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IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *L.Z. v. R.C.,*
2025 BCSC 1714

Date: 20250904
Docket: E231291
Registry: Vancouver

Between:

L.Z.

Claimant

And:

R.C.

Respondent

Before: The Honourable Madam Justice Francis

Reasons for Judgment

Counsel for the Claimant:	B. Ingram G. Lang M. Atwal
The Respondent, appearing in person:	R.C.
Place and Dates of Trial:	Vancouver, B.C. February 3-7, 10-14, March 24-28, and June 9, 2025
Place and Date of Judgment:	Vancouver, B.C. September 4, 2025

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Introduction

[1] In this high-conflict family law dispute, the parties have raised a multiplicity of issues, including parenting time, child support, and division of family property.

[2] L.Z. and R.C. were married in April, 2011 in Vancouver. Ms. Z had recently graduated with a master's degree from Simon Fraser University and Mr. C, 12 years her senior, had recently sold his business. Shortly after their marriage, in November 2011, they moved to Chengdu, China where they had two children, D (born November 2012) and V (born March 2014).

[3] In August 2018, the parties moved back to Canada. They lived together in Canada until the date of separation, June 30, 2019. At that time, Ms. Z relocated to China with D, and Mr. C stayed in Vancouver with V. For a period of about four years, Ms. Z and D lived in China and Mr. C and V lived in Vancouver. In March 2023, D returned to Vancouver to live with Mr. C and V. Meanwhile, Ms. Z moved to Chicago to live with her new partner, A.X.

[4] Since March 2023, both children have resided exclusively with Mr. C and had no in-person parenting time with Ms. Z. For a period of time, there were court-ordered virtual visits over Zoom, but by the time of trial, those visits were no longer taking place.

[5] In early 2023, the parties appear to have entered into a series of separation agreements. Each party has, at different times, sought to disavow these agreements. The nature of the agreements, and whether they are binding on the parties, must be determined before the financial consequences of the marriage breakdown can be fairly considered.

[6] When they were together, the parties lived a lavish lifestyle that involved expensive West Vancouver rental homes and luxury travel. There is now little left in the way of family property and both parties claim to have no income at all. The question of what happened to the sizeable family property the parties once owned

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was a major issue of contention at trial, as was the question of whether income should be imputed to one or both parties.

Issues

[7] The primary issues I must determine are:

1. What parenting arrangements, division of parental responsibilities, and other orders are in the best interests of the children?

2. Should the separation agreements be set aside? If not, should the provision for lump sum child support be enforced or should a different child support order be made?

3. What was the family property and debt at date of separation and what orders must flow as a consequence?

[8] Before discussing these issues, I must address two threshold issues: the use I can make of surreptitious recordings, and how I have assessed credibility in this high-conflict case.

Surreptitious Recordings

[9] Ms. Z sought to introduce into evidence certain surreptitious recordings she made of conversations she and Mr. C had after separation, as well as one recording of a call she had with D. Mr. C also wished to introduce some surreptitious recordings he had made into evidence. The majority of the recordings that Ms. Z sought to introduce are submitted for the purposes of corroborating her evidence that Mr. C was a violent and abusive spouse. The recordings Mr. C sought to submit are ones in which Ms. Z admits that the $500,000 she paid to him in May 2023 was money that she owed him, as well as a number of conversations the parties had about financial matters.

[10] At the time Ms. Z and Mr. C sought to introduce the surreptitious recordings into evidence at trial, I heard submissions on their admissibility, but reserved

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judgment on whether they would be admitted. I have now had the opportunity to consider the admissibility of the recordings.

[11] In *Fleury v. Budd,* 2023 BCSC 1749, Justice Hughes helpfully summarized the law as it pertains to surreptitious recordings in family law:

> [22] The practice of secretly recording a party for use in a family law proceeding has been repeatedly described as odious and one that ought to be discouraged. I agree. This type of behaviour undermines the general objectives of family law and admitting such recordings has the potential to erode trust, increase conflict and hinder the restructuring of family relationships. In this regard, surreptitiously obtained evidence is prejudicial because its admission comes at a high cost to the core values of family law and has the potential to bring the administration of justice into disrepute: see e.g. *C.C. v. S.P.R.*, 2022 BCSC 1057 at para. 30, citing Martha Shaffer, "Surreptitiously Obtained Electronic Evidence in Seven Simple Steps" (2019) 38 Can Fam LQ 259.
>
> [23] However, surreptitious recordings are not presumptively inadmissible. Circumstances may arise in which the probative value of the surreptitious recording outweighs the prejudicial effect of its admission: *C.C.* at para. 4; *Karringten v. Morrisonn*, 2023 BCSC 570 at para. 69. The court has a limited discretion to exclude this type of evidence simply on a policy basis: *C.C.* at para. 32, citing *Finch v. Finch,* 2014 BCSC 653 at para. 59; *Mathews v Mathews*, 2007 BCSC 1825 at para. 43.

[12] The test for admissibility of surreptitious recordings is set out in *Finch v. Finch,* 2014 BCSC 653 at paras. 58–59, 62. The party seeking to admit such evidence must establish the following:

1. the recording must be relevant;
2. the participants must be accurately identified;
3. the recordings must be trustworthy; and
4. the Court must be satisfied that the probative value of the recordings outweighs its prejudicial effects.

Recordings made by Ms. Z

[13] There are five recordings that Ms. Z seeks to admit into evidence. All recordings have been transcribed and translated into English:

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1. An undated recording of a telephone conversation in which Mr. C says, among other things, “If you mess with me, I will definitely kill you” (“Z Recording 1”).

2. An undated recording of Mr. C saying to Ms. Z, “Garbage like your parents gave birth to garbage like you” (“Z Recording 2”).

3. A recording that is not clear enough to be deciphered. A child can be heard in the foreground and a man can be heard yelling in the background (“Z Recording 3”).

4. An undated video transcript of Mr. C speaking to Ms. Z. The children are present. Mr. C tells Ms. Z to “wait to collect the body” (“Z Recording 4”).

5. An undated recording of a conversation between Ms. Z and D. Mr. C can be heard yelling in the background. In that call, Ms. Z seeks to reassure D after hearing Mr. C yell. D cries and says she is worried that her mother will “cause trouble again”. She begs her mother not to do anything, presumably in response to Mr. C’s verbal aggression (“Z Recording 5”).

[14] Turning to the applicable factors, I must first consider whether the recordings are relevant. Family violence is a contested issue in this case. Ms. Z has testified that Mr. C was physically and verbally abusive to her. Mr. C denies any family violence. The existence of family violence is relevant to parenting time, but also relevant to the enforceability of the separation agreements the parties signed, because Ms. Z alleges that she was coerced and intimidated by Mr. C into signing them. On this basis, recordings that contain overt or veiled threats by Mr. C are relevant. As such, I find the threshold of relevance has been met with respect to Z Recordings 1 and 2. Also relevant are Z Recordings 4 and 5, insofar as they appear to suggest that the children were exposed to menacing and threatening behaviour by Mr. C. Z Recording 3, because it is indecipherable, fails to meet the threshold test of relevance.

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[15] In terms of identification, notwithstanding Mr. C's denial of the authenticity of these recordings, it is very clear that the participants are Mr. C, Ms. Z and, with respect to certain recordings, D and V.

[16] The recordings are trustworthy. Mr. C has raised no evidence to suggest otherwise.

[17] I find that the probative value of these recordings is significant, and is not outweighed by the prejudicial effect. As I have noted, family violence is a central issue in this case and is very much in dispute. Family violence usually happens behind closed doors and is difficult to prove. In the recordings, Mr. C speaks in a menacing and threatening manner to Ms. Z. He appears to intimidate D while she is speaking to her mother. In my view, this is an appropriate case to exercise my discretion to admit Z Recordings 1, 2, 4, and 5 into evidence.

Recordings made by Mr. C

[18] Mr. C made several surreptitious telephone recordings of calls he had with Ms. Z. Most of these appear to date from around the time that the separation agreements were being negotiated. Those recordings have been transcribed and translated by Ms. Mo, a court-certified interpreter.

[19] There are six recordings that Mr. C sought to tender in evidence. Because they are lengthy and undated, I have identified each by the first line spoken, as it has been translated into English:

1. "You speak now first": this conversation involves a lengthy discussion of the payment of $500,000 by Ms. Z to Mr. C. The context of the conversation suggests that it took place in or around spring 2023 ("C Recording 1").

2. "Wow, for goodness sake": this recording mostly contains a discussion between the parties about whether Ms. Z should move back to Vancouver, as well as Mr. C alleging that Ms. Z owes him money ("C Recording 2").

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3. “If you do not agree with all my financial requests”: this conversation involves Mr. C making various threats to report Ms. Z to the US government, calling her evil and demanding that she return money that he says she owes him (“C Recording 3”).

4. “Declared bankruptcy”: in this conversation, Ms. Z asks Mr. C for financial advice, and they have a discussion about the benefits of investing in real estate in Vancouver (“C Recording 4”).

