. Then, when asked about whether he had obtained a plumbing permit, he said he had not and that none was required because the work was not substantial. I see P.G.'s evidence as to the work he did as being, at the very least, highly exaggerated.

[236] I note that the bulk of the work that P.G. claimed to have done was subsequent to O.M.'s commencement of litigation claiming an interest in the Duncan Home. Similarly, the series of \$2,000 payments that P.G. made to V.G. – ostensibly as his contributions to the mortgage costs – also began after litigation had been commenced.

[237] My conclusion is that I believe little of what either V.G. or P.G. have said, unless it is supported by contemporaneous documents. I approach O.M.'s evidence with caution as well, although where her evidence and that of V.G. or P.G. differs, and subject always to other surrounding circumstances, I generally prefer her evidence.

[238] I found both Ms. Chayka and S.M. to be generally believable witnesses.

Legal Context

Date of Separation

[239] Both the *FLA* and the *Divorce Act*, R.S.C. 1985, c. 3 (2nd Supp.), contain provisions with respect to separation. Although their language differs, the same legal principles are in practice applied regardless of which statute applies in a particular case: *C.L.D. v. J.J.P.D.*, 2024 BCSC 1123 at paras. 12–13. Among the influential authorities are some dealing with similar definitions under the old *Estate Administration Act* (*Austin v. Goerz*, 2007 BCCA 586 and *Gosbjorn v. Hadley*, 2008 BCSC 219) as well as with respect to Canada Pension Plan benefits (*Hodge v. Canada (Minister of Human Resources Development)*, 2004 SCC 65, [2004] 3 S.C.R. 357).

[240] The present proceeding is brought under the *FLA*, and the question of separation is relevant primarily in respect of property division under Part 5 of the *FLA*. Section 3 of the *FLA* deals with when a person is a spouse. Section 3(4) provides that:

- (4) For the purposes of this Act,
 - (a) spouses may be separated despite continuing to live in the same residence, and
 - (b) the court may consider, as evidence of separation,
 - (i) communication, by one spouse to the other spouse, of an intention to separate permanently, and
 - (ii) an action, taken by a spouse, that demonstrates the spouse's intention to separate permanently.

[Emphasis added.]

[241] Section 8 of the *Divorce Act* provides, among other things, for the granting of a divorce where spouses have lived separate and apart for a sufficient period of time. Section 8(3) provides that:

Calculation of period of separation

- (3) For the purposes of paragraph (2)(a),
 - (a) spouses shall be deemed to have lived separate and apart for any period during which they lived apart and either of them had the intention to live separate and apart from the other; and
 - (b) a period during which spouses have lived separate and apart shall not be considered to have been interrupted or terminated
 - (i) by reason only that either spouse has become incapable ...
 - (ii) by reason only that the spouses have resumed cohabitation during a period of, or periods totalling, not more than ninety days with reconciliation as its primary purpose.

[242] It is clear from the authorities that separation is not necessarily a bilateral decision. It does not require a “meeting of the minds”, or that both parties agree to separate: *Nearing v. Sauer*, 2015 BCSC 58 at para. 54; recently cited with approval in *Gupta v. Kumar*, 2023 BCCA 106 at para. 13.

[243] Rather, as summarized by Justice Gray in *Gosbjorn* at paras. 137–138 and 142:

[137] The parties agreed that Ms. Gosbjorn and Mr. Krompocker had a 12 year common-law relationship. As suggested in para. 42 of *Hodge*, "cohabitation" in this context can be defined to mean that there was a mutual intention to continue the relationship, and cohabitation will cease when either party regards the relationship as being at an end and, by his or her conduct, has demonstrated in a convincing manner that this particular state of mind is a settled one.

[138] As discussed in *Hodge*, use of that analysis for determining the end of the relationship permits the court to make a decision without putting inordinate emphasis on any particular event or lack of action. It allows the bridging of gaps as being brief "cooling off" periods.

...

[142] Using the analysis suggested in *Hodge*, parties cease to live and cohabit in a marriage-like relationship when either party regards the relationship to be at an end, and by his or her conduct, demonstrates in a convincing manner that this particular state of mind is a settled one. If the parties separate without either or both of them ending the relationship in that way, s. 98 will apply if they were separated for not less than one year with the mutual intention to live separate and apart.

[Emphasis added.]

[244] While *Gosbjorn* is an *Estate Administration Act* case, its analysis has been adopted and applied in cases involving the *Divorce Act* (including the influential judgment of Justice Dardi in *H.S.S. v. S.H.D.*, 2016 BCSC 1300 at para. 44, rev'd on other grounds 2018 BCCA 199) and the *FLA* (*Y.T.C. v. J.C.V.*, 2018 BCSC 773 at para. 22). Another influential judgment – that of Justice Fleming (as she then was) in *Nearing* applies both the *Divorce Act* and the *FLA*.

[245] The requirement that the intention to separate be "a settled one" is well established in the authorities, although there are some cases in which those words are not included in statements of the test – see, by way of example, *S.A.H. v. I.B.L.*, 2018 BCSC 544 at para. 55. In my view, that reflects the fact that whether the intention was settled was not in issue in those cases, and not a change in the legal requirements to establish a separation. The requirement is also somewhat implicit in the use of the word "permanently" in s. 3(4) of the *FLA*, which I have quoted above.

[246] In *Hodge*, Justice Binnie described the applicable legal principles as follows at para. 42:

[42] The respondent terminated cohabitation and cohabitation is a constituent element of a common law relationship. “Cohabitation” in this context is not synonymous with co-residence. Two people can cohabit even though they do not live under the same roof and, conversely, they may not be cohabiting in the relevant sense even if they are living under the same roof. Such periods of physical separation as the respondent and the deceased experienced in 1993 did not end the common law relationship if there was a mutual intention to continue. I agree with the observation of Morden J.A. in *Re Sanderson and Russell* (1979), 24 O.R. (2d) 429 (C.A.), at p. 432, that, subject to whatever provision may be made in a statute, a common law relationship ends “when either party regards it as being at an end and, by his or her conduct, has demonstrated in a convincing manner that this particular state of mind is a settled one”. On this point, Professor Fodden observes:

. . . turning to a (constructed) mental phenomenon permits the court to make a decision as to the critical moment a relationship ended without having to place inordinate stress upon any particular event or lack of action. It allows for the bridging of gaps in the relationship as being “brief cooling-off period[s]” and perhaps gives courts some freedom to protract the continuation of cohabitation past the last physical symptom, where to do so might be just.

(S. R. Fodden, *Family Law* (1999), at p. 60)

[247] Justice Dardi adopted this approach in *H.S.S.* where, leading up to her adoption at para. 44 of Justice Gray’s statement of the law (from para. 142 of *Gosbjorn*, cited above), she noted at paras. 42–43:

[42] . . . The Court’s task is to assess objectively, on the totality of the evidence, whether one spouse held a settled intention to separate and communicated that intention through his or her conduct to the other spouse. An express statement is only one of the factors for consideration in what is necessarily a contextual analysis.

