IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *J.K.P. v. L.S.B.,*
2025 BCSC 1494

Date: 20250805
Docket: E66865
Registry: New Westminster

Between:

J.K.P.

Claimant

And

L.S.B.

Respondent

- and -

Docket: S253573
Registry: New Westminster

Between:

J.K.P.

Plaintiff

And

L.S.B.

Defendant

- and -

Docket: H230678
Registry: Vancouver

Between:

S.S.P. and Mountain Investment Corp.

Petitioners

And

L.S.B., J.K.P., John and Jane Doe

Respondents

Before: The Honourable Mr. Justice Milman

Reasons for Judgment

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Counsel for the Respondent, L.S.B., in VA H230678:	K.S. Atwal, appearing June 16, 2025 only
Place and Dates of Trial:	New Westminster, B.C. June 16-20, 23-27 and July 2, 2025
Place and Date of Judgment:	New Westminster, B.C. August 5, 2025

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I. Introduction

[1] Before the Court are three related proceedings, all arising from the breakdown of the marriage between J.K.P. and L.S.B. Although the relationship lasted a relatively lengthy 26 years, it was not a happy one. Rather, it was marred by numerous acts of family violence by L.S.B. against J.K.P. and, in due course, their four daughters, P.B., G.B., J.B., and H.B., now aged 25, 24, 21 and 18, respectively. That history of family violence has shaped the course of this litigation in several important ways.

[2] The first proceeding is an action brought by J.K.P. under the *Family Law Act*, S.B.C. 2011, c. 25 [*FLA*], in which she seeks a divorce, child support, spousal support, a permanent protection order and an unequal division of the family assets. The only substantial item of property to be divided is a duplex in Vancouver, half of which served as the family home. J.K.P. seeks orders that would result in that real property being allocated entirely to her.

[3] The second proceeding is a civil action brought by J.K.P. against L.S.B. seeking general and aggravated damages to compensate her for the physical and psychological harm that that family violence is alleged to have caused her. She also seeks punitive damages, the cost of future care, and an award in favour of the Minister of Health for heath care costs under the *Health Care Costs Recovery Act*, S.B.C. 2008, c. 27 [*HCCRA*].

[4] The third proceeding is an appeal brought by L.S.B. from a decision of an associate judge of this court granting an order absolute of foreclosure in respect of his half interest in the family home. During the marriage, L.S.B. granted a mortgage of that half interest to a third-party lender, Mountain Investment Corp. (“MIC”). After the loan went into default, MIC obtained an order *nisi* of foreclosure and threatened to obtain an order for the sale of the family home, where J.K.P. and her four daughters were then residing. At J.K.P.’s request, her brother, S.S.P., purchased MIC’s interest in the debt and, after the redemption period expired, had himself substituted as petitioner and obtained the order absolute of foreclosure that is the

subject of L.S.B.'s appeal. L.S.B. argues that the Associate Judge erred by refusing his request to extend the redemption period to allow him to redeem the mortgage through the division of family assets in the *FLA* action, which was then set to begin approximately six weeks hence. In L.S.B.'s submission, S.S.P. improperly obtained a windfall at his expense through the order absolute because the value of L.S.B.'s foreclosed interest in the family home far exceeds the price that S.S.P. paid to acquire the debt.

[5] The parties have agreed to several terms in the *FLA* action, including a divorce, joint guardianship and a sharing of parenting responsibilities. Some of those terms have already been embodied in a consent order made during the trial. L.S.B. otherwise opposes the relief sought by J.K.P. in the two actions. He seeks an order allowing the appeal and setting aside the order absolute so that the mortgage can be redeemed through an equal division of the family assets and debts. J.K.P. and S.S.P. argue that the appeal should be dismissed on the basis that there was never any realistic prospect of redemption, as the Associate Judge found.

[6] In the discussion that follows, I will first address the appeal because the result in that proceeding will affect the assets and debts to be divided in the *FLA* action. I will then set out the facts that have been agreed upon and those that are disputed in the two actions, and how I have resolved that conflicting evidence. I will then turn to the *FLA* action before addressing the civil action, as instructed by the Ontario Court of Appeal in *Ahluwalia v. Ahluwalia*, 2023 ONCA 476 [*Ahluwalia*].

II. The Appeal

A. The Factual Background to the Appeal

[7] In 1998, soon after they were married, J.K.P. and L.S.B. purchased a house located at 4704 [street name redacted] in Vancouver ("4704"). They originally took title as joint tenants.

[8] In 2006, 4704 was subdivided and renovated to create a duplex. One of the two newly created lots retained the 4704 address and came to be used as a rental

property. The second lot was located at 1408 [street name redacted] (“1408”) and served as the family home for the remainder of the relationship.

[9] To finance the initial purchase and subsequent subdivision and renovation, J.K.P. and L.S.B. took out a mortgage on 4704. 1408 remained unencumbered until December 2022. At that time, L.S.B. severed the joint tenancy by granting a mortgage of his undivided one-half interest to MIC. There was conflicting evidence before the Associate Judge as to whether J.K.P. had consented to the granting of the MIC mortgage and how the $85,000 in mortgage proceeds were used.

[10] In the end, L.S.B. did not make the payments called for by the MIC mortgage. As of September 11, 2023, $91,629.20 was owing.

[11] MIC commenced foreclosure proceedings on September 26, 2023. On November 23, 2023, it obtained an order *nisi* of foreclosure, with a six-month redemption period that was to expire on May 23, 2024. No payment was made prior to that date.

[12] At the request of J.K.P., S.S.P. purchased MIC’s interest in the debt and its associated rights for $113,157.29 on July 12, 2024. J.K.P. is unable to work due to a medical condition described in more detail below. She wanted to retain 1408 for herself and the parties’ daughters so they could continue to reside there.

[13] In August 2024, L.S.B. filed a consumer proposal, seeking to compromise his debts, including the MIC mortgage, which in the aggregate were said to total $460,000. He remained unemployed at all relevant times.

[14] On March 25, 2025, less than two months before the trial of the two actions was scheduled to begin, S.S.P. applied in the foreclosure proceeding for an order to substitute himself as petitioner and for an order absolute of foreclosure.

[15] L.S.B. did not file a response to the application but appeared without counsel at the hearing on April 29, 2025 to oppose it. Despite his submissions, the relief sought was granted that same day.

[16] L.S.B. filed an appeal on May 16, 2025, which was three days beyond the prescribed deadline for doing so. On May 20, 2025, he sought an extension of time to file the appeal and a stay of the order absolute pending the outcome of the appeal. Those orders were granted by Majawa J. on May 27, 2025.

B. Arguments on Appeal

[17] L.S.B. advances two main grounds of appeal.

[18] First, he contends that the Associate Judge erred by allowing the substitution. In particular, he says that J.K.P. and S.S.P. abused the court's process by arranging the assignment of the mortgage from MIC to S.S.P., a result that should not have been allowed because S.S.P., as J.K.P.'s brother, was not at arm's length to her. For this proposition, he relies on *Scotia Mortgage Corporation v. Chin,* 2022 BCSC 1763 [*Chin*], in which Associate Judge Robertson refused to permit the assignment of a first mortgage to the daughter of the mortgagors in what are said to be similar circumstances.