5. “Its just, the key is”: in this recording, the parties appear to be discussing the children and negotiating how much Ms. Z should pay Mr. C in monthly child support (“C Recording 5”).

6. “I have to make money myself”: in this recording, Ms. Z talks about her business and her income. Based on the context of this recording, it appears to have taken place sometime after she moved to Chicago in late 2022 or early 2023 (“C Recording 6”).

[20] First, I must consider the relevance of the surreptitious recordings. In C Recording 1, Mr. C repeatedly asks Ms. Z to admit that the $500,000 payment contemplated in their draft separation agreement is money that she owes to Mr. C. Eventually, she relents and agrees to this point. In C Recording 5, the parties expressly discuss how much monthly child support Ms. Z should pay. C Recording 1 and C Recording 5 are therefore relevant to the circumstances surrounding the drafting of the separation agreements at issue between the parties.

[21] C Recording 3 is relevant because it contains the kind of verbal aggression and threats that Ms. Z alleges constitute family violence. C Recording 6 is relevant to Ms. Z’s financial circumstances. C Recordings 2 and 4 are of marginal or no relevance to the matters I must determine.

[22] The second criteria for admissibility is that the participants be accurately identified. From the context and subject matter of the conversation, it is very clear

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that the recordings in question are recordings of conversations between Mr. C and Ms. Z.

[23] The recordings must be trustworthy. While only transcripts were entered into evidence, counsel for Ms. Z advised the Court that she had received the audio recordings from Mr. C and listened to them. She did not object to the transcripts going into evidence. I find that the recordings are trustworthy.

[24] In terms of weighing the probative value and prejudicial effect, I find that C Recording 1 and C Recording 5 are very probative, particularly in light of the vague and confusing state of Ms. Z's evidence about the circumstances under which the separation agreements came into existence, something I discuss in more detail below. The transcripts tendered by Mr. C of the conversations between the parties in and around the time the parties were negotiating a settlement of their family law dispute directly speak to the question of whether Ms. Z was, as she claims to have been, coerced into signing the agreements. Therefore, I have exercised my discretion to admit the transcripts of C Recording 1 and C Recording 5 into evidence.

[25] I also find that the probative value of C Recording 3 outweighs its prejudicial effect. For the same reasons that the recordings made by Ms. Z, which evidence behaviour by Mr. C that likely amounts to family violence, are highly probative to issues I have to determine, so too is C Recording 3. In order to fairly adjudicate the family violence issues that have been raised by Ms. Z, I must admit these recordings into evidence.

[26] Finally, Ms. Z's income is a relevant issue in this case. Because she has never earned income in Canada, and her business ventures were internet-based and apparently involved very little documentation, it has been challenging to discern her income for the purposes of child support. C Recording 6 sheds some light on this issue and I find its probative value outweighs its prejudicial effect.

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[27] In my view, this is an appropriate case to exercise my discretion to admit C Recordings 1, 3, 5, and 6 into evidence.

Credibility, Reliability and Finding of Facts

[28] In considering the credibility and reliability of evidence, this Court has recourse to the methodology articulated in *Bradshaw v. Stenner*, 2010 BCSC 1398, aff'd 2012 BCCA 296, leave to appeal to SCC ref'd, [2012] S.C.C.A. No. 392:

> [186] Credibility involves an assessment of the trustworthiness of a witness' testimony based upon the veracity or sincerity of a witness and the accuracy of the evidence that the witness provides (*Raymond v. Bosanquet (Township)* (1919), 59 S.C.R. 452, 50 D.L.R. 560 (S.C.C.)). The art of assessment involves examination of various factors such as the ability and opportunity to observe events, the firmness of his memory, the ability to resist the influence of interest to modify his recollection, whether the witness' evidence harmonizes with independent evidence that has been accepted, whether the witness changes his testimony during direct and cross-examination, whether the witness' testimony seems unreasonable, impossible, or unlikely, whether a witness has a motive to lie, and the demeanour of a witness generally (*Wallace v. Davis*, [1926] 31 O.W.N. 202 (Ont.H.C.); *Farnya v. Chorny*, [1952] 2 D.L.R. 354 (B.C.C.A.) [*Farnya*]; *R. v. S.(R.D.),* [1997] 3 S.C.R. 484 at para.128 (S.C.C.)). Ultimately, the validity of the evidence depends on whether the evidence is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time (*Farnya* at para. 356).
>
> [Emphasis added].

[29] In this case, since both parties testified via a translator, I have been mindful of this Court's instruction in *Kim v. Choi*, 2019 BCSC 437:

> [17] Caution should be exercised in assessing the testimony of witnesses from other cultures or where English is a second language and the evidence is received through an interpreter. The reason for caution was explained in *Fu v. Zhu*, 2018 BCSC 9 at paras. 39-42:
>
> > [39] Some caution had to be exercised in assessing credibility because the witnesses were from another country and culture and did not speak English. Often cultural and linguistic differences can affect the demeanour of witnesses in ways not necessarily understood by the trier of fact. For this reason, I was hesitant to conclude that a witness was evasive, in case what appeared to be evasiveness could be due to language or cultural differences.
> >
> > [40] I have approached the evidence aware that nuances might be lost in translation, both in terms of the translation of the question to the witness and in the answer. Word choice and word order in a sentence might be an interpreter's preference and I have been careful

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> not to form judgment based on the wording of a single answer. Rather, I have considered the whole tenor of the evidence in coming to conclusions as to the facts. In my view it would be a mistake to take a single passage from a witness's evidence as a conclusive admission against interest, given the nuances that might be lost in translation.
>
> [41] As well, I have kept in mind that motives and conduct that might seem improbable to a person raised in a Canadian culture might not be improbable in another cultural context. The very structure of the transactions at issue in this case was unusual in the Canadian context, as it involved large sums of money changing hands over several years, without any written agreements in place or any common accounting practices. I have been mindful that different cultural contexts can affect the court's perspective as to inherent probabilities or improbabilities.
>
> [42] On the other hand, certain characteristics probably cross all cultures, and that includes the instinct and ability to be self-serving in one's memory so as to advance one's own interests, especially when it comes to matters of money.

> [18] The *Fu* caution is instructive, but it does not provide a license for a witness to lie. Simply because a witness comes from a different culture and speaks a different language does not result in a free ride in the witness box. A truthful witness is not diminished and an untruthful witness is not elevated. A truthful witness is to be believed and a liar is to be rejected.

[30] Both parties asked me to find the other not credible on material points of fact. Mr. C asked me to conclude that Ms. Z kidnapped D in 2019, stole all his money and deposited it into secret bank accounts, and has lived a life of luxury since that time while he and the children have lived in a state of penury. Ms. Z denies these allegations. Ms. Z asks me to find that Mr. C is a violent and abusive man who used threats of violence to coerce her into signing an improvident separation agreement. Mr. C denies this.

[31] For reasons I will discuss, neither parties' version of events is, in my view, accurate. However, one of the notable challenges of adjudicating this case has been that both parties spent the bulk of their time in the witness stand offering evidence of the poor character of the other, and commensurately less time discussing evidence that is material to this trial. This has meant that the assessment of evidence in this case has at times been less about assessing credibility by weighing two differing factual versions of the same events, and more about trying to find facts where the

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parties offered vague evidence or no evidence on material points. Because of this, it has often been necessary to look to other sources of evidence, such as documents, or the surreptitious recordings made by both parties, to find material facts. Where the evidence of the parties has conflicted on points such as whether Ms. Z was coerced into signing certain agreements, whether Ms. Z took D to China in 2019 without Mr. C's authorization, and whether Mr. C physically assaulted Ms. Z, I have looked to other reliable evidence to find these facts.

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Parenting Time, Parenting Responsibilities, and Other Orders Regarding the Children

[32] In her pleadings, Ms. Z seeks parenting time with the children, who presently reside full time with Mr. C. In her closing submissions, she clarified that she does not seek a parenting schedule at this time. Rather, she seeks an order for reunification counselling, with parenting issues to be resolved at a later date after the family has undergone reunification therapy.

Facts relevant to parenting

Parenting time between separation date and trial

[33] After separation, in June 2019, Ms. Z moved to China with D, who was seven years old at the time. They lived there with Ms. Z's parents for the next four years. During this time, V stayed in West Vancouver with Mr. C.

[34] Mr. C has accused Ms. Z of kidnapping D in June 2019. However, WeChat messages in evidence demonstrate that the parties were in communication during and after Ms. Z and D's flight to China. In these messages, Mr. C politely inquires about Ms. Z and D's journey. There is no suggestion in these messages that Mr. C had any problem with D going to China.

[35] Mr. C alleges that Ms. Z somehow forged the WeChat messages in which the parties communicate civilly about the trip to China, but there is no basis on which I could infer that these messages were forged or written by another person impersonating Mr. C. On a balance of probabilities, I find that Mr. C knew that, upon

separation, Ms. Z wished to move back to China and to take D with her and, at the time, Mr. C did not object to their move.

[36] In January 2020, despite the separation, the family met up in Europe and had a holiday together. After the holiday, Ms. Z and D returned to China and Mr. C and V returned to West Vancouver.