[43] The Ontario Court of Appeal in *Re Sanderson and Russell* (1979), 24 O.R. (2d) 429 (C.A.), held, in the context of a common law relationship, that a relationship has come to an end “when either party regards it as being at an end, and by his or her conduct, has demonstrated in a convincing manner that this particular state of mind is a settled one”: at 432. This statement was cited with approval by the Supreme Court of Canada in *Hodge v. Canada (Minister of Human Resources Development)*, 2004 SCC 65 at para. 42.

[248] In my view, this is precisely the sort of case where there is ambiguity as to the intention of the parties, and the question of whether the claimant’s intention was settled is key.

[249] Having noted the importance of a settled intention, I would otherwise adopt Justice Shergill’s distillation of the applicable principles in *S.A.H.* at para. 55:

[55] As is evident from the case authorities, the determination of the parties’ date of separation is a very fact specific exercise. I have found the following questions, framed in the form of a test, useful to determining the date of separation here:

1. Did at least one spouse have the intention to separate?
2. Was the intention to separate communicated to the other spouse?
3. Was the intention to separate acted upon? In other words, using generally accepted characteristics of marriage, did one or both spouses take action that is consistent with the separation, such as:
 - a. changing how they behaved with each other in public; and
 - b. changing how they behaved with each other in private.

[250] As noted, determination of whether one or both spouses acted upon a settled intention to separate is often informed by consideration of what are referred to as the generally accepted characteristics of the marriage: *Nearing* at para. 56. It is often useful to compare the behaviour of the parties both before and after an alleged separation date to determine whether they are living separate and apart: *Rose v. Guiguet*, 2008 BCSC 1225 at para. 70. As noted in *Nearing* at para. 56:

[56] ... Typically when the parties dispute the date of separation, the court’s analysis focuses on the generally accepted characteristics of marriage including the intention to remain married, having sexual involvement, carrying on activities in public, sharing financial resources and sharing significant family events: *Sachdeva* at para. 87. The court will also consider a range of other factors, including a clear statement by one of the parties of his or her desire to terminate the relationship. Sexual involvement, or lack thereof, is not conclusive: *Newth v. Booth*, 2011 BCSC 317 at para. 17.

[251] The cases reflect that courts have, over the years, identified certain generally accepted characteristics of a marital or marriage-like relationship. Those characteristics, and their relative significance, evolve as societal norms change. As set out in *Austin* at para. 59, generally accepted characteristics of a conjugal relationship include shared shelter, sexual and personal behaviour, services, social activities, economic support and children, as well as the social perception of the couple – however, “these elements may be present in various degrees and not all are necessary for the relationship to be found to be conjugal”. In *Austin*, a 2007

judgment, the Court noted that while financial dependence may at one time have been considered an essential element of a marital relationship, this is no longer so (para. 55.).

[252] A useful summary can be found in *H.S.S.* at paras. 46–50:

[46] The Court in *Weber v. Leclerc*, 2015 BCCA 492, recently considered the definition of “spouse” under the *Family Law Act*. The Court reviewed the appellate authorities that have evaluated the characteristics of a “marriage-like” relationship and observed that the jurisprudence has evolved in accordance with the changing societal norms surrounding marriage. The Court must apply a holistic approach, having regard to all aspects of the relationship. While the Court must consider the evidence expressly describing the parties’ intentions, the Court must test that evidence by considering whether the objective evidence of the parties’ lifestyle and interactions is consonant with those intentions: at para. 23.

[47] I turn to consider the factors which inform the analysis of whether the parties are living as spouses.

[48] It emerges from the authorities that although the living arrangements of the parties are not determinative, this factor is frequently accorded significant weight: *Routley v. Paget*, 2006 BCSC 419.

[49] Additionally, the following factors have been accepted as informing the analysis of whether the parties are living as spouses:

- Whether the parties vacationed together;
- Presence or absence of marital relations;
- How the parties conducted their financial affairs, including any financial planning they undertook as a couple and how they filed their tax returns. Notably, the authorities establish that financial dependence is no longer considered an essential element of a marital relationship;
- Estate planning;
- Making shared plans for the future;
- Participation in joint social activities and the manner in which the spouses presented themselves to others.

[See *Eisener v. Baker*, 2007 BCSC 83 at paras. 29-30; *Nearing* at paras. 56-58; *Oswell v. Oswell* (1990), 74 O.R. (2d) 15 (H.C.J.) aff’d (1992), 12 O.R. (3d) 95 (C.A.); *Routley v. Paget*, 2006 BCSC 419; *Greaves v. Greaves*, [2004] O.J. No. 2522 (S.C.J.); *J.J.G. v. K.M.A.*, 2009 BCSC 1056; *Fuller v. Mathews*, 2007 BCSC 444.]

[50] In summary, the authorities mandate a contextual and holistic inquiry, having regard to all aspects of the relationship. The Court in *Weber* affirmed that there is no checklist of characteristics that will invariably be found in all marriages. The presence or absence of any particular factor is not

determinative of whether the parties carried on a spousal relationship:
Weber at para. 21, citing *Austin v. Goerz*, 2007 BCCA 586 at para. 58.

[253] A more recent discussion of these objective factors is found in *Tam v. Li*, 2022 BCSC 1412 at paras. 12–13:

[12] In assessing whether or when two spouses separated, the court will consider the following factors:

- financial interdependence;
- living arrangements;
- objective evidence of the parties’ lifestyle and interactions such as shared vacations and activities;
- family events and social events attended or shared together, including how the parties present themselves to others;
- whether the parties engaged in sexual relations and other indicia of intimacy including fidelity and sharing personal information; and
- clear statements pertaining to the parties’ intention to remain in the marriage or terminate the marriage.

See: *H.S.S.* at paras. 48-49 citing, among other authorities, *Nearing* at para. 56-58; *Routley v. Paget*, 2006 BCSC 419; and *J.J.G v. K.M.A.*, 2009 BCSC 1056 at paras. 35-39. – also *C.L.D. v. J.J.P.D.*, 2024 BCSC 1123

[13] A happy or functional relationship is also not a pre-requisite for a marriage to be ongoing: *Surrett v. Butkiewicz*, 2018 BCSC 2194 at para. 72. Ongoing sexual intimacy and financial interdependence have, in the past, been seen as hallmarks of the presence of a marriage-like relationship or determinative that the parties are not living separate and apart. More recently, the clear authority is that no factor is determinative. The court must take a holistic view of the evidence, taking all relevant matters into account and weighing all the factors, rather than using these factors as a checklist: *Weber v. Leclerc*, 2015 BCCA 492 at paras. 22-25, and *Austin v. Goerz*, 2007 BCCA 586 at para. 58.