[19] Second, L.S.B. contends that the effect of the order absolute was to confer a windfall of $626,842 on S.S.P. At the hearing before the Associate Judge, there was no direct evidence of the value of 1408 or 4704 adduced in the record. Nevertheless, on the appeal, L.S.B. argues that their respective property assessments show 1408 to be worth $1.48 million (subject to the MIC mortgage) and 4704 to be worth $1.169 million (subject to a mortgage with an outstanding balance of approximately $240,000). These figures suggest that there remains well over $2 million in equity to be divided between the parties in the *FLA* action.

[20] In response to the first ground of appeal, J.K.P. and S.S.P. argue that the potential "mischief" that moved the court to refuse to approve the assignment at issue in *Chin* arose from the need to protect subsequent charge holders, a need that does not arise in this case. In response to the second ground of appeal, they say that the Associate Judge applied the correct test and arrived at the correct conclusion, there having been no evidence of value in the record before him. In any

event, they say, there is no such value because there would be no market for L.S.B.'s half interest in 1408.

C. Standard of Review

[21] It has been held that a decision of an associate judge refusing to extend a limitation period and granting an order absolute of foreclosure cannot be reversed on appeal unless that decision is shown to have been "clearly wrong": *Imor Capital Corp. v. Bullet Enterprises Ltd.*, 2014 BCSC 2540, at para. 5. However, in that case, the parties had agreed on the applicability of that standard, so the court was not called upon to decide the matter. The two cases relied upon for that formulation of the test (*Wright v. Sun Life Assurance Company of Canada*, 2014 BCCA 309 at paras. 35-37; and *Fat Mel's Restaurant Ltd. v. Canadian Northern Shield Insurance Co.* (1993), 76 B.C.L.R. (2d) 231 at para. 13 (C.A.)) were decided in a different context.

[22] The general formulation of the standard of review to be applied on an appeal from the decision of an associate judge was set out in *Abermin Corp. v. Granges Exploration Ltd*. (1990), 45 B.C.L.R. (2d) 188 (S.C.) as follows:

> An appeal from a Master's order in a purely interlocutory matter should not be entertained unless the order was clearly wrong. However, where the ruling of the Master raises questions which are vital to the final issue in the case, or results in one of those final orders which a Master is permitted to make, a rehearing is the appropriate form of appeal. Unless an order for the production of fresh evidence is made, that rehearing will proceed on the basis of the material which was before the Master. In those latter situations, even where the exercise of discretion is involved, the judge appealed to may quite properly substitute his own view for that of the Master. [At 193.]

[23] That standard is now firmly entrenched in the law and was more recently endorsed by the Court of Appeal in *Kalafchi v. Yao*, 2015 BCCA 524.

[24] I am satisfied that the order under appeal was a final disposition of the rights of the parties and raised questions that are "vital to the final issue in the case". As such, it ought to attract the less deferential standard of review associated with a rehearing. Regardless of which standard of review is applied, however, I am

satisfied that the order absolute cannot stand. In the discussion that follows, I will therefore apply the more stringent "clearly wrong" standard.

[25] In *1055249 B.C. Ltd. v. Grace Mtn. Land Company, Ltd.*, 2023 BCSC 2339, a decision of an associate judge was said to be "clearly wrong" where any one or more of the following circumstances apply:

a) the associate judge abuses her discretion by acting arbitrarily or capriciously;

b) the associate judge exercises her discretion under a mistake of law;

c) the associate judge erred in law or principle;

d) the associate judge misdirected herself;

e) the associate judge disregards a principle;

f) the associate judge misapprehends facts or takes into account irrelevant factors; or

g) the order of the associate judge would result in an injustice.

D. Should the substitution order be set aside?

[26] I agree with L.S.B. that some of the concerns expressed in *Chin* are applicable in this case. There, former spouses, the father, Mr. Chin, and the mother, Ms. Huang, were co-owners of the family home. As here, they initially took title to the property as joint tenants and then jointly granted a first mortgage. Later, Mr. Chin granted two subordinate mortgages of his half share alone, thereby severing the joint tenancy. The first mortgage eventually went into default and the lender obtained an order *nisi* of foreclosure. After the redemption period had expired but before the family action was tried, the parties' daughter took an assignment of the first mortgage. The subordinate mortgagees opposed the application to approve the assignment.

[27] S.S.P. and J.K.P. argue that the court's reasoning in refusing to permit the assignment in those circumstances is inapplicable here because the court was concerned in that case only about protecting the interests of the subsequent charge holders. I disagree. Associate Judge Robertson referred to two kinds of "mischief" raised by the opposing creditors, as follows:

> [41] The opposing creditors point to significant risk in mischief that could be done by Ms. Huang or her daughter as a non-arm's length assignee, pointing to the fact that the petitioner's redemption period has expired, meaning that the petitioner could now apply for order absolute, the effect of which would be to:
>
> > a) Vest Mr. Chin from title in what would amount to a collateral attack on the Property rights being advanced in the Family Proceedings; and
> >
> > b) Vest off the claims of the subsequent charge holdings, meaning the loss of their security, leaving them only with their *in personam* rights against Mr. Chin, who as noted above would no longer have this Property as an asset to look to in order to satisfy those obligations. The result of that would also potentially be a collateral attack on the Family Proceedings and arguments as to whether or not the obligations under these charges are family debts to be properly satisfied from the family property, which may [*sic*] this Property may be determined to be.

[28] Her stated concern about the first kind of mischief, the kind present here, was described as follows:

> [47] I do have concerns as to the mischief that may be caused in the Family Proceedings, in particular that steps could be taken as a collateral attack on the remedies being claimed therein. The assignee has deposed that the relationship between her and Mr. Chin, her father, has been broken. Her affidavit suggests that she is favouring Ms. Huang in the Family Proceedings. The existence of other litigation between mortgagors, including matrimonial litigation, is not by itself a reason to refuse to compel an assignment. It is when the circumstances of that litigation are such that there is a risk of mischief or abuse that could prejudice a party's rights in that litigation that it may be appropriate to deny an assignment.

[29] Like the assignee in *Chin*, S.S.P. has not explained why he chose to take an assignment of the debt rather than simply redeem the MIC mortgage. He could have prevented the threatened sale of 1408 by either means.

[30] In view of my conclusion in the next section with respect to the order absolute, there is no need to set aside the substitution order on these grounds. The effect of doing so would be to reinstate MIC as petitioner, even though it has already been paid in full. S.S.P. should be permitted to recover on the debt that he paid for.

[31] It is the order absolute, rather than the substitution order, that is the real source of the mischief that concerned the court in *Chin*.