[37] In March 2021, Ms. Z came to West Vancouver from China in an attempt at reconciliation. She left D behind in China with her parents. She testified that she stayed in West Vancouver, living in the family home with Mr. C and V, until early October 2021. In August 2021, the three family members took a trip to Vancouver Island together. Ms. Z produced photographs of this trip, as well as credit card entries showing charges for accommodation and restaurants on Vancouver Island.

[38] Mr. C denies that Ms. Z stayed at the West Vancouver home from March 2021 to October 2021 in an attempt at reconciliation, or that they went on a trip together to Vancouver Island in August 2021. He claims that Ms. Z came to West Vancouver in March 2021 and stayed for only 14 days. He claims that she doctored photographs and falsified documents in order to make it look like she went on a trip with him and V in the summer of 2021 when she did not.

[39] Mr. C's surreptitious recordings support Ms. Z's version of events on this point. In C Recording 3, he said:

> Humph, when you came here and stayed for 6 months, you consumed me, you were really terrific! You consumed me financially, I already had no money at the time.

[40] The preponderance of evidence, including photographs, bank statements, and Mr. C's own statement in C Recording 3, supports Ms. Z's version of events. I do not believe that she doctored or falsified documents. I accept that she moved back to Canada in 2021 for a period of about six months as an attempt at reconciliation that was ultimately unsuccessful.

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[41] Sometime in 2022, Ms. Z started a romantic relationship with Ms. X. Ms. X was someone she had known previously, who was working as a realtor in Chicago. By August 2022, Ms. Z had moved to Toronto, leaving D behind in China with her parents. Over the course of the latter half of 2022, Ms. Z and Ms. X spent time together in Toronto, and by December 2022, Ms. Z had moved to Chicago to live with Ms. X. D remained in China with Ms. Z's parents. In February 2023, Ms. Z and Ms. X were married, although that marriage was later annulled because Ms. Z was not yet divorced from Mr. C.

[42] In March 2023, Ms. Z arranged for D to fly from China to Vancouver to live with Mr. C and V. D has been living in West Vancouver with her father and brother ever since.

[43] On August 23, 2023, the parties attended a Judicial Case Conference and agreed to an order that Ms. Z would have Zoom parenting time with the children once a week. From the outset, the visits were often missed by the children; Ms. Z would log on and the children would not. By June 2024, V stopped attended the Zoom parenting visits altogether. By the time of trial, neither child was participating in any Zoom parenting time.

Evidence of Views of the Children

[44] It is axiomatic that any dispute about parenting time must be focussed only on the best interests of the children. Further, s. 37(2)(b) of the *Family Law Act,* S.B.C. 2011, c. 25 [*FLA*] mandates that the views of the children should be considered in a parenting order, unless it is inappropriate to consider them.

[45] There is no s. 211 report in this case, nor have the parties taken any steps to obtain a Hear the Child Report, or to adduce any evidence at all of the children's views, wishes, or needs. This left the Court in the difficult position of determining parenting time with almost no evidence about the children.

[46] As such, I asked the parties for submissions about whether I should interview the children. The claimant did not agree; the respondent did. Ultimately, I determined

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that a judicial interview with the children was the only way that the Court could obtain the views of the children and I arranged to meet separately with each of D and V.

Interviews with Children

[47] D is 12 years old and enjoys badminton, shopping, and hanging around with her best friend. She told me that she lives with her father, her brother, and her grandmother and she has a good relationship with all three of them. She remembers a little bit about the time she lived in China with her mother, but said she likes Canada better because school was very difficult in China and there is more time for fun in Canada. She described that when she first came back to Canada in grade 5, it was both scary and exciting. She told me she did not know why she was sent back to live in Canada with her father.

[48] D told me that she has not seen her mother since she came home from China in March 2023. She told me that she did not want to see her mother, even on Zoom calls. While she expressed a strong preference for spending time with her father and not her mother, she was unable to articulate any reason for this preference, other than that her mother was “boring” and “strict.” When asked for an example of her mother being strict, she said that her mother once got mad at her for doing poorly on a test. She told me there were no rules at her Dad’s house, and no chores, and she was happy living there. Interestingly, when asked if there was one thing she would change about each parent, she said that she wished they could spend more time with her. Specifically, with respect to her mother, she said she wished her mother would “spend time with me, not other people.” When asked if there was one thing I could order to make things better for her, she told me she wished I would give her dad more money.

[49] V is 11 years old and is in grade 5. He loves hockey and gym and school. When asked why he thought he was being interviewed by the Court, he told me that it was because his mother had frozen his father’s bank accounts. During our interview, he referred a number of times to money and the constrained financial circumstances his father was in. When asked about his mother, he said he didn’t

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know much about her and was not interested in seeing her. He said he remembers her being mean to him, but also said he hasn't seen her in years.

[50] On the basis of my conversations with D and V, it is clear to me that their father has brought them into the centre of the conflict between their parents. They have been told about the litigation between their parents to the extent that V knows that his mother took steps to freeze money in his father's bank account. They both were careful to tell me that their father needed money. I find it more likely than not that their father coached them to tell me this. It is deeply troubling that Mr. C saw fit to involve the children in the dispute in this way. Exposure to this kind of conflict is damaging to children. By talking to the children about financial, legal, and adult matters, and involving them in the dispute, Mr. C was harming his children.

[51] Nothing the children told me led me to believe that there was a valid reason for them to be estranged from their mother. While it is true that she chose to live far away from them by moving to Chicago, she has attempted to maintain regular telephone and Zoom contact with them, something that Mr. C has actively undermined. I have no doubt that Mr. C has intentionally sowed division between the children and their mother and this constitutes a serious and urgent issue that needs to be addressed, so that the relationship can be repaired and the children can enjoy the benefit of a positive relationship with both parents.

High conflict behaviour in this proceeding

[52] Mr. C has filed a number of lawsuits against people involved in this case, including a claim against Ms. Z's lawyer (dismissed in 2024), and a civil claim against a witness and friend of Ms. Z, S.Y., claiming defamation, obstruction of justice, and false representation. He filed a civil claim against the Royal Bank because the bank complied with a property restraining order issued by this Court. He has brought multiple Law Society complaints against Ms. Z's lawyers. His emails to Ms. Z's counsel, many of which were in evidence, are replete with outrageous allegations and insults.

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[53] During the trial, both parties were often dysregulated, yelling at one another and hurling insults in a manner that was completely inappropriate in a courtroom. While Ms. Z has not engaged in the kind of procedurally abusive behaviour that Mr. C has, based on her behaviour in court, she too appears to lack maturity, self awareness, and composure under stress. I note this in the context of my analysis of parenting issues because, in my view, both parties are in need of mental health support to enable them to successfully co-parent their two children.

Family Violence

[54] Ms. Z testified that Mr. C was a violent spouse who physically and verbally assaulted her on a number of occasions. The first time the police were called to the home with respect to an incident of family violence was April 21, 2019, when Mr. C was arrested for assaulting Ms. Z. Mr. C spent a night in jail and the police records suggest that the police recommended a charge of assault, although it was not clear on the evidence before me whether the Crown approved charges, or if Mr. C was charged and the charge was later stayed. In any event, the Crown did not ultimately pursue criminal charges against Mr. C.

[55] Ms. Z also tendered into evidence various photographs of herself with bruises on her face and body. She says these bruises were the result of violent assaults from Mr. C.

[56] Mr. C denies that he ever assaulted his wife.

[57] On a balance of probabilities, I find that Mr. C was abusive to Ms. Z. I do not need to undertake any kind of credibility analysis of Ms. Z to find that Mr. C is aggressive and verbally abusive; this is evident from the recordings of the telephone conversations between them. He has made a number of threats against Ms. Z, including threatening to kill her. With respect to physical violence, there are a number of reliable documents that corroborate Ms. Z's evidence about the occasions on which Mr. C was physically violent with her and refute any suggestion that her allegations were recently fabricated for the purposes of this family law dispute. These include:

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1. Copies of a January 17, 2019 WeChat message between Ms. Z and S.Y., wherein Ms. Z asks S.Y. how to call the police and says, “I was discussing divorce with him, he almost strangled me to death”;

2. the April 21, 2019 police report in which the police conclude that Mr. C assaulted Ms. Z; and

3. a photograph from April 2021 of Ms. Z with a bruised face that corroborates Ms. Z’s claim that Mr. C hit her and gave her a black eye during the attempted reconciliation period in 2021. I do not accept Mr. C’s conjecture that Ms. Z’s facial bruising could have been the result of cosmetic procedures.

[58] Considering all the evidence, I find it more likely than not that Mr. C physically and verbally abused Ms. Z.

[59] Mr. C needs therapeutic assistance so that he can gain insight into his behaviour and learn to parent his children cooperatively with Ms. Z. He needs to find non-destructive outlets for his emotions, lest he put his own children at risk. I have addressed this in the orders described below.

Parenting Time and Counselling

[60] Ms. Z does not seek an order for parenting time with the children at this time. The only order she sought at the end of trial was that the children receive therapeutic support through a reunification program, specifically the Reach Reunification Program run by Dr. Susan Gamache. It is clear that the family needs this type of therapy and I am prepared to order it.