[254] These characteristics of a marriage are often described as “objective factors” that can help the court resolve competing views as to whether a separation has occurred. While they are relevant to ascertaining the parties’ actual intentions, it is important to keep in mind that the objective factors will rarely be determinative in and of themselves: *Gosbjorn* at para. 136, citing *Takacs v. Gallo*, [1998] B.C.J. No. 600 (C.A.) at para. 55.

[255] The application of these principles in *S.A.H.* is instructive. In March 2004, Ms. H. had commenced divorce proceedings which was communicated to Mr. L. However, a few months later the parties reconciled, and no steps were taken in the proceedings until the fall of 2013. At paras. 62–67, the court concluded:

[62] In addition, their day-to-day life did not measurably change after the commencement of family law proceedings, either in terms of their private behaviour or how they interacted with each other in public. The evidence establishes that the parties' remained financially inter-dependent at the same level as they had always been, until October 1, 2013. They also continued to reside in the same home; share their financial resources; eat and cook their meals together; manage a joint household; parent their children together; do family activities together; and take family vacations together.

[63] While the existence or absence of sexual intimacy is not determinative of the issue, I do not accept Mr. L.'s evidence that all sexual contact ended after the fall of 2002. There is uncontroverted evidence that Ms. H. became pregnant after this time. I accept Ms. H.'s evidence that sexual contact between the parties' continued well after 2004, albeit infrequently.

[64] Their public life also did not change: they continued to attend social functions together and present themselves publically as a married couple. Indeed, it appears that no-one, except the parties and the claimant's father and her lawyers, was even aware that the claimant had filed for divorce in March 2004. Their children were still giving them anniversary cards until at least 2008, and up until her political campaign of 2014, all of Ms. H.'s political campaign materials had her marriage to Mr. L. featured prominently.

[65] These events show that the parties are making a slow, incremental move towards separation, but are not evidence of separation. The most significant of these, Mr. L. sleeping in the basement of the family home, could at best be described as a distancing, rather than a clear break, in the parties' relationship. Notably, item 5 of the Reconciliation Terms describes Mr. L.'s desire to have quality time to himself, including a "place where [I.] can relax and play recorded music at high volume without bothering anyone (basement room)". Despite sleeping in the basement, the parties continued to share the same bed during family vacations, and were intimate with each other even after Mr. L. started sleeping in the basement.

[66] Although it appears that the parties' broached the topic of separation again in 2010, they did not follow through and instead, continued in the same manner until they could no longer tolerate living in the same home.

[67] On an objective basis, the evidence supports a finding that the parties separated on October 1, 2013, when Ms. H. moved out of the family home pursuant to the Interim Separation Agreement.

[256] Finally, I note two recent judgments in which the court considered the situation of parties who were not living together even before the alleged separation – a situation that is becoming more and more common, particularly where spouses

feel there are better economic prospects in one country, while better conditions for the education or other needs of a child in a different country. In *Quirion v. Lovett*, 2022 BCSC 1693, Justice Ahmad noted at paras. 72–73:

[72] Typically, when the parties dispute the date of separation, the court's analysis focuses on the generally accepted characteristic of marriage, including factors such as the intention to remain married, having sexual involvement, carrying on activities in public, sharing financial resources and sharing significant family events: *Nearing v. Sauer*, 2015 BCSC 58 at para. 56, citing *Sachdeva v. Sachdeva*, 2013 BCSC 313 [*Sachdeva*] at para. 87.

[73] However, in this case, because the parties did not physically reside together at the relevant time, their relationship did not include many of the generally accepted characteristics that would otherwise be associated with a marriage-like relationship. In these unique circumstances, I have considered the overall context in which the parties conducted themselves, including their interactions and communications with each other and with third parties, following the January 3, 2018 phone call.

[257] In *Arcand v. Arcand*, 2023 BCSC 747, Justice Lamb noted at para. 87:

[87] Many of the generally accepted characteristics that would otherwise be associated with a married couple may be absent when the parties do not physically reside together at the relevant time: *Quirion v. Lovett*, 2022 BCSC 1693 at para. 73. In such circumstances, the Court may consider the overall context in which the parties conducted themselves, including their interactions with each other and with third parties.

Unequal Division of Property

[258] Division of family property and debt is governed by Part 5 of the *FLA*. Section 81 provides that:

Subject to an agreement or order that provides otherwise and except as set out in this Part and Part 6 [*Pension Division*],

- (a) spouses are both entitled to family property and responsible for family debt, regardless of their respective use or contribution, and
- (b) on separation, each spouse has a right to an undivided half interest in all family property as a tenant in common, and is equally responsible for family debt.

[259] What is family property is defined by s. 84(1):

- (1) Subject to section 85 [*excluded property*], family property is all real property and personal property as follows:
 - (a) on the date the spouses separate,

- (i) property that is owned by at least one spouse, or
 - (ii) a beneficial interest of at least one spouse in property;
- (b) after separation,
- (i) property acquired by at least one spouse if the property is derived from property referred to in paragraph (a) (i) or from a beneficial interest referred to in paragraph (a) (ii), or from the disposition of either, or
 - (ii) a beneficial interest acquired by at least one spouse in property if the beneficial interest is derived from property referred to in paragraph (a) (i) or from a beneficial interest referred to in paragraph (a) (ii), or from the disposition of either.

[260] In this case, there are no claims of excluded property. That is because all of the parties' pre-relationship assets were lost through a bad investment after the parties were married.

[261] Section 86 defines "family debt" to include all financial obligations incurred by a spouse during the relationship.

[262] With respect to valuation, s. 87 provides that:

Unless an agreement or order provides otherwise and except in relation to a division of family property under Part 6,

- (a) the value of family property must be based on its fair market value, and
- (b) the value of family property and family debt must be determined as of the date
 - (i) an agreement dividing the family property and family debt is made, or
 - (ii) of the hearing before the court respecting the division of property and family debt.

[263] Section 95 sets out those circumstances in which the court may order an unequal division of family property or debt:

- (1) The Supreme Court may order an unequal division of family property or family debt, or both, if it would be significantly unfair to
 - (a) equally divide family property or family debt, or both, or
 - (b) divide family property as required under Part 6 [*Pension Division*].
- (2) For the purposes of subsection (1), the Supreme Court may consider one or more of the following:

- (a) the duration of the relationship between the spouses;
 - (b) the terms of any agreement between the spouses, other than an agreement described in section 93 (1) [*setting aside agreements respecting property division*];
 - (c) a spouse's contribution to the career or career potential of the other spouse;
 - (d) whether family debt was incurred in the normal course of the relationship between the spouses;
 - (e) if the amount of family debt exceeds the value of family property, the ability of each spouse to pay a share of the family debt;
 - (f) whether a spouse, after the date of separation, caused a significant decrease or increase in the value of family property or family debt beyond market trends;
 - (g) the fact that a spouse, other than a spouse acting in good faith,
 - (i) substantially reduced the value of family property, or
 - (ii) disposed of, transferred or converted property that is or would have been family property, or exchanged property that is or would have been family property into another form, causing the other spouse's interest in the property or family property to be defeated or adversely affected;
 - (h) a tax liability that may be incurred by a spouse as a result of a transfer or sale of property or as a result of an order;
 - (i) any other factor, other than the consideration referred to in subsection (3), that may lead to significant unfairness.
- (3) The Supreme Court may consider also the extent to which the financial means and earning capacity of a spouse have been affected by the responsibilities and other circumstances of the relationship between the spouses if, on making a determination respecting spousal support, the objectives of spousal support under section 161 [*objectives of spousal support*] have not been met.