E. Should the order absolute be set aside?

[32] In assessing whether to grant the order absolute, and, by implication, dismiss L.S.B.'s request for an extension of the redemption period, the Associate Judge was required to apply the test recently reiterated by Edelmann J.A. in *Grace Mtn. Land Company Ltd. v. 1055249 B.C. Ltd.*, 2025 BCCA 92, in the following terms:

> [20] The test for extending a redemption period (or opposing an order absolute) is the two-part test set out in *Canada Permanent Mortgage Co. v. Dan-Al Construction Co.*, [1982] B.C.J. No. 2339 (C.A.) at para. 12. The mortgagor must establish:
>
> > a) That the property has sufficient value by way of security for the amount outstanding; and,
> >
> > b) A reasonable prospect of repayment within an extended period.
>
> [21] However, notwithstanding its findings on the two elements, the court retains a discretion to consider the application on the merits and whether the results of the order will be inequitable, as foreclosure is an equitable remedy: *Forjay Management Ltd. v. 0981478 B.C. Ltd.*, 2022 BCSC 1314 at paras. 80–81. One of the factors that can be considered in this analysis is whether the mortgagor will gain a windfall if the order absolute is granted: *Winters v. Hunking*, 2017 ONCA 909 at para. 40.

[33] The Associate Judge never properly considered either branch of that test, let alone whether to exercise his residual discretion in view of the prospect of a windfall for S.S.P.

[34] In particular, the Associate Judge did not turn his mind to the question of whether the value of 1408 was sufficient to secure the debt. That may be because that first branch of the test appears to have been uncontroversial in the hearing before him.

[35] Had he done so, the windfall to S.S.P. would have been obvious. J.K.P. argues that there was no evidence of value in the record before the Associate Judge, which precluded any such consideration. However, in his affidavit sworn in support of the application, S.S.P. attached L.S.B.'s statement of affairs sworn in support of his consumer proposal. In it, he listed the estimated values of the duplex properties (4704 at $1.172 million and 1408 at $1.488 million) as well as that of the charges on them ($270,787 and $100,000, respectively). Those figures suggested that there would be sufficient equity to allow L.S.B. to redeem the MIC mortgage from his share, if he were to be bought out in the context of the division of assets in the *FLA* action. While that was not evidence sufficient to support a final order, it was enough to justify extending the redemption period so that the prospect of redemption by those means could be explored. The Associate Judge was not directed to that evidence by any of the parties and so he did not consider it.

[36] The requirement to show a "reasonable prospect of repayment" was discussed in *1103969 B.C. Ltd. v. 1069185 B.C. Ltd.*, 2019 BCCA 73, where Saunders J.A., writing for the Court, stated as follows:

> [27] In looking to the prospect of repayment, the Court will look to the evidence and not rely upon speculation as to what may be possible.
>
> [28] There is no dispute that there is sufficient value in the property to protect the first mortgagee, indeed the judge speaks of a potential windfall to the first mortgagee in the event the order absolute is granted. What has been in issue is the criterion that there be a reasonable prospect of payment in order to attract an extension of the redemption period. This is sometimes explained in terms of needing at least a plan, but it remains to the judge, considering all that is known to the court, to assess the viability of the proposal for payment advanced.

[37] Here, the Associate Judge concluded that there was no reasonable prospect of repayment, for the following reasons:

> [13] I cannot find that there is any reasonable prospect of repayment given the circumstances of [L.S.B.] and the debt he currently has. It has been a year since the redemption period expired. [L.S.B.] will still have the opportunity in the family law proceeding to seek division of property with respect to any claims between him and [J.K.P.]. Although he is being foreclosed out of his interest in this property, [J.K.P.] will retain her one-half interest, which may be subject to division in the family law proceeding.

[38] With respect, that is no answer and misses the point. The question before the Associate Judge was not whether L.S.B. could somehow be compensated through the division of the remaining property in the *FLA* action for any windfall that S.S.P. was receiving in the order absolute. Even if that were the question to be answered, it is not clear how L.S.B. could properly be compensated in that manner, given that it is S.S.P., not J.K.P., who will have received the windfall. To make matters worse, J.K.P. now argues in the *FLA* action that, assuming the order absolute is left to stand, L.S.B. ought not to receive any interest in her half of 1408 precisely because L.S.B. irresponsibly allowed his half interest in that property to be forfeited in the foreclosure proceeding.

[39] Rather, the question for the Associate Judge was whether there was a realistic prospect of *repayment* through the division of assets in the *FLA* action. That question was never even asked, let alone answered. I am satisfied that there was.

[40] J.K.P. relies on *Joshi Financial Inc. v. Sealey*, 2024 BCSC 2621, for the proposition that claims advanced in pending litigation will not suffice for this purpose, given the inherently uncertain outcomes of court proceedings. However, the pending litigation here was a family action in which:

a) the MIC mortgage is a family debt to be divided in the *FLA* action along with the family assets;

b) L.S.B. is presumptively entitled to a half interest in those assets; and

c) the MIC mortgage could be redeemed from L.S.B.'s share of those assets, given the extent of the parties' equity relative to the size of the debt.

[41] I appreciate that J.K.P. is seeking a reapportionment and advancing other claims in the two actions so that, if she is successful, no money will be coming to L.S.B. for his interest in the family assets. However, the effect of the windfall brought about by the order under appeal is to deprive L.S.B. of a significant part of the equity that would otherwise be available to him to satisfy those claims, assuming they

succeed in whole or in part. That, I have concluded, is an unjust result that cannot be allowed to stand.

F. What is the appropriate disposition?

[42] In the result, I am allowing the appeal and setting aside the order absolute. Rather than remit the application for reconsideration, I intend to resolve the foreclosure proceeding with finality by extending the redemption period so that the mortgage can be redeemed through the division of assets in the *FLA* action.

III. Findings of Fact in the Two Actions

[43] At the time of trial, J.K.P. was 57 and L.S.B. 54. Both are originally from India.

[44] J.K.P. emigrated to Canada in 1993 to join her first husband. It was an arranged marriage and the couple had not met before. They turned out to be incompatible and were divorced after only a few months. She married her second husband in 1995. It too was an arranged marriage that did not last. It ended in divorce after only a few days.

[45] J.K.P. had first met L.S.B. in India when they were still children. They were introduced again at the wedding of one of L.S.B.'s relatives. At the time, J.K.P. was in the process of completing the divorce from her second husband. After that event, L.S.B. obtained J.K.P.'s telephone number from a friend and they began dating. At the time, L.S.B. was living in New York. He had entered the United States on a visitor's visa and had overstayed after he was refused refugee status in that country.

[46] The relationship quickly grew serious. After visiting one another a few times, they were married in Brooklyn, New York, on September 3, 1997.

[47] I heard more evidence in the trial about the parties' purchase and renovation of 4704 and the circumstances in which the MIC mortgage was granted.

[48] The purchase occurred in 1998, soon after they were married. L.S.B. testified that she paid the $5,000 deposit and the $22,719.71 to complete, drawing on her own personal funds to do so. L.S.B.'s memory is that they both contributed to the

purchase, although he acknowledged in his testimony that her contribution was larger than his.