[61] Ms. Z has suggested that, in lieu of child support, she is willing to pay for the reunification program. In my view, such an order would obscure the separate obligation of a party to financially support their children and the important family expense of therapeutic intervention for these children. Further, it is my view that Mr. C needs to bear some financial responsibility for reunification counselling. I order that the parties should be equally responsible for the cost of this therapy.

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[62] At present, the children are refusing parenting time of any kind with their mother. Forcing them to have parenting time with her risks exacerbating the alienation. This is something Ms. Z appears to recognize, as she seeks to defer the question of parenting time until after the completion of therapy. I agree that the next steps in healing the relationship between Ms. Z and her children should be governed by the recommendations of Dr. Gamache and her team. I will order that Ms. Z's further parenting time should be in accordance with recommendations of Dr. Gamache.

[63] I am also of the view that Mr. C needs special help with controlling his anger. In addition to ordering reunification counselling, I order that Mr. C must undertake at least six sessions of therapy with a counsellor who has expertise in anger management.

Parenting Responsibilities

[64] Ms. Z does not seek to have parenting responsibilities allocated to her. She simply asks for an order that the parties share joint guardianship. Her position is consistent with the reality that the children live with Mr. C, and Ms. Z mostly lives in another country. I find it is appropriate for parenting responsibilities to be allocated to Mr. C. However, both parents will have the right to obtain information about the children directly from third parties. In the future, if Ms. Z were to live regularly in the Lower Mainland again, this would likely constitute a change of circumstances that would justify revisiting the question of parenting responsibilities.

Separation Agreements and Child Support

Facts relevant to separation agreement

[65] In early 2023, Ms. Z contacted McLean Law and spoke to a person named Amanda Feng. She believed Ms. Feng to be a lawyer. As it turns out, Ms. Feng was a paralegal and legal administrative assistant. The evidence surrounding Ms. Feng's involvement in this family law proceeding is extremely murky; however, it appears that Ms. Feng drafted a series of separation agreements (the "Separation

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Agreements") for Ms. Z and assisted her with drafting an application for a consent divorce.

[66] It appears that there were at least three different separation agreements drafted by Ms. Feng, two of which were signed by Ms. Z. All three were signed by Mr. C.

[67] The first of the Separation Agreements is dated January 30, 2023 (the "January 2023 Separation Agreement"). It contains the following:

1. A separation date of December 10, 2021;
2. A statement that Ms. Z is self-employed and her income fluctuates but averages around $80,000 per year;
3. A statement that Mr. C is an Uber driver and his income fluctuates but averages around $15,000 per year;
4. Child support is calculated in the amount of $1,211 per month, payable by Ms. Z to Mr. C;
5. The children will reside primarily with Mr. C. Ms. Z will have one or two days of parenting time with the children each week; and
6. Spousal support is waived.

[68] While the January 2023 Separation Agreement is signed by both parties, only Ms. Z had her signature witnessed. Her signature was witnessed by Ms. X.

[69] There is a second separation agreement, also dated January 30, 2023, that has different terms. Because there is no evidence that Ms. Z ever signed this agreement (although it appears to be signed by Mr. C), I find this agreement to be of little or no evidentiary value in determining the scope of what, if anything, the parties agreed to in early 2023 with respect to their separation. At best, it is a draft, that would have been superseded by the January 2023 Separation Agreement that was

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signed by both parties. As such, I need not consider this unsigned agreement further.

[70] There is a third separation agreement dated May 12, 2023. It is entitled "Amended Separation Agreement" (the "Amended Separation Agreement") and is signed by both parties, although not witnessed. The Amended Separation Agreement contains the following:

1. A separation date of October 1, 2021;

2. No declaration as to the Guidelines Income of either party;

3. Under the heading "Child Support", the following statement:

> Based on the issue of child support in the future, [Z] worried that she might encounter irresistible changes in the future. After thought, [Z] decided to borrow money from her parents and give it to [C] in one lump sum of child support. [Z] will pay [C] a total of $500,000 at once instead of paying child support monthly, which includes the child's Special or Extraordinary Expenses, including but not limited to education or dental fees, etc. [Z] wishes that [C] can make proper arrangements for the child support Lump sum. After the lump sum is paid, [C] will not claim any more Child support or Special or Extraordinary expenses from [Z] in the future. [C] will be solely responsible for all the Children's expenses.

4. Guardianship and parenting time terms are the same as in the January 2023 Separation Agreement.

[71] Ms. Z testified that she met Ms. Feng because she was the person who picked up the phone when she called McLean Law. Ms. Z believed that Ms. Feng was a lawyer. She later learned that she was not a lawyer. While Ms. Feng was not called as a witness at trial, the parties tendered an affidavit wherein she deposed that she never represented herself as a lawyer to Ms. Z. She deposed that, while she was acting as a legal assistant, she agreed to help Ms. Z with what she believed to be an uncontested divorce application. Once she realized the divorce would be contested, she stopped her involvement.

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[72] Ms. Z offered very little evidence about the circumstances under which she signed the January 2023 Separation Agreement and the Amended Separation Agreement. She testified that Ms. Feng contacted both her and Mr. C and obtained information from them that she used for the purposes of drafting the Separation Agreements. She did not provide evidence about what instructions she gave to Ms. Feng, whether Ms. Feng was acting for her alone or for her and Mr. C jointly, what advice Ms. Feng gave her when she was purportedly holding herself out as a lawyer, or what negotiations took place between her and Mr. C with respect to these agreements. She did not testify about whether she signed a retainer letter with McLean Law, how many times she spoke to Ms. Feng, or whether Ms. Feng told her and Mr. C to obtain independent legal advice. She denies signing the January 2023 Separation Agreement and claims that she only signed one agreement, despite the fact that both the January 2023 Separation Agreement and the Amended Separation Agreement bear her signature. The January 2023 Separation Agreement also appears to be witnessed by Ms. Z's partner, Ms. X. Ms. Z testified that she knew nothing about the January 2023 Separation Agreement, nor the unsigned draft agreement also dated January 2023. In her testimony, she speculated that Ms. Feng may have created these documents to "make the May agreement seem more true or accurate." Ms. Z offered no explanation for her witnessed signature being on the January 2023 Separation Agreement.

[73] With respect to the only agreement that Ms. Z admits to signing, the Amended Separation Agreement, Ms. Z was asked on direct examination why the parties included the above-noted child support provision in the agreement. She testified that all the provisions in the agreement were for the purposes of getting a court order. I infer her evidence to mean that the $500,000 lump sum child support provision was included in the Amended Separation Agreement so that the parties could obtain a divorce order, something they would not be able to do if they could not demonstrate to the Court that adequate provisions had been made for the support of the children.

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[74] The vagueness of Ms. Z's evidence about the circumstances surrounding the creation of the Separation Agreements, along with the completely unexplained presence of her signature on a document she claims to have never seen, is important because Ms. Z now takes the position that both the January 2023 Separation Agreement and the Amended Separation Agreement should be set aside on the basis of, among other things, unconscionability. She submits that Mr. C unfairly took advantage of her vulnerability in forcing her to sign an agreement that was not in her best interests. I will discuss this argument in detail below.

[75] On May 12, 2023, Ms. Z sent a wire transfer to Mr. C in the amount of $500,000. The funds to make this payment were a gift from her partner, Ms. X.

[76] There was a slight delay in the funds being received by Mr. C; he received them on May 15. However, prior to receiving the funds, Mr. C took the position that, because of the delay, Ms. Z was in breach of the Amended Separation Agreement, and emailed Ms. Feng telling her he would not honour the agreement.

[77] On June 14, Ms. Z's counsel obtained a property restraining order, freezing the $500,000 payment.

[78] There have been a series of orders since June 2023, allowing Mr. C to access some of the frozen funds to pay for his living expenses and those of the children.

Principles of law relevant to family law agreements

[79] The test for validity of a contract, including a family law contract, is objective. It is not based on the parties' subjective intentions, but on whether an objective reasonable bystander, informed of the material facts, would find that the parties intended to contract and agreed on all essential terms of the contract, and whether those terms can be determined with reasonable certainty: *Lacroix v. Loewen,* 2010 BCCA 224 at para. 36.

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[80] The *FLA* encourages out-of-court resolution of disputes through the use of agreements. “Written agreement” is defined in s. 1 of the *FLA* as an agreement in writing signed by all parties. The definition in s. 1 does not require agreements to be witnessed to be valid. Only in circumstances in which the parties wish to limit the court’s jurisdiction to make property orders is there a requirement that a family law agreement be witnessed (see s. 93 of the *FLA*).

[81] Also relevant for the purposes of this discussion is s. 7 of the *FLA*, which says that if an agreement changes a previous agreement, only the replaced sections of the previous agreement are revoked, and the balance of the previous agreement remains in effect.