[264] These provisions, which came into force in 2013, are substantially different from the previous statute (the *Family Relations Act* or *FRA*). As noted by Justice Harris in *Jaszczewska v. Kostanski*, 2016 BCCA 286 at para. 36:

[36] It is useful to recognize that the purpose of the legislative reform to the *FRA* seems to have been to simplify the division of family property, to render it more certain and predictable, and to divide property on a basis that better fits people's expectations of fairness. The Legislature attempted to accomplish this purpose in two ways. First, the definition of excluded property in the *FLA* provides greater clarity regarding what property is subject to division than existed under the *FRA*, where the identification of family assets was often difficult. Second, the Legislature reduced the discretion of courts to depart from equal division. This was accomplished in part by imposing a

higher test for such a departure. Under the new scheme, family property is to be divided equally unless it is “significantly unfair” rather than just “unfair” to do so. A court’s discretion was also limited by identifying more precisely the considerations relevant to the analysis than had previously been the case.

[265] Justice Harris concluded at para. 38 that one can see in the *FLA* an intention “to limit the circumstances in which a departure from equal division of family property could be justified because of unequal contributions to its acquisition, preservation, maintenance or improvement”. He noted at para. 39 that:

[39] Also, because family property is generally valued on the date of the hearing, the parties will presumptively share in any post-separation increases in the value of family property. Once again, because of s. 81, this entitlement exists independent of the parties’ respective contribution to the post-separation increase in value.

[266] Turning to the discretion in s. 95 to depart from an equal distribution, Justice Harris noted at para. 41 that the test of “significant unfairness” imposes a more stringent threshold than the test that was applied under the *FRA*. As well, he noted at paras. 43–44 that:

[43] The determination of whether an equal division would be significantly unfair is also guided by a more precise identification of relevant factors than was found in the *FRA*. Importantly, the Legislature did not include in s. 95(2) the principle of relative contribution found in s. 65(1)(f) of the *FRA*. Under s. 65(1)(f), a court could consider circumstances relating to the acquisition, preservation, maintenance, improvement or use of property. Section 95(2), by comparison, refers rather narrowly to career contributions (95(2)(c)) and to post-separation increases in value beyond market trends caused by one spouse (95(2)(f)). I agree with the judge’s view that if relative contribution to the acquisition, preservation, maintenance or improvement of family property during the relationship was intended to be a significant factor or one frequently relied on in justifying the conclusion that the equal division of family property is significantly unfair, the Legislature would have said so. Allowing relative contribution to become a regular consideration in the context of s. 95 would likely create uncertainty and complexity. This would be contrary to the legislative objectives discussed earlier that underlie the *FLA* division of property regime.

[44] Having said that, in enacting s. 95(2)(i) the Legislature recognized that there may be factors other than those listed that could ground significant unfairness. Hence, while the Legislature intended to limit and constrain the exercise of judicial discretion to depart from equal division, it did not provide a closed list of factors and it did not eliminate the discretion. Accordingly, in my view, one cannot read the *FLA* as abolishing unequal contribution as a factor

that may be relevant to reapportionment, although the circumstances in which it may be considered and relied on are intended to be much constrained.

[267] In *Khan v. Gilbert*, 2019 BCCA 80, the Court allowed an appeal from a trial judgment which departed from equal division based on one spouse having earned significantly less than the other, and whose contributions to the family economy and burdens during the relationship had been significantly less. Justice Fenlon referenced the comments of Justice Harris in *Jaszczewska* at paras. 43–44, and commented at paras. 31–32 that:

[31] In *Slavenova v. Ranguelov*, 2015 BCSC 79, Justice Savage (as he then was) said:

[60] The “significant unfairness” contemplated by s. 95 requires much more than differing financial contributions in a relationship. Exactly equal contribution is more likely exceptional than commonplace. The new regime under the *FLA* recognizes that partners will come to a relationship in differing circumstances and accounts for those in the concepts of “family property” and “excluded property”. The starting point in the division of property analysis already applies significant exclusions.

[Emphasis added.]

[32] Cases in which unequal contribution to family expenses and burdens were found to make it significantly unfair to divide family property equally have involved marked, prolonged, and intentional or unexplained disparities in contribution to family burdens: *Nanara v. Nanara*, 2017 BCSC 1447; *E.H.H. v. C.L.M.*, 2017 BCSC 1299.

[268] Thus:

[36] In summary on this issue, in my respectful view the judge erred in principle in his approach to the reapportionment of family property, basing it on a dollar for dollar comparison of contribution to expenses which does not reflect the nature of marriage as a family venture. In most marriages, one spouse will earn more than another and therefore contribute more to the family finances. As noted at para. 43 of *Jaszczewska*, allowing relative contribution to become a regular consideration in the context of s. 95 would create uncertainty and complexity, contrary to the legislative objectives underlying the *Family Law Act* division of property regime.

[269] These issues were considered again in *Singh v. Singh*, 2020 BCCA 21, where Justice Garson commented on the “significant unfairness” threshold at paras. 133–134:

[133] In *V.J.F. v. S.K.W.*, 2016 BCCA 186, Justice Newbury described s. 95 as requiring a high threshold of “significant unfairness” to depart from equal division: at para. 81. Other cases have reached similar conclusions about the high threshold necessary to reapportion assets under s. 95. In *Khan v. Gilbert*, 2019 BCCA 80, for example, Justice Fenlon noted that cases in which unequal contribution was found to reach the significantly unfair threshold have involved marked, prolonged, and intentional or unexplained disparities in contribution to family burdens: at para. 32.

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

[270] Justice Garson went on to consider what “other” factors could fall within the scope of s. 95(2)(i). She noted the comments of Justice Harris in *Jaszczewski* at para. 44, which are cited above. She concluded at para. 138, based on consideration of established rules of statutory interpretation, that items (a) through (h) of s. 95(2) are part of a limited class – that being the economic characteristics of a spousal relationship. She concluded at paras. 139–140 that:

[139] The *economic characteristics of a spousal relationship* is a broad class, but one that is narrower than the general term in s. 95(2)(i). With regard to Sullivan’s third requirement, there are clearly other factors relevant to the class that are not enumerated in s. 95(2)(a)–(h). For example, this limited class would allow for the consideration of the relative contribution of spouses to the acquisition, preservation, maintenance, or improvement of family property during the relationship, as suggested by *Jaszczewska* at para. 44.