[49] Both parties contributed in the early years to the mortgage and household expenses and, until L.S.B. began having trouble controlling his alcohol consumption, he generally earned more than J.K.P. did. It is common ground that the parties took on traditional roles during the marriage. J.K.P. managed the family finances and did most of the household chores and child rearing.

[50] J.K.P. says it was her idea to subdivide and renovate 4704 in 2006.

[51] After the renovation was complete, the parties continued to live in 1408 until their separation on January 3, 2023. After that, they both resided there separately until L.S.B. departed in March 2023.

[52] J.K.P. and all four daughters testified about numerous acts of family violence by L.S.B. against them during the relationship. He abused them many times, physically and verbally. In addition, J.K.P. testified that at times she did not consent when L.S.B. had sex with her.

[53] In L.S.B.'s testimony at trial, he did not deny having been violent with her and the children at times, although he submitted in his closing argument that she has exaggerated what occurred for financial gain in this litigation – a proposition that was not put to her in cross-examination. Nor was she cross-examined on any differences in their respective accounts of those incidents.

[54] J.K.P.'s testimony was consistent with that of several other witnesses, including all four daughters, a family friend and S.S.P., all of whom had the chance to observe the family dynamics first-hand. I found J.K.P. to be an honest and reliable witness.

[55] In his closing submissions, L.S.B. invoked discredited myths and stereotypes in urging me to reject parts of J.K.P.'s evidence. For example, he argued that I should find that there was no family violence after 2012, partly because J.K.P.

remained in the relationship for another decade after that and would not have done so had the family violence been ongoing during that time. I agree with J.K.P. that such reasoning has no place in the law and should be rejected: *K.M.N. v. S.Z.M.*, 2024 BCCA 70. There are, of course, many reasons why a woman in J.K.P.'s situation would remain in an abusive relationship for as long as she did. In any event, she provided several cogent reasons to explain why she did so, including her fear of further violence, her fear of having her children apprehended, financial pressures and cultural norms in the South Asian community.

[56] L.S.B. acknowledged that his own memory of those violent episodes is clouded by his heavy consumption of alcohol at the time. His testimony at trial was often inconsistent with his pre-trial testimony on discovery. Shortly after his cross-examination began at trial, he refused to continue with it. After relenting and agreeing to continue with the cross-examination, he refused to answer questions about certain real property in India, in which he had previously claimed to have an interest. All of this contributes to my finding that he was neither a truthful nor a reliable witness.

[57] In summary, I am satisfied that wherever their accounts differ, it is J.K.P.'s version of events that should be preferred.

[58] The first incident of family violence occurred in 1998, shortly after they were married. At that time, J.K.P. was lying in bed. L.S.B. grabbed her by the leg, pulled her off the bed and dragged her along the floor. According to J.K.P., the incident led to the miscarriage of what would have been their first child.

[59] The second violent incident described by J.K.P. occurred in 1999. The parties had gone out to have dinner at a friend's house in Port Moody. L.S.B. had driven them to the event but because he had been drinking while they were out, J.K.P. drove them home. After she accidentally missed the appropriate exit from the highway on the way home, L.S.B. slapped her on the face for having made that error.

[60] In October 2000, L.S.B.'s parents travelled to Vancouver from India to stay with them. On their first night in the family home, J.K.P. was cooking in the kitchen while L.S.B. was drinking alcohol. J.K.P. mentioned to her in-laws that she was concerned about L.S.B.'s alcohol consumption and asked them if they could try to discourage him from drinking so much. L.S.B. responded by throwing his glass at her back with sufficient force that it broke.

[61] In June 2001, while J.K.P. was pregnant with G.B., another violent incident occurred while J.K.P. was on the telephone with her mother. L.S.B. overheard her complaining to her mother about his violent behaviour. This angered him and he began beating her again. This time, she called the police and L.S.B. was arrested. At the urging of her in-laws, however, she later told the police that she did not want to proceed with criminal charges and L.S.B. was released and returned home. When he arrived back home, he berated her for having called the police and beat her again, this time even more severely.

[62] Another violent incident occurred shortly after G.B.'s birth later in 2001. J.K.P. had taken G.B. to get her vaccinations. She returned home with P.B. and G.B. late in the day. L.S.B. became suspicious about the length of her absence. In a fit of rage, he struck her in the face, causing her nose to bleed profusely. P.B. and G.B. were present when this occurred.

[63] Police attended the family home again in April 2004, while J.K.P. was on maternity leave following J.B.'s birth. On that occasion, L.S.B. had punched her several times in the head and upper body after concluding that she had, without his prior approval, used up a long-distance calling card to speak to family members.

[64] In yet another such incident, L.S.B. beat her in the head and upper body in the presence of L.S.B.'s parents. Both L.S.B. and his parents accused her on that occasion of returning home unusually late from work because she was having an affair. In fact, she had been working overtime to help cover family expenses associated with the renovation of 4704.

[65] J.K.P. described another incident that occurred in or around 2006 during which L.S.B. threatened to kill her and the girls with an axe.

[66] Soon after H.J. was born in 2007, they had another argument that turned violent. While J.K.P. was trying to breastfeed H.J., L.S.B. picked up a plastic chair and tried to hit J.K.P. with it, but the chair hit a ceiling fan. He then slapped her repeatedly in the face.

[67] In 2008, an incident occurred in which L.S.B. threw a bowl of lentil soup at J.K.P. On another occasion that year, while three of the children were present, he picked up a hot skillet from the stove and threw it at her. The skillet missed her and hit the wall, leaving an indentation that has never been repaired.

[68] In 2009, J.K.P. fell ill. She was eventually diagnosed in 2011 with Type 2 neurofibromatosis (“NF2”), a genetic disorder that causes tumours to grow on nerves, particularly those in the skull and spine. She was required to undergo five surgical operations to remove them. During this period, the family violence did not abate but rather grew worse.

[69] L.S.B. was convicted for assaulting J.K.P. on July 23, 2010. On that occasion, which was approximately one month after her second surgery, he became angry because, in his view, she had failed to conduct an adequate background check on one of their tenants. Once again, he punched her repeatedly in the head and upper body. Following his arrest, he was subsequently convicted for returning to the family home on each of August 12 and December 12, 2010, in breach of his conditions of release. For the offences that took place on July 23 and August 12, 2010, he received a suspended sentence. For the incident on December 12, 2010, he was sentenced to a custodial term of seven days, in addition to the 24 days he had already spent in pre-trial custody.

[70] In early 2011, having been prohibited from returning to the family home, L.S.B. travelled to Toronto to receive treatment for his alcoholism at a rehabilitation facility. J.K.P. assisted him by paying part of the cost of the treatment. He remained

in Toronto for the next 12-18 months. Although he was also working and earning income while he was there, he did not share any of his earnings with J.K.P.

[71] After receiving treatment, L.S.B. remained sober for many months. After his return to Vancouver in mid-2012, however, that interval of sobriety came to an end. He had already begun drinking again when he violently assaulted J.K.P. on December 23, 2012, this time by choking her. All four of the parties' daughters (then aged 12, 11, 9 and 5) intervened and tried to pull him off her. He was subsequently convicted of this assault and received, among other things, a two-year period of probation, in addition to the 37 days spent in pre-trial custody.