[82] The *FLA* has distinct provisions for dealing with different kinds of family law agreements. Agreements with respect to property division are governed by different rules than agreements for child support, or agreements respecting guardianship, parenting time, and contact. Section 148 of the *FLA* governs child support agreements. On application by a party, the court may set aside or replace with an order all or part of an agreement respecting child support if the court would make a different order on consideration of the matters set out in s. 150. Section 150 dictates the process the court must undertake in determining child support.

[83] In this case, the bulk of Ms. Z’s legal submissions with respect to the Separation Agreements were predicated on the fact that, in her submission, the Separation Agreements are property division agreements disguised as child support agreements. As such, she submits that s. 93 of the *FLA* applies and the Court should set aside the Separation Agreements on the basis of those provisions. In my view, there is no reliable evidence on which I could reasonably conclude that the Separation Agreements are anything other than child support agreements. The wording of the agreements is unambiguous: the January 2023 Separation Agreement refers to monthly child support and the Amended Separation Agreement refers to lump sum child support. The Amended Separation Agreement contains a term that says “Property Division: N/A.”. Further, on May 12, 2023, Ms. Z wired

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$500,000 CAD to Mr. C with a memo line that read “one lump sum of child support including special or extraordinary expenses.” In order for me to find that either agreement was a family property agreement, and not a child support agreement, I would have to ignore the unambiguous words used in the contracts.

[84] In further support of her argument that the Amended Separation Agreement perpetuates a “false narrative” that the $500,000 is support and not a payment on account of property division, Ms. Z’s counsel relied on the testimony of the parties, submitting:

> Ms. [Z] asserts that the agreement of May 12, 2023, while disguised as a child support agreement, was in reality a property agreement, and this accords with the testimony of both Mr. [C] and Ms. [Z].

[85] However, neither Mr. C nor Ms. Z gave evidence on this point. Ms. Z testified that the provisions in the Amended Separation Agreement were intended to assist her in getting a divorce order. She did not testify that she understood them, contrary to the clear language of the agreement, to represent a division of family property. On cross examination, Mr. C was asked to admit that the Separation Agreements had nothing to do with child support, and he responded that he didn’t care what the $500,000 was for, as long as he received it. He was pressed on this point again, and asked why the agreement refers to child support and he admitted he did not read the contract before he signed it, and said “for the purposes of getting my money back, I would sign whatever she wanted.”

[86] Mr. C has, in various correspondence, accused Ms. Z of stealing from him and characterized the $500,000 as “payback” of funds she stole. In C Recording 1, the following exchange took place:

> Mr. [C]: Why is that? Now I hope you understand from the bottom of your heart. I’m getting back this 500K now, but this 500K is not your money and its not a handout to me from you.
>
> Ms. [Z]: I never meant it to be that way. That’s my repayment to you, OK. My repayment to you is calculated from 2019. Each of us assumes half of what was 5 million back then. Put it this way, OK?
>
> Mr. [C]: No, I want to ask you, do you agree with this point?
>
> Ms. [Z]: Agreed.

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> Mr. [C]: This money is absolutely not you
>
> Ms. [Z]: I agree with whichever way it is.
>
> Mr. [C]: Right, this money
>
> Ms. [Z]: I agree with whichever way it is. I, right right right. I agree with whichever way it is. Whatever it is, I will give you. Whatever I do, even if I have to smash pots and sell scrap metals to raise funds. I will give it to you.

[87] In my view, this conversation does not assist Ms. Z or Mr. C's position. It appears very clear that Mr. C (who, unlike Ms. Z, knew that the conversation was being recorded) was trying to pressure Ms. Z into saying that the $500,000 payment under the Amended Separation Agreement was on account of family property she owes Mr. C. Ms. Z agreed to this proposition, but it is very clear that she was willing to characterize the payment however Mr. C wished, which is why she repeated "I agree with whichever way it is."

[88] In light of evidence of Mr. C characterizing the $500,000 payment as something other than child support, counsel for Ms. Z submitted that the Court simply doesn't have enough evidence to discern what was agreed to in the Separation Agreements and that this is one of the reasons they are not enforceable. I disagree. The Separation Agreements are not ambiguous at all. The only potential ambiguity arises from the fact that the parties have, after the Separation Agreements were signed, characterized the January 2023 Separation Agreement and the Amended Separation Agreement in a manner that is different from their clear wording in order to advance positions that are helpful to them.

[89] The Supreme Court of Canada's expression of the role of extraneous evidence in contractual interpretation in *Sattva Capital Corp. v. Creston Moly Corp.,* 2014 SCC 53 is well known, but bears repeating as it is dispositive of the arguments Ms. Z raises here:

> [57] While the surrounding circumstances will be considered in interpreting the terms of a contract, they must never be allowed to overwhelm the words of that agreement (*Hayes Forest Services*, at para. 14; and Hall, at p. 30). The goal of examining such evidence is to deepen a decision-maker's understanding of the mutual and objective intentions of the parties as expressed in the words of the contract. The interpretation of a written contractual provision must always be grounded in the text and read in light of

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> the entire contract (Hall, at pp. 15 and 30-32). While the surrounding circumstances are relied upon in the interpretive process, courts cannot use them to deviate from the text such that the court effectively creates a new agreement (*Glaswegian Enterprises Inc. v. B.C. Tel Mobility Cellular Inc.* (1997), 101 B.C.A.C. 62).

[90] Given the clear and unambiguous terms of the Separation Agreements, I can only find that they are agreements with respect to child support and s. 93 of the *FLA* has no application.

Are the Separation Agreements inconsistent?

[91] I do not accept Ms. Z's argument that the Separation Agreements are unenforceable because they are inconsistent. The Amended Separation Agreement is very clearly an amendment of the January 2023 Separation Agreement. It contains identical provisions with respect to guardianship and parenting time. It contains a different separation date (October 1, 2021, instead of December 10, 2021), and it quantifies child support as a lump sum of $500,000 instead of monthly payments of $1,211 per month, on the basis (according to the Amended Separation Agreement) that Ms. Z is uncertain about her future income and prefers to pay child support as a lump sum. The Amended Separation Agreement, on its face, appears to be a valid amendment of terms the parties agreed to in the January 2023 Separation Agreement.

Are the Separation Agreements Enforceable Contracts?

[92] The January 2023 Separation Agreement and the Amended Separation Agreement are both signed. Ms. Z does not allege that either her signature nor that of Ms. X were forged on the January 2023 Separation Agreement, she just denies signing it and offers no evidence at all about whether Ms. X witnessed it (Ms. X did not testify at trial).

[93] Ms. Z's lawyer says that the Separation Agreements are not enforceable because they were prepared by Ms. Feng, who is not a lawyer. The validity of a contract does not depend on its drafter being legally trained. Parties enter into agreements every day without the assistance of legal counsel. A family law

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agreement drafted without independent legal advice may be more vulnerable to being set aside under the relevant provisions of the *FLA*, but there is no basis for saying that a family law agreement is void or ineffective because it has been drafted without the assistance of legal counsel. In fact, s. 6(4)(b) of the *FLA* expressly states that an agreement respecting a family law dispute is binding on the parties whether or not the agreement was made with the involvement of a family law dispute resolution professional.

[94] Ms. Z also says that that Separation Agreements are not enforceable because Mr. C did not, in his counterclaim, seek to enforce them. Mr. C is self represented and not legally trained. More importantly, child support provisions invoke the rights of the children, not the rights of Mr. C. For the same reason that parents are not entitled to contract out of their child support obligations (*Kaler v. Kaler,* 2013 BCCA 57), it cannot be the case that an agreement for child support will be set aside because the custodial parent didn't bring a counterclaim seeking to enforce a child support agreement.

[95] Finally, Ms. Z argues that the Separation Agreements are not valid because they are unconscionable. It is difficult to see how the doctrine of unconscionability is invoked in circumstances in which the sole financial beneficiary of the agreement is the parties' two children.

[96] Stepping back for a moment, it must be recalled that the January 2023 Separation Agreement and the Amended Separation Agreement were signed in the spring of 2023, after Ms. Z had relocated to Chicago to be with her new partner. She lived in a different country from Mr. C and the children and, as a result, was not having any in-person parenting time with either child. She had not had any significant period of parenting time with V since 2021. The children both resided full time with Mr. C. As such, child support was very clearly a live issue between the parties and, like any non-custodial parent, Ms. Z had a responsibility to pay child support to her children. In this context, I find Ms. Z's arguments about unconscionability and inequality of bargaining power to be misplaced.