[140] Accordingly, I find that the limited class rule is applicable and I must consider whether the factors the judge relied upon are properly the subject of s. 95(2)(i). In my view, they are. The *economic characteristics of a spousal relationship* would clearly encompass the existence of undisclosed assets. This class would also permit consideration of the costs of bankruptcy, and a party’s motivations for entering bankruptcy, as the trial judge did in the case at bar, and the consequent impact on the value of the asset.

[271] More generally, I note a helpful summary of key principles to be applied in dealing with claims for unequal division, as summarized by Justice Abrioux (as he then was) in *Nanara v. Nanara*, 2017 BCSC 1447 at para. 63:

- (a) the *FLA* espouses a presumption of equal division of family property, the entitlement to which exists independent of contributions or use. However, unequal contribution after separation can be a relevant consideration in reapportionment: *Jaszczewska v. Kostanski*, 2016 BCCA 286 at para. 44;
- (b) the court must first “go through the notional exercise” of equal division, then consider if equal division would be significantly unfair. “Significantly unfair” means “compelling or meaningful having regard to the factors set out in s. 95(2)”. There must be “very persuasive reasons” from departing from equal division: *Parton v. Parton*, 2016 BCSC 1528 at para. 71 [*Parton*]; *Dheenshaw v. Gill*, 2017 BCSC 319 at paras. 44-45; *Remmem v. Remmem*, 2014 BCSC 1552 at para. 44;
- (c) lack of financial disclosure is a factor which may be taken into account in considering whether an unequal distribution is appropriate: *Bamford v. Mulyati*, 2017 BCSC 945 at para. 43; *Ahmadi-Abbasabadi v. Ahmadian*, 2017 BCSC 648 at para. 171;
- (d) reapportionment is meant to remedy substantial unfairness but does not require both parties to be in absolute equality. *Parton* at para. 108.

[272] Finally, I note *S.A.T. v. D.I.T.*, 2022 BCSC 1176 at para. 246, in which Ms. T claimed reapportionment:

[246] ... essentially on the mental and physical abuse she has suffered as result of Mr. T’s misconduct. Of course, this is not one of the enumerated bases under s. 95(2) which would militate in favour of a finding of significant unfairness. However, family violence has still factored into the reapportionment analysis where it has had a “connection to the economic characteristics of the spousal relationship”: *Chang v. Chang*, 2020 BCSC 1783 at paras. 121–122; *Salman* at para. 122.

[273] As explained in *Salman v. Astifan*, 2021 BCSC 1395 at paras. 121–122:

[121] *Chang* provides some authority to reapportion family assets in circumstances where there has been bullying conduct on the part of one of the spouses but there were a number of other factors at play in that case that led the court to reapportion the family assets on a 75%-25% basis. Not all those factors are present in this case.

[122] However, I find that Mr. Salman’s abuse and violent outbursts is a factor I may consider in this case because it does have a connection to the economic characteristics of the spousal relationship. I find as a fact that Mr. Salman’s conduct made it very difficult for Ms. Astifan to devote herself to the restaurant business in the manner that she would have liked and had intended in the final years of the relationship. I accept Ms. Astifan’s evidence in this respect. Were it not for Mr. Salman’s violent, abusive, and degrading conduct towards Ms. Astifan, I find it more likely than not that the restaurant would have been more successful in those years. I am not able to quantify this but I will take this into account as part of the totality of the evidence in

considering whether an equal division of the assets is substantially unfair and, if so, what reapportionment should be ordered.

Analysis

[274] I begin with determination of the date of separation.

[275] It is clear to me from the communications between O.M. and V.G. that they both had strong religious views that were incompatible with the seeking of a divorce. Both also believed it was better for A.G. if they remained together. Those strong views were a significant deterrent to either party moving forward with separation.

[276] They both also had strong views as to which country they should be living and raising A.G. in. As I assess the parties' comments, communications and actions, O.M. strongly believed the best thing for their family was for all of them to live in Ukraine, while V.G. strongly believed the best thing for the family was for all of them to live in Canada. Each of them held firm to those views until the summer of 2018 – when O.M. agreed to return to Canada.

[277] I reject V.G.'s assertion that the parties separated in May 2015 when he traveled with O.M. and A.G. to Ukraine and then immediately returned. I do not accept V.G.'s evidence that O.M. spoke of divorce at the time. I accept O.M.'s evidence that a significant part of her desire to go to Ukraine related to her views as to medical treatment for A.G. That said, she was also very unhappy in Canada, having minimal ability to communicate or understand English, few others to converse with in Russian other than P.G. and his family with whom her relationship was very poor, a husband who was working very long hours and with whom she was frequently arguing, and no support from her own family. I accept the evidence of O.M. that she hoped that V.G. would eventually agree to come and live with them in Odessa.

[278] In my view, neither party evinced the requisite intention to separate in connection with O.M. and A.G. moving to Ukraine in May 2015. As I read their emails and interpret the parties' evidence, over the subsequent year, each hoped

the other would choose to move to where they were living, and while V.G. had concerns about O.M., she wanted him to “stop living in the past”. They did spend time together in late 2015 when V.G. came to Odessa and stayed with O.M. and A.G. in the apartment.

[279] Matters between the parties seem to have deteriorated in late May 2016. This appears to have been partly a result of the steps taken by the MCFD in British Columbia to track down A.G. As noted in the chronology above, there appear to have been multiple communications between the parties, of which only a small part is in evidence. O.M.’s email of May 25 expressed concern about V.G.’s refusal to provide reasonable financial support to them, and his characterization of her requests for financial support as “extortion”. She accused him of being more interested in his money than in his child and family. She pushed back on what appears to have been a statement by V.G., presumably to the MCFD, that he had not consented to O.M. and A.G. travelling to Ukraine in May 2015. This email also contained a reference to a “boyfriend”. I accept the evidence of O.M. that she did not have a boyfriend, and that she was trying to prompt a response from V.G.

[280] The best case for V.G.’s claim of separation comes from three emails sent by O.M. between July 10 and August 3, 2016. The context of those emails is found, at least in part, in the exchanges from May 2016. It includes both parties maintaining their position that they wanted to live in Canada (in the case of V.G.) and Ukraine (in the case of O.M.) and a refusal by the other to join them in their preferred country. It included whatever were the allegations in the V.G. letter or email that provoked O.M.’s response of May 25, 2016. And it included V.G.’s refusal to provide financial support for O.M. and A.G. I accept O.M.’s assessment that the middle of 2016 was a very harsh period of their relationship.