[72] L.S.B. returned to the family home in 2013 after completing another stint at a rehabilitation facility. This time, he agreed to be baptised in the Sikh religion and was able to remain sober for the next 12-18 months.

[73] In 2015, there was another violent altercation in the family home. This time, L.S.B. had discovered that P.B., then 15, had been vaping and using marijuana. He demanded that she leave the home because of that behaviour. He assaulted her in the course of the argument. J.K.P., J.B. and G.B. were all assaulted when they intervened to protect H.P. In the result, H.P. moved out of the family home and into the rental suite.

[74] In September 2022, L.S.B. became violent again after asking the girls for money and refusing to leave J.B.'s bedroom. On this occasion, he struck each of J.K.P. J.B., P.B. and G.B. Once again, the police were called and L.S.B. was arrested. After this incident, the girls told J.K.P. that they could not continue to live with L.S.B. They added that they would leave the home themselves unless she divorced him. She agreed to do so.

[75] The parties separated on January 3, 2023. J.K.P. commenced the *FLA* action on February 27, 2023.

IV. The *FLA* Action

A. Proposed Mid-Trial Amendment to the Notice of Family Claim

[76] During her testimony at trial, J.K.P. testified that when the parties purchased 4704 in 1998, the entire down payment of $27,719.71 was drawn from her retirement savings and an insurance payout she received to compensate her for the loss of her vehicle in a motor vehicle accident. Prior to the commencement of her cross-examination, she brought an application to amend the notice of family claim to allege that the down payment came entirely from her excluded property, and, as such, ought to be credited back to her in the division of family assets.

[77] L.S.B. opposes the application to amend, arguing that it came too late and, if allowed, would cause him prejudice. In particular, he asserts that, because of the delay in advancing that new allegation, he has lost the ability "to gather additional evidence and retain expert assistance in tracing funds from over 2 decades ago."

[78] The parties agree that the test to be applied on an application to amend pleadings mid-trial is as set out in *Lam v. Chiu*, 2012 BCSC 677 [*Lam*]. That test requires the court to ask the following questions concerning the proposed amendment:

a) is it inconsistent with the pleadings already filed on behalf of the party seeking the amendment;

b) is it inconsistent with evidence already tendered by that party and his witnesses at trial and on discovery;

c) if it had been asked for at the outset of the trial, would it have changed the whole course of the trial;

d) would it be unfair to the opposite party; and

e) is it necessary for the purpose of determining the real issues raised or depending upon the pleadings?

[79] I agree with J.K.P. that the proposed amendment is not inconsistent with her current pleading, which already invokes s. 85 of the *FLA*, the provision dealing with excluded property. It is not inconsistent with her testimony at trial or on discovery. I also agree with her that if the exclusion had been sought at the outset of the trial, it would not have changed the course of the trial in any way.

[80] J.K.P. had already testified during her examination for discovery on April 24, 2025, that she paid the entire down payment on 4704 on her own. Had L.S.B. wished to negate that assertion, he had the opportunity to do so. The evidence falls short of establishing any real prejudice to L.S.B. attributable to the timing of the proposed amendment.

[81] The final consideration is whether the proposed amendment will assist in addressing the real issue between the parties. Although J.K.P. may have used excluded property to make the down payment on 4704, the evidence suggests that she intended in doing so to make a gift of it to L.S.B., like the contributing spouses in *Namdarpour v. Vahman*, 2019 BCCA 153, *Pisarski v. Piesik*, 2019 BCCA 129 and *Venables v. Venables*, 2019 BCCA 281. In the latter, Griffin J.A., writing for the Court, summarised the question that arises in such cases as follows:

> [95] What emerges from these authorities, of relevance to the current appeal, is that the intention of the spouse transferring ownership is key in determining whether the property transferred from one spouse to the other remains excluded property or becomes family property. If it is found that the spouse who transferred the property intended that the property be a gift to the other spouse, and there is no agreement that it is to remain excluded property, then it will become family property …

[82] I am satisfied that, in 1998, the parties commingled their property and deposited their earnings into a joint account. Any use of excluded property in purchasing 4704 was intended as a gift. The real issue to be decided between the parties is therefore not whether the property remains excluded today, but whether that gift of formerly excluded property should weigh in favour of the reapportionment that she seeks, as it did in *Venables*.

[83] On balance, I have concluded that the proposed amendment is necessary to determine that issue. I am therefore granting leave for it to be made.

B. Support Issues

i. The Parties' Incomes

J.K.P.

[84] J.K.P. was diagnosed in 2011 with NF2. She has been receiving disability benefits since then. Her main source of income is the rental revenue from 4704.

[85] The parties have agreed that her income over the last six years is as follows:

Year	CPP Claimed	Gross Rental Income Claimed	Line 150
2019	$10,140.96	$14,400.00	$8,727.48
2020	$10,333.68	$14,400.00	$7,868.92
2021	$10,437.00	$14,400.00	$11,009.12
2022	$10,718.76	$45,600.00	$24,451.73
2023	$11,415.48	$46,800.00	$26,030.25
2024	$11,917.80	$73,200.00	$38,092.99

[86] J.K.P. seeks to have her income set at the average of the last three years, or $29,524.99, L.S.B. has not suggested any alternative. I therefore accept that figure as her income for support purposes.

L.S.B.

[87] L.S.B. has held various jobs over the years, including the following:

a) convenience store attendant;

b) car wash attendant;

c) janitor;

d) upholsterer;

e) mail sorter for a delivery company;

f) stocking shelves at Walmart and Ikea;

g) worker at a car parts factory;

h) landscaping; and

i) truck driver (Class 1 licence).

[88] The parties agree that his income over the last six years was as follows:

Year	Income prior to Business Deductions	CPP Benefits	Social Assistance	Rental Income Claimed	Line 150
2019	$84,175.92 (commission income)	$8,885.25		$14,400.00	$31,970.25
2020	$121,302.41			$14,400.00	$46,397.73
2021	$84,464.06			$14,400.00	$14,544.01
2022	$87,982.97			$45,600.00	$44,558.58
2023	$9,488.13			$0.00	$7,113.81
2024	TBD	$19,483.92	$8,160.20	$0.00	$27,301.71

[89] J.K.P. delivered a notice to admit seeking L.S.B.'s admission that his stated income, as set out above, was not based on full-time work. L.S.B. did not respond to the notice to admit and is therefore deemed to have admitted that fact. On that basis, J.K.P. urges me to assess his income by taking the average of his most productive years, 2019, 2020 and 2022, and doubling the resulting figure, to yield an imputed income of $80,000.

[90] To justify that imputation of additional income, J.K.P. must show that L.S.B. has not behaved reasonably, having regard to his capacity to earn in light of his age, education, health, work history and work availability: *Marquez v. Zapiola*, 2013 BCCA 433.