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[97] There is a second reason why I find Ms. Z's argument about unconscionability to be unpersuasive. C Recording 1 demonstrates that Ms. Z actively negotiated with Mr. C about the $500,000 payment and negotiated to ensure that it would discharge her from liability for child support. While the recording is undated, I can infer from the context that it took place at some point prior to the signing of the Amended Separation Agreement:

> Ms. [Z]: But yesterday, we agreed, that is, it's for the children. For the children's part, I mean, you promised me yesterday, didn't you? I currently do not have the capacity to take care of the children. You said, you would not go after me for the time being, go after me for this, right?
>
> Mr. [C]: Right, but just by saying so, you can't refuse to take care of the children, ever, right? You can't say, I mean
>
> Ms. [Z]: Uh, I won't, I won't, I won't. I won't write it this way.
>
> Mr. [C]: That is, once this is done, there's no longer a single penny, the children
>
> Ms. [Z]: Uh, no, won't, won't no no
>
> Mr. [C]: Right, you, you can't write anything like this.
>
> Ms. [Z]: No, I won't, no, no, no.
>
> Mr. [C]: You can't write anything that makes me nervous
>
> Ms. [Z]: OKOKOK, I won't, I won't. After all, this is my, I won't write anything so contentious, but I mean, we'll, for the part of child support, you are not going after me for the time being, right? For the next while I mean, right?
>
> Mr. [C]: This is for sure. This is for sure. But you can't…
>
> …
>
> Ms. [Z]: So you say how this should be written? That is, this, but you can't say that I'm obliged to pay how much or anything like that. I mean regarding the children. I mean, how should this sentence be constructed?
>
> Mr. [C]: Well, you just write the divorce thing first. I think it's just that
>
> Ms. [Z]: No, a divorce involves, it will, it involves the issue of child support. For example, definitely I think guardianship for the two goes to you
>
> Mr. [C]: In whatever amount, you just write a little bit, I don't know. You have to write a minimum, 800 dollars right? I don't know. I really have no idea regarding this type of thing, but mi- is there a symbolic, a number for child support?
>
> Ms. [Z]: No, I'll write it this way then. What do you think? You don't need to worry. I mean, I, um, because if I write any repayment, it's not adequate, is it? It's just that if I write it this way, um, it's just that, um, let's not specify the child support, OK? Just do not specify the child support.
>
> …

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> Ms. [Z]: Um, or I'll write it this way, I just write uh, the children for example, we'll write a number, in any event, ultimately it's 500K Canadian dollars, and just this sum of money first, I mean.
>
> Mr. [C]: Uh, I know what you mean
>
> Ms. [Z]: And next, the children
>
> Mr. [C]: Uh, I know what you mean, are you saying you treat this money as your child support? These things, you, not a big deal.
>
> …
>
> Ms. [Z]: I'm their biological mother, I'm not their step mother. I hope that the children have a good life, including giving this payment to you. I also know that you will not spend this money recklessly. You definitely will use it to create a more stable environment for the children.

[98] The above excerpts from a much lengthier conversation suggest that Ms. Z was an active participant in the negotiations surrounding the Amended Separation Agreement. Indeed, it appears from this conversation that she herself drafted the clause that indicated that a $500,000 payment would be made by her to Mr. C for lump sum child support, as she notes more than once that she will "write" it in a particular way. Her position that she was coerced to sign this agreement by Mr. C is unsustainable in light of the fact that the term in question appears to have been drafted by Ms. Z.

[99] Also relevant is C Recording 5, which, from context, appears to be a discussion that took place in advance of the January 2023 Separation Agreement. In it, Ms. Z proposes that she pay child support of $4,000 a month:

> Ms. [Z]: The next is what you said, that month-by-month thing. In any event, the monthly expenses are basically 4000. I think, for the basic expenses, the basic expenses for the two children, I mean in the future, it's just, just regarding some set-up expenses, you can calculate some additional stuff and add them into it, and that's all reasonable. But if you want to get full payment for this year, that's unnecessary, because what I'm worried about is that once I make full payment to you, you'll come up with some other requests later, or sometimes when discussions don't go well between us, and the children are both with you, I'll be extremely helpless and will also be in a very disadvantageous position. Since I've given the children to you, and on my end, I will in any event make this kind of payment to- to you like this. I think this way would make the relationship balanced between us two.
>
> …
>
> Ms. [Z]: I, 12000 for 3 months, 3 months, 3 months, I'll first transfer 20K to you, just to get started

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> Mr. [C]: You transfer 30K to me first then. You first transfer 30K.
>
> Ms. [Z]: I already said already, this to be is already very, even 20K is my – I've calculated 3 months, and it's 12 thousand for 3 months
>
> Mr. [C]: 3-
>
> Ms. [Z]: Twelve thousand, I'm giving you an extra 8000 for all sorts of set-up expenses for the child. I, I already avoided to be too uh with my calculations, including 20k per month, it's actually not a small amount in uh Vancouver. It's just 20 thousand RMB which is 4000 Canadian dollars. I think that's already sufficient. Really, I've also calculated the numbers. I also, I've also done comparisons carefully. Because you are not going to a private school. A public school does not require money. When it comes to their extra tutoring stuff, when everything is added up, compared to the going rate, I think, I think the two children, with 2000 for each child, I think it's sufficient, sufficient. Because you'll definitely have more money than you can spend. If you don't spend all, you save it, and you'll have some, and for example, some large items. For example, you want to buy something fo the children sometimes, some type of big one-time purchase. I can't think of anything big. You see, a computer is just-just about a little over 1000 dollars, or something like that so
>
> Mr. [C]: [sighs]
>
> Ms. [Z]: I think that 4000 is already quite a lot, actually. If you take a serious look, that is, over there in Canada, when they order child support payment resulting from a divorce, they do so based on the income. Its only a few hundred dollars or a little over 1000 for each child.
>
> Mr. [C]: So you just do it this way now. When you go back, that uh that, your 20K, you can send me that, can't you.
>
> Ms. [Z]: Yup.
>
> Mr. [C]: [sighs]

[100] The above conversation indicates that Ms. Z was the driving force behind the inclusion of a $4,000 per month child support payment in the January 2023 Separation Agreement. In light of this evidence, Ms. Z's testimony that she has no recollection of the January 2023 Separation Agreement is not credible.

[101] Also relevant are WeChat messages between the parties. On October 16, 2022, the following WeChat message took place:

> Mr. [C]: You took all the money, and you should be asking about our survival.
>
> Let's all stop arguing.
>
> Ms. [Z]: I dedicated the best ten years of my youth to you, and in the end, you have no sense of guilt at all.
>
> Mr. [C]: I have also given my all with all my effort.

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> That's how you have what you have today.
>
> It's my total dedication and support.
>
> Ms. [Z]: You monopolized the best youthful time of my life for ten years! And now you're still talking to me about your final money! You have no guilt towards me at all!
>
> …
>
> Mr. [C]: Right now, I'm facing difficulties here.
>
> Ms. [Z]: If I continue to support you like this now, I will have no way to make development.
>
> Mr. [C]: So, you give my money back, then I won't bother you anymore.
>
> Ms. [Z]: [R] [C]! That's not your money.
>
> Mr. [C]: You have to take care of the child, right?
>
> That is my money.
>
> Ms. [Z]: If you continue to be this stubborn, it's still a deadlock.
>
> Mr. [C]: I don't want to mention these things, either.
>
> Very difficult right now
>
> I need your help
>
> Since you are doing well with your development.
>
> Ms. [Z]: Why is that yours! How much is my youth worth? Have you ever calculated it?
>
> Mr. [C]: You have to take care of the child here.
>
> Ms. [Z]: At my age, I'm still competing with those more than ten years younger than me.
>
> Mr. [C]: You're so young and beautiful now; its that because of the money invested back then?
>
> Ms. [Z]: How much time have I wasted?
>
> You do a calculation and see how much it is!
>
> Do you still think you are at a loss? I
>
> Mr. [C]: Don't forget you still have a child.

[102] The above passage suggests that Ms. Z was providing financial support to Mr. C and the children. It also suggests that, rather than being coerced and intimidated by Mr. C, that Ms. Z was often as combative with Mr. C as he was with her during the time that they were negotiating the Separation Agreements.

[103] On December 17, 2022, Ms. Z sent a WeChat text to Mr. C that said, "when you have time, please help me check the procedure for getting married in Chicago".

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The fact that Ms. Z would seek advice from Mr. C about marrying someone else, at the same time that the January 2023 Separation Agreement was being negotiated, strongly suggests that the position of dominance and exploitation that she now claims Mr. C occupied in her life is improbable.

[104] I reject the submission that the January 2023 Separation Agreement, as amended by the Amended Separation Agreement, is void for unconscionability. It is a valid agreement for the payment of lump sum child support by Ms. Z to Mr. C.

Should the Court uphold the Amended Separation Agreement?

[105] Having concluded that the Separation Agreements are child support agreements and not unconscionable or otherwise invalid, it is still open to me to set aside and replace any provision in a child support agreement with retroactive application (*Hinz v. Davey*, 2022 BCCA 232 at paras. 36–66), if I am not satisfied that the terms of the Amended Separation Agreement comply with the Federal Child Support Guidelines, SOR/97-175 (the "Guidelines"). Given the limitations on the ability of the parties or the Court to depart from the Guidelines, I must make whatever orders are necessary to ensure that the children's financial needs are provided for.

[106] The following *FLA* provisions are relevant:

> **148** (3) On application by a party, the court may set aside or replace with an order made under this Division all or part of an agreement respecting child support if the court would make a different order on consideration of the matters set out in section 150 [*determining child support*].
> …
> **150** (1) If a court makes an order respecting child support, the amount of child support must be determined in accordance with the child support guidelines.
>
> (2) Despite subsection (1), a court may order child support in an amount different from that required by the child support guidelines if
>
> (a) the parties consent under section 219 [*persons may consent to order being made*] or have an agreement respecting child support, and
>
> (b) the court is satisfied that reasonable arrangements have been made for the support of the child.