[281] O.M.’s email of July 10, 2016, said simply “I want to divorce.” V.G.’s reply rejected that idea, saying “I didn’t get married to get a divorce”. I see this as a reflection of the parties’ deep mutual resistance to separation and divorce, which is

rooted in their strongly held religious views as well as their mutual commitment to A.G.

[282] In her July 24 email, O.M. went on at length about V.G.'s lack of financial support at times when money was really needed for A.G.'s treatment, and then requested that V.G. send the marriage certificate to O.M. in Odessa. It was common ground that the purpose of this request related to obtaining a divorce.

[283] The August 3 email suggested that it would be easier if V.G. came to Ukraine and that the parties could then go to Moldova together to get a divorce. The email suggests that it was V.G. who had wanted a divorce, and asserts that O.M. had "fought as best I could", had prayed, humiliated herself and begged. The email suggests that V.G. had demonstrated that he was "more comfortable being alone", but that his "silence" had "made things worse". It suggested that they part ways peacefully.

[284] O.M.'s evidence – not disputed by V.G. – was that after she had sent the August 3 email, she received the marriage certificate from V.G., along with a note from V.G. asking her to make sure he "was not brought out with his feet first", which O.M. took as an indication that V.G. did not really want to let her go.

[285] I recognize that O.M.'s emails talk about divorce. In my view, underlying the many cases I have referred to is a recognition that a marriage is not a commercial contract. It is a highly personal relationship infused with emotions, particularly so where the relationship is strained and discussions can become heated. It is not appropriate to parse the language of an email between spouses about their future in the same way as one might parse a lease termination notice drafted by counsel. This is part of the context that gives rise to the requirements in the cases cited above that the Court consider the facts in a holistic manner and ensure that there is a settled intention with respect to a separation.

[286] I accept O.M.'s evidence that part of her motivation in all of these mid-2016 communications was to provoke a response from V.G. Two responses are in

evidence – V.G.’s initial assertion that he did not get married to divorce, and the comment he included with the marriage certificate when he sent it to O.M.

[287] I accept O.M.’s evidence that she did not take any steps after she received the marriage certificate to apply for a divorce. Rather, she was torn as to what to do next and, in essence, continued on as she had over the next few months until – in January 2017 – V.G. returned to Ukraine and the parties spent significant time together, including their vacation in Egypt. This is consistent with her explanation – which I accept – that she had been for many months trying to provoke a reaction from V.G. and seeking confirmation that he was still committed to their relationship. It would make sense that, having received the “feet first” comment from V.G., she would wait to see what happened next.

[288] The authorities I have cited suggest consideration of the “generally accepted characteristics of the marriage”, both before and after the alleged separation. As noted in *Quirion* and *Arcand*, this is a difficult exercise where the parties were not physically residing together either before or after the alleged separation. In this case, there was no immediate change in the parties’ relationship in August 2016. Both before and after that time, the parties had been living in different countries, corresponding occasionally, and V.G. had been visiting from time to time. It is noteworthy in this case that, by December 2016, V.G. had scheduled another visit to Ukraine. V.G.’s time in Ukraine included meetings that he and O.M. had with a pastor to focus on their relationship. While the parties had different recollections as to how they got along while V.G. was in Ukraine on this trip, what is clear is that it was positive enough that V.G.’s time away from Canada was extended so that he could vacation with O.M. in Egypt. The time the parties spent together in Odessa and in Egypt was such that O.M. followed up with her email of February 15, 2017, in which she expressed that she “misses” V.G. and that “I love you and I’m waiting”.

[289] Also in the fall of 2016, V.G. filed an income tax return stating that his marital status was married and that O.M. was his spouse. The return filed in the fall of 2016 was his 2015 return, so would have indicated marital status as of the end of 2015.

However, he continued to show his marital status as married in his subsequent income tax returns until after June 2019. I am unconvinced by V.G.'s assertion that his bookkeeper advised him that he had to identify himself as married until he had a "legal document" showing that he was separated. The income tax return includes multiple boxes to show different status, including "divorced", "separated" and "single". It should have been clear to V.G. that separated was different from divorced, and any bookkeeper knowledgeable about the filing of income tax returns would have known that a separated individual should use the separated box. In my view, the indication on his 2015 return is a confirmation that, at the very least, he did not consider himself to have been separated as of the end of 2015.

[290] In my view, there is much in common between the facts of this case and that of *S.A.H.*, paras. 62–67 of which are cited above. In *S.A.H.*, the claimant had actually commenced divorce proceedings in 2004, but did not pursue them. The parties' living arrangements did not change, and they did not actually separate until 2013.

[291] I conclude that O.M. did not have a settled intention to separate in July and August of 2016, when she wrote the emails on which V.G. relies in this action.

[292] V.G. also relied on a set of 2017 communications – those being the emails O.M. sent on May 22, June 5 and July 1, 2017. The first of the emails was very negative, suggesting that O.M. did not "want any more attention" from V.G., and that she no longer wanted to have anything to do with him. The second, only two weeks later, asked V.G. to "treat me the way you want me to treat you", and not to "push me away this time". O.M. went on to say that "I really need you", and expressed a desire to talk about getting together and forgetting the past. The third email included a statement that "I still love you anyway".

[293] I cannot read this series of emails as indicating a settled intention to separate. As a group, they express ongoing disappointment but a desire to be together.

[294] Again, there was no change in the parties' relationship before and after these emails, and as noted above, it was shortly after these emails that V.G. filed his 2016 tax return indicated that he was still married to O.M. and not separated.

[295] Finally, there was a further email sent by O.M. in January 2018. That email asserted that O.M. was no longer V.G.'s wife and that her life with V.G. was a thing of the past. O.M. said that the email was a reaction to communications in which V.G. blamed her for many things. Both parties agreed that subsequent to this email, they exchanged messages. While they did not agree on who initiated those communications, they did agree that the messages communicated interest in keeping their relationship. V.G. said that O.M. even indicated an openness to talking about Canada.

[296] In terms of events before and after the January 2018 email, it is clear on the evidence that the subsequent messages led to V.G. returning to Ukraine for several weeks following which V.G., O.M. and A.G. returned to Canada and lived together at the Duncan Home for several months.

[297] In my view, none of these early 2018 communications either effected or reflected a separation between the parties.

[298] As a result, I conclude that the parties did not separate during the time that O.M. lived in Ukraine. The date of the parties' separation is June 28, 2019.

[299] I turn now to ascertaining family property and debt.

[300] For the reasons set out in my discussion of reliability and credibility, I do not accept the evidence of V.G. and P.G. that there was an oral agreement that P.G. would own 50% of the Duncan Home. Given my rejection of their evidence, I will proceed on the basis that P.G.'s interest is limited to the 1% interest as shown on title.