[91] In his closing submissions at trial, L.S.B. argued that additional income should not be imputed to him because his ability to work has been compromised by his addiction to alcohol, a condition for which he is not responsible, citing *Kalanuk v. Michelson*, 2010 SKQB 394. In that case, the court stated as follows:

> [14] All of the circumstances must be considered in determining whether a payor was unable to pay arrears at the time they were incurred. Special circumstances exist in this case. There is no dispute that the petitioner's addiction to drugs has been serious. Alcoholism and drug addiction are viewed as illnesses requiring treatment rather than unacceptable conduct based on individual choice. I am satisfied that the petitioner was not intentionally underemployed during the periods that he was in treatment facilities. It seems apparent, as well, that the significant decrease in his actual income after 2004 was substantially connected to his addiction issues. Those issues may also serve to explain, at least in part, the petitioner's delay in bringing this application.

[92] *Kalanuk* has since been followed by many other courts, both in British Columbia and elsewhere (in British Columbia, see *Dunbar v. Saunders*, 2021 BCSC 193). In *CK v MK*, 2024 ABKB 626, a payor spouse was relieved of the obligation to pay child support otherwise payable on this ground even where, as here, the payor adduced no medical evidence to support the alleged inability to work.

[93] I accept that L.S.B.'s addiction to alcohol has in the past prevented him from working at times. However, he has testified that although he is currently sober, he has not been actively seeking work. He says that he intends to do so soon, although he made a similar pledge to the court in the context of a previous interlocutory application. He last left a rehabilitation facility in April 2025. I have concluded that he is currently intentionally underemployed and that additional income should be imputed to him on that basis.

[94] Quantifying L.S.B.'s true earning potential is challenging. A large part of his income historically has been rental income from 4704, a source that is no longer available to him. After subtracting that source, his most productive year was 2020 when he earned about $32,000 on his own. On the assumption that he was working only part-time that year, like all others, I am imputing an income of $50,000 to him.

ii. Are the parties' daughters still children of the marriage, and if so, how long will they continue to be so?

[95] J.K.P. seeks retroactive and prospective child support for all four of the parties' daughters. Child support is payable only for "children of the marriage". That

term is defined in ss. 2(1) of the *Divorce Act*, R.S.C. 1985, c. 3 (2nd Supp.), as follows:

> ***child of the marriage*** means a child of two spouses or former spouses who, at the material time,
>
> **(a)** is under the age of majority and who has not withdrawn from their charge, or
>
> **(b)** is the age of majority or over and under their charge but unable, by reason of illness, disability or other cause, to withdraw from their charge or to obtain the necessaries of life …

[96] It is common ground that H.B., who is 18, remains a child of the marriage. L.S.B. disputes that the three older daughters belong in that category. In particular, he says that they no longer qualify for ongoing child support because:

a) they are now too old;

b) they are no longer in need of support; and

c) they have chosen to sever their ties with him.

[97] The weight to be attached to that last factor was recently discussed in *D.R.B. v. J.L.B.,* 2024 BCSC 962. There, Baird J. summarised the principles to be applied in the following terms:

> [15] The leading case in British Columbia on the factors to be considered in determining whether adult children enrolled in post secondary education should continue to be considered "children of the marriage" for purposes of child support is *Farden v. Farden* (1993), 48 R.F.L. (3d) 60 (B.C.S.C.), in which Master Joyce, as he then was, set out the relevant considerations as follows:
>
> > Whether or not attendance in a post-secondary institution will be sufficient cause for a finding that the child is still a "child of the marriage" requires examination of all of the circumstances. It is not a conclusion which follows automatically from proof of attendance at the institution [*McNulty v. McNulty* (1976), 25 R.F.L. 29 (B.C.S.C.)] In my view the relevant circumstances include:
> >
> > 1) Whether the child is in fact enrolled in a course of studies and whether it is a full-time or part-time course of studies;
> >
> > 2) whether or not the child has applied for or is eligible for student loans or other financial assistance;

> 3) the career plans of the child, i.e. whether the child has some reasonable and appropriate plan or is simply going to college because there is nothing better to do;
>
> 4) the ability of the child to contribute to his own support through part-time employment;
>
> 5) the age of the child;
>
> 6) the child's past academic performance, whether the child is demonstrating success in the chosen course of studies;
>
> 7) what plans the parents made for the education of their children, particularly where those plans were made during cohabitation;
>
> 8) at least in the case of a mature child who has reached the age of majority, whether or not the child has unilaterally terminated a relationship from the parent from whom support is sought.

[16] All of the surrounding circumstances must be considered, and individual factors will be of varying importance in different cases. Not all of the listed factors need to be met before an adult child might be entitled to ongoing support. In some cases, the final factor has been highly influential if not determinative: see, for example, *H.M.H. v. T.R.H.*, 2017 BCSC 1899 and the cases cited therein. However, in *Shaw v. Arndt*, 2016 BCCA 78 at para. 29, a decision by which, of course, I am bound, Newbury J.A. adopted as "a useful description of the current law concerning the estrangement of adult children from their parents" the following conclusions drawn from a 2010 paper on the subject written by Justice David L. Corbett entitled *Child Support for Estranged Adult Children*:

> (a) Contrary to certain recent literature, there has not been "growing judicial recognition" that the quality of the relationship should have a bearing on child support.
>
> (b) Courts have been willing to impose a few specific responsibilities on adult support recipients, and may properly do so, but not conditions that include maintaining a social relationship with a parent.
>
> (c) <u>The statutory basis for taking the quality of the child-parent relationship into account is dubious.</u>
>
> (d) There is appellant [*sic*] authority permitting the court to place some weight on the parent-child relationship, but that authority is more ambiguous than trial and motions court decisions suggest.
>
> (e) On the current state of the law, there seems to be a discretion to take this factor into account, though few courts do, and fewer have found it a significant factor in a support decision.

> (f) The better view is that if conduct is ever relevant, it should only be in truly egregious cases of misconduct by a child against a parent.
>
> [Emphasis in the original.]

[17] Newbury J.A. concluded, at para. 31:

> The unsatisfactory relationship is not an excuse for [the father's] failure to pay child support; nor is it a reason why [the child] should not be regarded as a child of the marriage. Many parents or step-parents have troubled relationships with their children, but by virtue of their youth, children still have to be supported, in whole or in part, in obtaining training or degrees that will allow them to become self-sufficient. The final '*Farden* factor' may justify the cessation of support in rare cases, but this case does not begin to approach the egregious circumstances in which a cut-off of support would be justified.

[98] This is not one of those "egregious" cases involving "misconduct by a child against a parent". In their testimony at trial, P.B., G.B. and J.B. each described the acts of family violence, indifference, neglect and cruelty that led them to sever their ties with L.S.B. I am satisfied that their decision to do so was a reasonable one in the circumstances and, as such, ought to have no bearing on the question of whether they should continue to be entitled to child support.

[99] P.B. is 25. She is currently engaged in full-time studies at a nursing school in California. She expects to graduate in 2028. She is receiving a student loan to cover her tuition while there. She works 10-15 hours per week. Before beginning that programme, she attended vocational colleges and worked as a hair stylist.