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> (3) The court must consider the child support guidelines for the purposes of subsection (2), but must not consider arrangements made for the support of the child to be unreasonable only because the amount required under the child support guidelines differs from those arrangements.
>
> (4) Despite subsection (1), a court may order child support in an amount different from that required by the child support guidelines if satisfied that
>
> > (a) an agreement or order respecting the financial duties of the parents or guardians or the division or transfer of property, other than an agreement respecting child support, benefits the child directly or indirectly, or that special provisions have otherwise been made for the benefit of the child, and
> >
> > (b) applying the child support guidelines would be inequitable on consideration of the agreement, order or special provisions.
>
> (5) If a court makes an order respecting child support in an amount different from that required under the child support guidelines, it must give reasons for doing so.

[107] Because both parties take the position that the Amended Separation Agreement is an agreement for property division, not child support, Ms. Z did not seek to set aside or replace with the Amended Separation Agreement with an order for child support under s. 148. In fact, Ms. Z asks that the matter of child support be deferred until after the completion of reunification counselling. However, since both children presently reside full time with Mr. C and no child support is being paid, and considering that child support is the right of the child, I am not prepared to defer the issue. I am, however, prepared to consider whether, pursuant to s. 148, the Amended Separation Agreement should be set aside or replaced on the basis that the support payable in the Amended Separation Agreement is inconsistent with the Guidelines.

[108] The proper approach to an application under s. 148(3) was outlined in *G.J.L. v. M.J.L.*, 2017 BCSC 688 [*GJL*]:

> [122] …when considering whether to change a child support agreement, it is necessary to consider all of the matters in s. 150. The first step is to proceed under s-s (1) and determine what an application of the *Guidelines* would produce. That is what the court will initially consider in deciding whether it "would make a different order" than what is provided in the agreement. However, it is also open to the party seeking to uphold the agreement to refer the court to s-s (2) and ask it to find that reasonable arrangements have been made for the support of the children. If it makes that finding then it is not a

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> situation in which it would "make a different order" and set aside the agreement or replace it with an order. [Footnote omitted.]
>
> [123] Because this is a shared custody situation, an application of s. 9 of the *Guidelines* will produce the amount of child support against which the amount in the agreement should be compared. Even if that amount is higher than the agreement amount, it is still open to me to be satisfied that "reasonable arrangements" are in place for the children and uphold the agreement.
>
> [124] …In my opinion, s-s. (2) and its concept of reasonable arrangements offers an exception to the usual result of a s .9 analysis, to allow courts to uphold those agreements that still provide sufficient support despite falling short under that analysis.

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[109] I must therefore first consider how much child support Ms. Z would be responsible for under the Guidelines, then I must consider whether reasonable arrangements have been made for the support of the children.

Section 150(1): Guidelines Support

[110] In this case, it is challenging to discern whether the Amended Separation Agreement complies with the Guidelines because the parties' incomes since separation have been elusive. Given the fact that Ms. Z does not work (although, as I discuss and conclude below, she is not disabled from earning income and is susceptible to having income imputed to her), a $500,000 lump sum child support provision may seem excessive. However, I note that at the time the parties were negotiating about the Separation Agreements in early 2023, Ms. Z had just moved to Chicago and married a resident there, with no apparent plans to return to live in British Columbia, or to apply for the children to relocate to Chicago. A modest lump sum payment would be insufficient to discharge her past and future obligation to financially support her children.

What are the parties' Guidelines Incomes?

[111] Ms. Z is unemployed. She has not worked in conventional employment since before she married Mr. C in 2011, even though she has an undergraduate degree from China and a master's degree in education from Simon Fraser University.

[112] In 2022, Ms. Z invested in a business selling skin care products. She claims never to have made any money from this business. This is contradicted by an April 2023 WeChat message to Mr. C (sent in the midst of negotiations about the Amended Separation Agreement), wherein she assured Mr. C that she would financially support the children, and sent him a screenshot of how much she earned the prior week from her company. The amount was 10,006.02 RMB, the equivalent of about $2,000 CAD. In C Recording 6 she complains that she only earns “10K to 20K bucks” a month from her business.

[113] Ms. Z was asked by her counsel about these representations. She said they were not true, and that she told Mr. C that she was making this money because she was scared of him.

[114] In C Recording 5, Ms. Z raises the possibility of paying Mr. C $4,000 a month for child support and does not indicate any concerns about her ability to pay this amount.

[115] I do not believe that Ms. Z lied to Mr. C about her income because she was scared. This makes no sense in the context of the conversations they were having about the children. Further, it was Ms. Z herself who offered the amount of $4,000 a month for child support, and at no point did she say anything about not being able to afford this. In the circumstances, I find Ms. Z to be not credible when it comes to her post-separation income. I have no means of determining precisely what it was, but I am satisfied that it was not, as she claims, zero.

[116] Even if I were satisfied that Ms. Z has had no income since separation, I could not concede to her counsel’s position that no income should be imputed to her.

[117] The British Columbia Court of Appeal in *Van Gool v. Van Gool* (1998), 166 D.L.R. (4th) 528, 1998 CanLII 5650 (B.C.C.A.), at para. 34, confirmed that a person is expected to take reasonable steps to seek employment in a case where a parent is healthy and there is no reason why the parent cannot work. At para. 30 of *Van*

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Gool, Prowse J.A. also quoted the words of Mr. Justice Macfarlane from *Garcia v. Rodriguez* (1997), 29 R.F.L. (4th) 329, 1997 CanLII 2253 (B.C.C.A.):

> … It is no answer for a person liable to support a child to say he is unemployed and does not intend to seek work or that his potential to earn income is an irrelevant factor.

[118] Ms. Z argues that one of the reasons she cannot work is that she doesn't speak English. Ms. Z has a master's degree from Simon Fraser University, an English-speaking university. While she testified at trial through an interpreter, she regularly corrected the interpreter for mistranslating certain words from Mandarin to English, or from English to Mandarin. She appears to instruct her lawyers without the assistance of an interpreter. I do not believe Ms. Z's English language skills are as poor as she has portrayed them to be.

[119] Further, I am not satisfied that Ms. Z is incapable of working. Indeed, other than her alleged poor language skills, and the fact that she testified to suffering from stress as a result of the trial, Ms. Z has offered no evidence at all that would support the conclusion that she is unable to work. Therefore, as with any other parent, Ms. Z has a positive obligation to work to support her children. Indeed, I find she likely has worked and earned income and that she has not been forthright with the Court when she has claimed that she has not.

[120] Given the paucity of reliable evidence on this point, I find that the most reliable evidence of Ms. Z's income comes from the monthly amount of child support she told Mr. C she was prepared to pay, namely $4,000 a month. It was Ms. Z who came up with this number as something she could afford and which, in her view, met the needs of the children. As such, I conclude that, at the time the Separation Agreements were signed, Ms. Z had an income that was at a minimum sufficient for her to pay Mr. C child support in the amount of $4,000 a month.

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Do the terms of the Amended Separation Agreement comply with the Guidelines?

[121] In order to determine whether the Amended Separation Agreement complies with the Guidelines, I must consider whether the lump sum payment of $500,000 discharged Ms. Z's obligation under the Guidelines to support her children.

[122] When Ms. Z sent D back from China to live in Canada, there does not appear to have been any discussion between the parties about when, if ever, Ms. Z intended to return to the Lower Mainland to re-commence parenting her two children. She relocated to Chicago and married Ms. X, a realtor with an established career there and no apparent plans to move to British Columbia. Ms. Z was vague in her evidence about any future plans to reside regularly in the Lower Mainland, although she has recently purchased a condominium in Vancouver. At most, it appears that Ms. Z's plan is to visit her children as much as she can, while having no imminent plans to resume regular in-person parenting time. This is relevant to discerning the reasonableness of a $500,000 lump sum child support payment.

[123] In these circumstances, in which Mr. C would continue to shoulder the entirety of the financial burden of the two children for the foreseeable future, as he has done for V since June 2019 and D since March 2023, I find that it was reasonable for the parties to agree upon a generous lump sum payment to account, potentially, for the cost of raising two children, then aged 9 and 10, into adulthood.

[124] In determining whether the lump sum amount is fair, therefore, I have considered how much child support would be payable if Ms. Z were required to pay $4,000 in monthly support from June 2019 until V reaches 19 (March 28, 2033). This amount comes to $656,000 ($4,000 x 164 months). This is a rough calculation and there are factors that would serve to reduce this amount, including that for four years, from June 2019–March 2023, D lived with Ms. Z and V lived with Mr. C, giving rise to a set-off of child support obligations. Further, child support would likely decrease after D reaches 19 (on November 17, 2031), leaving V as the only child of the marriage for whom support would be payable. Finally, courts often award a

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present value discount on a lump sum award: *P.M.Z. v. D.J.T.*, 2023 BCSC 1444 at paras. 254–256. On the other hand, the calculation of $4,000 x 164 months does not account for any special and extraordinary expenses, which would increase the lump sum amount payable.