[301] As also discussed above in the context of reliability and credibility, I reject the notion that any family debts remained at the time of separation other than the

mortgage on the Duncan Home. The debt to Mr. Linevich arose in 2012, and V.G. gave evidence that he was working long hours to pay it off from 2013 onward. After four years of effort to pay off this debt, in August 2017 he certified a list of minor debts in his mortgage application that did not include anything owing to Mr. Linevich. In the spring of 2019, he sent US \$100,000 to someone – he said this was payment of the debt to Mr. Linevich.

[302] I am suspicious given the number of payments made from V.G.'s US\$ Account that some of those payments may relate to other assets elsewhere that have not been disclosed. I am also concerned about O.M.'s lack of disclosure with respect to her Ukraine banking arrangements. Although, as noted above, I have doubt's about O.M.'s ability to have acquired any assets of substance in Ukraine, the non-disclosure of all parties is of concern.

[303] All of that said, I am not in a position to make findings as to the existence of other assets on the part of either V.G. or O.M. As a result, it is my view that the most appropriate course is for me to simply divide the family property and family debt that I am satisfied on the evidence before me actually exist – those being the Duncan Home and the mortgage.

[304] This brings me to the final question with respect to property division – whether there should be an unequal division. An equal division would give each of V.G. and O.M. a 49.5% interest in the net equity in the Duncan Home. V.G. says that O.M. should receive much less than that in the circumstances.

[305] The cases make clear that, while the court has the jurisdiction under the *FLA* to recognize unequal contributions during the relationship by way of unequal division of property, doing so should be the exception rather than the rule. In my view, there were unequal contributions to the acquisition and improvement of the Duncan Home during the relationship, but at the same time, those were largely funded by V.G. providing minimal and, at times, no funding for the living costs of O.M. and A.G. in Ukraine, and by O.M assuming almost the entirety of the responsibility for raising the parties' child. This is not a case of "marked, prolonged and intentional or

unexplained disparities in contribution to family burdens” (using the language of *Khan*). This is a case in which each party assumed specific family burdens, and in so doing, facilitated the other assuming other family burdens. And it is a case in which O.M. and A.G. struggled to get by on a very small portion of the family income. It would be inappropriate in such circumstances to conclude that the parties’ different, but not necessarily unequal, contributions give rise to significant unfairness.

[306] With respect to the specific factors listed in s. 95(2):

- a) The duration of the parties’ relationship was just under eight years (September 3, 2011 to June 28, 2019);
- b) O.M. played the primary role in care of A.G., the effect of which was to allow V.G. to work long hours developing his business and generating income; and
- c) After the date of separation, V.G. continued to pay the mortgage, performed some renovation work, and also continued to live in the Duncan Home.

[307] Two authorities – *S.A.T.* and *Salman* – conclude that family violence may be a consideration in an application for unequal division of family property, where it has a connection to the economic characteristics of the spousal relationship. Both V.G. and P.G. made numerous allegations about O.M., and in particular that she was abusive toward V.G. O.M. admitted to having struck V.G. once in an argument.

[308] Given my conclusions as to credibility, I conclude that the allegations of violence beyond the one admitted by O.M. are not made out. In my view, the one incident that was acknowledged did not impact on the economic characteristics of the spousal relationship in any way.

[309] In my view, the only two factors that potentially give rise to significant unfairness in this case are:

- a) The work done by V.G. to continue renovations to the property after June 2019; and
- b) The mortgage payments made by V.G. after June 2019.

[310] That said:

- a) While I heard V.G.'s evidence, supported by P.G., as to how hard he has worked on the renovations, there is no specific evidence establishing the extent to which the post-separation renovations have increased the value of the Duncan Home; and
- b) V.G. has been living in the Duncan Home since it was acquired in August 2017, and there is no claim for occupation rent.

[311] The evidence indicates that the amount owing on the mortgage decreased from \$387,000 at the time of separation to \$340,000 at the time of trial. This decrease is of benefit to both parties. It is a substantial post-separation increase in the net value of family property, and it comes from the efforts of V.G.

[312] With respect to the renovations, having reviewed the differing comments of the appraisers in the two appraisal reports submitted (one done shortly after separation, the other done during the trial), I accept that the further renovation work that was done had some, albeit unquantified, impact on the appraised value.

[313] In my view, this is a case in which there has been a significant increase to the value of family property after separation, and it would be significantly unfair not to appropriately recognize V.G.'s post-separation contributions. In my view, the most appropriate means to recognize that contribution would be to provide a credit to V.G. before division of the equity in the property. Providing some recognition for the renovation work (which should not be substantial in light of the lack of specific evidence as to the value generated thereby), I would assess that credit as \$60,000.

[314] The 2024 appraisal values the Duncan Home at \$800,000. The mortgage balance is \$340,000. The net value of the family property is \$460,000. Crediting

\$60,000 to V.G. in respect of his post-separation increases to the value of family property, the net amount to be divided is \$400,000. Equally dividing V.G.'s 99% interest in the Duncan home gives rise to a value for O.M.'s interest of \$198,000.

[315] I do not accept V.G.'s submissions that there should be an advance adjustment for the \$24,000 P.G. claims to have invested in the Duncan Home. There is no evidence that these funds were actually invested in the Duncan Home, and in any event I have concluded that P.G. has a 1% interest in the Duncan Home. Any dealings with respect to the \$24,000 payment are a matter to be accounted for as between V.G. and P.G. The same would apply to the funds that P.G. deposited into TD Account 7139 after this litigation was commenced.

[316] I would direct that V.G. be given 60 days from the release of these reasons for judgment to purchase O.M.'s interest in the Duncan Home for \$198,000. If he does not do so, then the Duncan Home should be listed for sale, with joint conduct of sale, and 49.5% of the net sale proceeds (less the \$60,000 credit to V.G.) to be paid to O.M.

Imputation of Income

Positions of the Parties

[317] O.M. argued that income should be imputed to V.G. on the basis that:

- a) He was paid in cash for some work, which was not reported on his income taxes, and
- b) He acknowledged occasionally purchasing, fixing up and re-selling damaged motor vehicles.

[318] O.M. submits that the many significant deposits to and transfers from V.G.'s bank accounts are indicative of him earning significantly more than his reported income. O.M.'s counsel prepared an analysis of all of the deposits to his accounts for 2019, which were said to demonstrate receipts much higher than his alleged gross income. O.M. calculates the arrears of child support as \$62,697.

[319] V.G. says that he does not work for cash and has accurately reported his income. He notes that he was audited by the CRA for 2020 and 2021, and there was no reassessment. He says that in 2019, the year analyzed by O.M.'s counsel, many of the deposits relate to moving money between his own accounts as well as taking advantage of a couple of special zero interest balance transfer promotions from credit cards. The only unreported income he acknowledges relates to the vehicles he fixed up and resold. V.G. says that the child support arrears are actually about \$9,000.