[100] G.B. has recently turned 24. She graduated from the University of British Columbia in the spring of 2025 with a Bachelor of Arts in Geography. She was unsuccessful in her application to begin postgraduate studies there for the upcoming academic year but intends to apply again more widely for the following one, commencing in September 2026. She is currently working part-time as a cashier at the City of Vancouver but is looking for a full-time position as an urban planning assistant.

[101] J.B. is 21. She is currently enrolled in a paralegal programme at a vocational college. She began the programme in the fall of 2024 and expects to graduate in the spring of 2026. She is receiving student loans to cover her tuition. She previously attended another vocational college to study pre-nursing but decided to change her career path. While there, her studies were funded by J.K.P. Between the two academic programmes, she took a gap year. During that time and while she was studying, she worked at a beauty salon and later at a physiotherapy clinic.

[102] H.B. is 18 and just graduated from high school in the spring of 2025. She will be attending the University of Victoria in September 2025 to study health sciences. Her studies will be paid for with student loans and an RESP to which J.K.P. alone has contributed.

[103] J.K.P. seeks an order:

a) recognising P.B. and G.B. as children of the marriage through to the end of 2028;

b) recognising J.B. as a child of the marriage through to the end of 2026; and

c) recognising H.B. as a child of the marriage through to the end of 2030, on the assumption that she will complete five years of post-secondary education.

[104] I have concluded that, based on the evidence presented a trial, the parties' daughters continued, or will continue to be children of the marriage through to their graduation in those academic programmes in which they have gained admission, as follows:

a) G.B. until the end of June 2025;

b) J.B. until the end of June 2026; and

c) P.B. and H.B. until the end of June 2028.

iii. Child Support

[105] Section 3(2) of the *Federal Child Support Guidelines*, SOR /97-175 [*Guidelines*], states as follows:

> **(2)** Unless otherwise provided under these Guidelines, where a child to whom a child support order relates is the age of majority or over, the amount of the child support order is
>
> > **(a)** the amount determined by applying these Guidelines as if the child were under the age of majority; or
> >
> > **(b)** if the court considers that approach to be inappropriate, the amount that it considers appropriate, having regard to the condition, means, needs and other circumstances of the child and the financial ability of each spouse to contribute to the support of the child.

[106] In *Neufeld v. Neufeld*, 2005 BCCA 7, the Court set out a four-part test for determining whether the *Guidelines* should be followed in a situation where an adult child is attending a post-secondary institution:

> *Step One*
>
> Decide whether the child is a "child of the marriage" as defined in the *Divorce Act*? If s/he is not, that ends the matter.
>
> *Step Two*
>
> Determine whether the approach of applying the *Guidelines* as if the child were under the age of majority ("the usual *Guidelines* approach") is challenged. If that approach is not challenged, determine the amount payable based on the usual *Guidelines* approach.
>
> *Step Three*
>
> If the usual Guidelines approach is challenged, decide whether the challenger has proven that the usual *Guidelines* approach is inappropriate. If not, the usual *Guidelines* amount applies.
>
> *Step Four*
>
> If the usual *Guidelines* approach is inappropriate, decide what amount is appropriate, having regard to the condition, means, needs and other circumstances of the child and the financial ability of each spouse to contribute to the support of the child?

[107] J.K.P. seeks child support based on the *Guidelines* payable retroactively to the date of separation *and* prospectively, on a lump-sum basis. L.S.B. has not submitted that the Guidelines amount is inappropriate for any of the daughters.

[108] The factors to be considered in deciding whether a retroactive award of child support should be made were set out in *D.B.S. v. S.R.G.*, 2006 SCC 37 as follows:

a) reasonable excuse for why support was not sought earlier;

b) conduct of the payor parent;

c) circumstances of the child; and

d) hardship occasioned by a retroactive award.

[109] J.K.P. has been seeking child support since the inception of the *FLA* action. L.S.B. has never paid any child support. His failure to do so can be explained in part by his struggle with alcoholism. He has actively sought treatment at times, although his commitment to his recovery and taking the necessary steps to remain sober has been inconsistent. Since emerging from rehabilitation most recently, he has remained sober but has yet to find work, let alone to pay child support.

[110] I am satisfied that a retroactive award is appropriate. However, I will reduce the retroactive amount payable by 25% to account for the periods when L.S.B. was incapable of working due to his alcohol addiction and actively seeking treatment.

[111] I am also satisfied that prospective and retroactive child support should be paid as a lump sum.

[112] In *P.W. v. G.Z.*, 2022 BCSC 1323, Murray J. ordered child support payable by way of a lump sum in similar circumstances, explaining her reasons for doing so as follows:

> [75] Section 170 of the FLA provides the court with the discretion to make a lump sum child support order. In *Zhang v. Sun*, 2016 BCSC 1418 at paras. 279-284 Fleming J. summarized the principles relevant to determining whether a lump sum child support payment should be made, including:
>
> > 1. The same considerations that apply to orders for lump sum spousal maintenance apply to consideration of a lump sum child maintenance order;

> 2. Lump sum maintenance awards are exceptional, and should be made only when there is some special need or specific circumstances render it appropriate;
>
> 3. The existence of animosity between the parties may favour a lump sum maintenance order to reduce future sources of conflict;
>
> 4. Whether the parent disobeyed a previous maintenance order and had not demonstrated prudent financial management;
>
> 5. The payor's past avoidance of support payments.
>
> [76] The risk of a lump sum order is that the payor's ability to pay may change, leading to a need for variation. Given my comments regarding the futility of a review, G.Z.'s failure to provide adequate financial disclosure, G.Z.'s pattern of failing to pay creditors, and the likely difficulty P.W. will have collecting support, I find that a lump sum child support order is the appropriate award, despite the risk that future variation could be required.

[113] A similar pattern of behaviour has been demonstrated here. L.S.B. has failed to manage his financial affairs in a prudent manner. He has defaulted on numerous loans. He left the management of the family finances entirely to J.K.P. Because of his history of family violence, he should have no contact with J.K.P. and she should not have to be in contact with him. He also has a history of failing to abide by court orders and has failed to pay any child support to date. I am satisfied that it is unlikely that he would abide by any order requiring him to pay child support periodically in the future. For all those reasons, I am satisfied that retroactive and prospective child support should be payable as a lump sum from L.S.B.'s share of the property to be divided in this action, as was done, for example, in *Hammond v. Holtz*, 2024 BCSC 447.

[114] Retroactive child support is to be paid from the date of separation (January 3, 2023) to June 30, 2025, a total of 30 months at $1,233 per month (the table amount for four children, based on an income of $50,000), yielding a total owing of $36,990. After applying the 25% discount to that figure, I am awarding $27,742.50 in retroactive child support.