[125] To be clear, I am not being asked to make a lump sum child support award in this case. Rather, I am charged with determining whether the child support agreement should be set aside, based on a consideration of s. 150. Assuming that $4,000 a month was an appropriate amount of support payable under the Guidelines, I find that the rough calculation above supports the conclusion that the $500,000 lump sum payment was broadly consistent with the amount Ms. Z ought to have paid in child support under the Guidelines.

Have reasonable arrangements been made for the support of the children?

[126] Given the lack of reliable evidence about Ms. Z's actual income, I have considered whether, in the event I were incorrect in finding that Ms. Z has a Guidelines income sufficient to pay child support in the amount of $4,000 a month, the Amended Separation Agreement should still be upheld. Under s. 150(2), the Court may deviate from the Guidelines if there is an agreement for child support in place and I am satisfied that reasonable arrangements have been made for the support of the child.

[127] In the particular circumstances of this case, I am satisfied that a lump sum payment of $500,000 was a reasonable arrangement for the support of the children, irrespective of Ms. Z's actual income at the time. Ms. Z had access to these funds and, given her uncertain future, wished to make a lump sum payment to discharge herself from any future obligation to provide for her children. If this constituted an overpayment of child support, then I can only conclude that Ms. Z freely entered into a contract in which she benefitted her children more than she was required to. I am satisfied that this was a reasonable arrangement for the support of the children.

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[128] As a result, I decline to set aside the $500,000 lump sum payment of child support under the Amended Separation Agreement.

Family Property

Facts re: Family Property

[129] Discerning the value of the family property at the date of separation, particularly funds held in securities accounts in China, has been particularly vexing in this case. Ms. Z argues that the family property at the date of separation (June 30, 2019) consisted of various bank accounts with a value of $591,695, and that the family debt was $2,760. Mr. C argues that the value of the family property at the date of separation consisted of 10 million RMB (about $2 million CAD) in a Galaxy Securities investment account and 7.8 million RMB (about $1,560,000 CAD) in a China Merchant Bank account.

[130] Ms. Z provides the following table, sourced to the exhibits, to establish the date of separation value of the various accounts:

CAD $ - RMB converted 5:1

Description	Value	Source
CMB **8793	$10,964.20	Exh. 14, Tab 2, p. 2
CMB **6666	Nil	Exh. 14, Tab 1, p. 16
Galaxy **377	Nil	Exh. 14, Tab 6, p. 5
Galaxy **882	$532,597.80	Exh. 14, Tab 4, p. 125
ABC **1779	$0.10	Exh. 14, Tab 8, p. 2
TD Bank **8927	$4.93	Exh. 14, Tab 20, p. 2
TD Bank **5893	$11,122.00	Exh. 14, Tab 19, p. 2
TD Direct 21F8W8 (U.S.)	$36,970.92	Exh. 22, Tab 6, p. 1
CMB Credit Cards	$2,677.60	Exh. 14, Tab 30, p. 1

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TD VISA	$83.00	Exh. 14, Tab 39, p. 2

Family Property Value = $591,659.95
Family Debt Total = $2,760.60

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[131] Ms. Z notes in her written submissions that the primary family property at the separation date was the value in the Galaxy **882 account. Her counsel went through the fairly painstaking task of determining the separation date value in this account by looking at the November 2020 account close out value of RMB 1,711,286 and then adding back cash withdrawals back to June 30, 2019 to reach a date of separation value of RMB 2,662,989, which counsel converts to $532,597.80. I have carefully reviewed counsel's calculations in this regard and see no fault in them.

[132] In terms of what happened to the funds after the November 2020 account close out, on November 9, 2020, RMB 1,705,000 was transferred into the ABC **1779 account. On the same date, this same sum was then transferred from the ABC **1779 account to a Guojin Securities **979 account.

[133] There was considerable trading in the Guojin Securities **979 account between February 12, 2020 and March 31, 2021, but unfortunately, the net loss from these trades was RMB 811,936. In March and April 2023, two withdrawals closed out the Guojin Securities **979 account. The total amount of these two withdrawals was RMB 449,475, nearly all of which was wired to Mr. C's TD Bank **9483 account and applied by him to his TD Direct Investing account.

[134] Mr. C suspects that Ms. Z has hidden assets and bank accounts and he does not accept that the family funds have been dissipated since 2019 such that there is no family property left to divide. There are three reasons why I do not believe that Ms. Z has undisclosed assets that may be family property:

1. Despite very extensive discovery and lengthy cross examination of Ms. Z, there is simply no evidence that Ms. Z has additional accounts beyond those that have been disclosed;

2. The financial records in evidence demonstrate that Mr. C was a very high-risk investor with a track record of losing vast sums of money; and

3. Neither of the parties were employed during the marriage or after the date of separation, although they lived a lavish lifestyle. It is therefore not surprising that, during the course of their marriage, they spent down the sizable savings they had at the date of marriage.

[135] Therefore, I accept Ms. Z's evidence, which is substantiated by the bank records, that the couple's total family property at date of separation had a value of approximately $590,000 and the family debt was approximately $2,700. This means that, at date of separation, each party had a half-interest in the family property, and half-liability for the family debt.

[136] However, in the six years since separation, the parties spent down their family property. While the records show Ms. Z liberally accessing family property to pay for personal expenses such as luxury clothes and cosmetic dermatology, the vast majority of the depletion of family property from June 2019 to the date of trial was on account of stock market losses incurred by Mr. C. Ms. Z does not, in this litigation, seek to make Mr. C accountable for those losses, she simply asks for the Court to find that there is no family property left to divide. I find this to be the case.

[137] As a result, I make no order for payment from one party to the other on account of division of family property or division of family debt.

Discharge of CPL

[138] Mr. C has put a Certificate of Pending Litigation ("CPL") on a Vancouver condominium owned by Ms. Z. He has offered no evidence of any kind to support his theory that this is family property. It is clear on all the evidence that Ms. Z purchased the condominium with funds advanced by Ms. X, long after separation. The condominium is not family property, and the CPL should therefore be removed.

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Conclusion and orders

[139] At the close of submissions, the parties asked me to make a final order for divorce. I did so. Therefore, the following are the remaining orders that arise from my reasons for judgment:

Parenting

1. The parties shall share joint guardianship of the children.

2. The children will participate in the reunification program operated by Dr. Susan Gamache (the “Program”) and the children, the respondent, and the claimant will attend and participate in the Program as required by Dr. Gamache. The claimant and the respondent shall follow the directions of Dr. Gamache with respect to participating in individual counselling, parent/child counselling, and joint counselling, as required by her and her associates.

3. The costs of the Program shall be shared equally by the claimant and the respondent.

4. The family will only cease participation in the Program if so recommended by Dr. Gamache, by agreement of the parties, or by court order.

5. Mr. C will undergo at least six sessions of therapy with a counsellor who specializes in anger management.

6. The children will continue to reside with Mr. C, but Ms. Z should have parenting time as recommended by Dr. Gamache.

7. The parents will both remain guardians of the children.

8. Mr. C will have all s. 41 parental responsibilities for the children.

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9. Both parents will have the right to obtain information concerning the children directly from third parties, including but not limited to teachers, counsellors, medical professionals, and third-party care givers.

10. I will seize myself of parenting time issues for one year from the date of these reasons for judgment.

Child Support

11. The Amended Separation Agreement is a valid and binding child support agreement. Pursuant to the Amended Separation Agreement, Ms. Z was required to pay Mr. C $500,000 as lump sum child support. Any remaining amount of the $500,000 payment that was made to Mr. C and frozen pursuant to the June 2023 order of Associate Judge Robertson should be released to Mr. C.

12. Any other funds belonging to Mr. C that are frozen pursuant to the June 2023 order of Associate Judge Robertson shall be released.

13. All property presently in the possession of Ms. Z shall remain with Ms. Z and Mr. C's claims against her property are dismissed.

14. All property presently in the possession of Mr. C shall remain with Mr. C.

15. The certificate of pending litigation registered on 2805-233 Robson Street shall be removed forthwith.

Costs

[140] Costs are complicated in this case by the fact that the parties had mixed success on the matters at issue in the trial. They are further complicated by the fact that, as is evident from the many emails in evidence at trial, Mr. C conducted this litigation in a manner that was highly inappropriate. He sent frequent and regular abusive emails to Ms. Z's counsel, making outrageous threats and unsubstantiated allegations against them, and at each opportunity undermined the fair and orderly bringing of this case to trial. I should note that he was polite and respectful in my

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presence at the trial, but his behaviour in dealing with counsel and others involved in this litigation was truly beyond the pale.

[141] In these circumstances, the Court must consider special costs as a means of sanctioning Mr. C's behaviour. However, he did enjoy success on some issues at trial. In fairness to both parties, therefore, if the parties are unable to agree on costs, I will hear submissions on costs, with supporting case authorities, at a time and date that should be coordinated through Supreme Court Scheduling.

"Francis J."

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