Legal Context

[320] Imputation of income is dealt with in the *Federal Child Support Guidelines*, SOR/97-175. Section 16 provides that as a starting point, a spouse's annual income for purposes of child support is determined using Line 150 of the spouse's income tax return. Section 17 makes provision for situations where the income of a spouse varies significantly from year to year, s. 18 makes provision for cases in which a spouse is a shareholder, director or officer of a corporation, and s. 19 provides other circumstances in which income should be imputed including where there are concerns that income has been diverted or that a spouse has unreasonably deducted expenses from income.

Analysis

[321] On the facts, I am not satisfied that a basis to impute income to V.G. has been established in respect of the alleged construction work performed for cash. I am not satisfied that the review of deposits has actually established an excess of deposits beyond what is reasonable given the gross business income reported. I accept that a small amount should be added to his reported income each year in respect of the repair and resale of motor vehicles – doing the best I can with the minimal evidence on this point, I would suggest the addition of \$3,000 to his annual income would be appropriate.

[322] Neither of the parties' submissions contained a calculation of the amounts of child support payable based on V.G.'s actual reported income. V.G.'s submission

indicated that the amount was approximately \$9,000. There will have to be a small upward adjustment in light of my comments above. If the parties are unable to agree on the precise calculation, then they can seek further direction from me.

Spousal Support

Positions of the Parties

[323] O.M. seeks spousal support on a compensatory and non-compensatory basis. She says that she reasonably focused on care of A.G. for several years, and has gradually worked to become self-sufficient since the parties separated. She also says that she was on social assistance until 2022 and was in need of spousal support. She says that V.G. has been on notice since the Notice of Family Claim was filed in July 2019 that she was seeking spousal support. She seeks spousal support up to June 2024 but not thereafter, given that the parties have been separated for five years and she now has regular employment.

[324] V.G.'s says that O.M. has not established entitlement on either a compensatory or a non-compensatory basis, and that it is too late to seek spousal support. Even if there was entitlement, he says that the parties separated in 2015 and that any entitlement was satisfied long before the action was commenced.

Legal Context

[325] The legal principles were not in dispute. As summarized in *Chutter v. Chutter*, 2008 BCCA 507 at paras. 50 and 54:

[50] Compensatory support is intended to provide redress to the recipient spouse for economic disadvantage arising from the marriage or the conferral of an economic advantage upon the other spouse. The compensatory support principles are rooted in the "independent" model of marriage, in which each spouse is seen to retain economic autonomy in the union, and is entitled to receive compensation for losses caused by the marriage or breakup of the marriage which would not have been suffered otherwise (*Bracklow*, at paras. 24, 41). The compensatory basis for relief recognizes that sacrifices made by a recipient spouse in assuming primary childcare and household responsibilities often result in a lower earning potential and fewer future prospects of financial success (*Moge*, at 861-863; *Bracklow*, at para. 39). ...

...

[54] Where compensatory principles do not apply, need alone may be sufficient to ground a claim for spousal support (*Bracklow*, at para. 43). Non-compensatory support is grounded in the “social obligation model” of marriage, in which marriage is seen as an interdependent union. It embraces the idea that upon dissolution of a marriage, the primary burden of meeting the needs of the disadvantaged spouse falls on his or her former partner, rather than the state (*Bracklow*, at para. 23). Non-compensatory support aims to narrow the gap between the needs and means of the spouses upon marital breakdown, and as such, it is often referred to as the “means and needs” approach to spousal support.

Analysis

[326] I am satisfied that entitlement has been made out on both a compensatory and a non-compensatory basis. It was appropriate for O.M. to focus on the care of A.G. for the time she was living in Ukraine from 2015 to 2018. Her care for A.G. allowed V.G. to focus on and advance his business in Canada. When O.M. moved to Canada, she faced a significant transition and a need to learn to function in an employment environment in the English language. Her request for spousal support for a five-year time frame, ending in June 2024, is reasonable.

[327] The request that was made was calculated based on imputed income amounts. I have not accepted O.M.’s submission with respect to cash income from construction. Given the lower income levels that my decision with respect to imputation gives rise to, and that child support will take priority, it is not clear to me whether spousal support calculated in accordance with the *Spousal Support Advisory Guidelines* will be greater than zero.

[328] If this is to be pursued, I would invite O.M. to provide a calculation based on the income levels I have accepted, showing what spousal support would be payable.

Parenting

Positions of the Parties

[329] As noted above, with one exception, neither party seeks any change to the existing arrangements with respect to parenting time. Apart from this one matter, I understand that the parties are agreed that the existing interim orders will become final.

[330] V.G. asks that O.M. (or the family members that assist her) drive A.G. all the way to Duncan on Fridays, rather than to Mill Bay as they have been doing. V.G. points out that O.M. moved from Duncan to Victoria without his consent shortly after separation, and submits that it would only be fair that they share the driving responsibilities equally. He says that having to drive to Mill Bay on Friday afternoons to meet A.G. takes him away from work earlier than necessary. O.M., on the other hand, says that any extra driving would be a hardship for her.

Legal Context

[331] Parenting arrangements are governed by s. 37 of the *FLA*, which mandates consideration of the best interests of the children.

Analysis

[332] In my view, given the history, I view it as appropriate that each party make the trip all the way to the other's home on those days they are doing drop-off or pick-up. Neither party makes a significant income and it only makes sense that each party only be taken away from their work obligations once each weekend.

Conclusion

[333] On the main issue at trial, I have concluded that the Duncan Home is family property, the related mortgage is a family debt, and the net equity should be divided as set out above.

[334] On the other issues:

- a) I have declined to impute income to V.G., other than \$3,000 per annum in respect of his vehicle repair work;
- b) I have found that O.M. has established entitlement to spousal support with a duration beginning on the date of separation and ending June 2024; and

- c) I have asked the parties to calculate the amounts of child support arrears and of the spousal support payable, based on my conclusions, and will determine the amounts if the parties are unable to agree.

[335] With respect to parenting, I have directed that, unless otherwise agreed, O.M. is to drop off A.G. at V.G.'s home at the start of V.G.'s parenting time, and V.G. is to drop off A.G. at O.M.'s home at the conclusion of V.G.'s parenting time. Otherwise, the existing interim orders will become final.

[336] One of the parties asked that the question of costs be left for further submissions once the result at trial is known. Any submission seeking costs should be made through Supreme Court Scheduling within six weeks of the date this judgment is released. Any submission in response should be made within three weeks thereafter. The applicant may submit a brief reply submission within seven days of the other party's submission. I will determine after reviewing the submissions whether a hearing is necessary.

[337] There are certain issues that I have left for the parties to resolve, based on directions given. If the parties are unable to resolve those matters, or if I have failed to deal with any matter that was properly before me, or if there are any mathematical errors in the calculations I have made, those can be drawn to my attention by way of submissions that should be made in accordance with the same timeline as for submissions on costs.

“Veenstra J.”