[115] Prospectively, based on my findings, L.S.B. will owe child support as follows:

Year	# of children	Months payable	Total
July 1, 2025 to June 30, 2026	3	12 x $1,029	$12,348
July 1, 2026 to June 30, 2028	2	24 x $781	$18,744
		TOTAL:	**$31,092**

[116] The total of lump-sum child support owing is therefore $27,742.50 (retroactive) + $31,092 (prospective) = **$58,835**.

iv. Special and Extraordinary Expenses

[117] In addition to the child support payable, J.K.P. seeks an order requiring L.S.B. to advance her $200,000 as an extraordinary expense under s. 7 of the *Guidelines*, to cover his half of the cost of hosting future weddings for each of the parties' four daughters, quantified at $100,000 per wedding.

[118] Section 7 of the *Guidelines* states as follows:

> **Special or extraordinary expenses**
>
> **7 (1)** In a child support order the court may, on either spouse's request, provide for an amount to cover all or any portion of the following expenses, which expenses may be estimated, taking into account the necessity of the expense in relation to the child's best interests and the reasonableness of the expense in relation to the means of the spouses and those of the child and to the family's spending pattern prior to the separation:
>
> **(a)** child care expenses incurred as a result of the employment, illness, disability or education or training for employment of the spouse who has the majority of parenting time;
>
> **(b)** that portion of the medical and dental insurance premiums attributable to the child;
>
> **(c)** health-related expenses that exceed insurance reimbursement by at least $100 annually, including orthodontic treatment, professional counselling provided by a psychologist, social worker, psychiatrist or any other person, physiotherapy, occupational therapy, speech therapy and prescription drugs, hearing aids, glasses and contact lenses;
>
> **(d)** extraordinary expenses for primary or secondary school education or for any other educational programs that meet the child's particular needs;
>
> **(e)** expenses for post-secondary education; and
>
> **(f)** extraordinary expenses for extracurricular activities.

> **Definition of "extraordinary expenses"**
>
> **(1.1)** For the purposes of paragraphs (1)(d) and (f), the term ***extraordinary expenses*** means
>
> > **(a)** expenses that exceed those that the spouse requesting an amount for the extraordinary expenses can reasonably cover, taking into account that spouse's income and the amount that the spouse would receive under the applicable table or, where the court has determined that the table amount is inappropriate, the amount that the court has otherwise determined is appropriate; or
> >
> > **(b)** where paragraph (a) is not applicable, expenses that the court considers are extraordinary taking into account
> >
> > > **(i)** the amount of the expense in relation to the income of the spouse requesting the amount, including the amount that the spouse would receive under the applicable table or, where the court has determined that the table amount is inappropriate, the amount that the court has otherwise determined is appropriate,
> > >
> > > **(ii)** the nature and number of the educational programs and extracurricular activities,
> > >
> > > **(iii)** any special needs and talents of the child or children,
> > >
> > > **(iv)** the overall cost of the programs and activities, and
> > >
> > > **(v)** any other similar factor that the court considers relevant.

[119] In *Clarke v. Clarke*, 2014 BCSC 824, this court reiterated that s. 7 contains an exhaustive list of the expenses that qualify for reimbursement under the *Guidelines*.

[120] Even if the requisite evidentiary support for such an award were present (and it is not), I am unable to see how the cost of hosting future weddings could fit within any of the enumerated categories in s. 7. I am therefore refusing to grant that relief.

v. Spousal Support

[121] J.K.P. seeks a lump sum award of spousal support in the amount of $133,705 (i.e., the mid-range, based on an imputed income for L.S.B. of $80,000), on compensatory grounds.

[122] A spouse's entitlement to spousal support is determined having regard to the condition, means, needs and other circumstances of each spouse. Relevant factors include the length of time the spouses cohabited and the functions performed by each spouse during the cohabitation: *B.L.S. v. D.J.S.*, 2021 BCSC 1311.

[123] Section 15 of the *Divorce Act* identifies four objectives for such an order as follows:

(a) to recognise any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown;

(b) to apportion between the spouses any financial consequences arising from the care of any child of the marriage over and above any obligation for the support of any child of the marriage;

(c) to relieve any economic hardship of the spouses arising from the breakdown of the marriage; and

(d) insofar as practicable, to promote the economic self-sufficiency of each spouse within a reasonable period of time.

[124] In *Zacharias v. Zacharias*, 2015 BCCA 376, the Court of Appeal explained the various grounds upon which a compensatory award of spousal support can be based, as follows:

> [26] Compensatory entitlement will arise where, as a result of the parties' roles during the marriage, one spouse has suffered economic disadvantage or has conferred economic advantages on the other. Most often, such entitlement will arise where one spouse has sacrificed career opportunities in order to take on more of the family's household or child-rearing responsibilities. Upon the dissolution of the marriage, the spouse who has given up opportunities may be entitled to spousal support, either to compensate for diminished earning capacity, or to share in the augmented earning capacity of the other spouse. The main goal of compensatory spousal support is to provide for an equitable sharing of the economic consequences of the marriage (see *Moge v. Moge*, [1992] 3 S.C.R. 813 at 858–66).

[125] The difficulty I have with J.K.P.'s claim for compensatory spousal support is that she has not shown that she has suffered any financial disadvantage resulting from the marriage or its breakdown, nor has she seen a reduction in her standard of living since separation. She acknowledges that her present inability to work is attributable entirely to her illness, not to family violence or other conduct by L.S.B. I am therefore refusing to make any award of spousal support.

C. Division of Assets

i. Governing Legislation

[126] Pursuant to s. 81 of the *FLA*, spouses are generally entitled on separation to a half interest in family property, and equally responsible for family debt, regardless of their use and contribution. The term "family property" is defined in s. 84 of the *FLA* to mean property that either spouse owns at the time of their separation or was acquired after their separation but derived from such property, unless it is excluded.

[127] Despite s. 81, the court may order an unequal division of family property or family debt pursuant to s. 95, which states as follows:

> **Unequal division by order**
>
> **95** (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.

ii. Family Assets and Debts to be Divided

[128] During the trial, I received appraisal evidence that was not before the Associate Judge in the foreclosure proceeding. That evidence shows 1408 and 4704 to be worth $1.35 million and $1.125 million, respectively. 4704 is subject to a mortgage with an outstanding balance of $243,817.73 as of December 31, 2024. As a result of my ruling on the appeal, 1408 remains burdened by the MIC mortgage, for which S.S.P. paid $113,157.29. The equity in the two properties to be divided between the parties is therefore worth $2,118,024.98.

[129] The only other family property available to be divided are the parties' respective vehicles, which they agree they should each retain.

iii. The Appropriate Division

[130] Assuming the appeal would fail, J.K.P. seeks an order that her half interest in 1408 should be divided 100% in her favour, on the basis that L.S.B. allowed his half interest in 1408 to be forfeited through the order absolute. She also seeks to have 4704 allocated entirely to her as well, on various other grounds.

[131] L.S.B. seeks an equal division of all family property.

[132] Because I have allowed the appeal, the parties' equity in both 1408 and 4704 is available in its entirety to be divided in the *FLA* action. I agree with J.K.P. that there are several factors weighing in favour an unequal division in her favour.

[133] First, I have already noted J.K.P.'s use of her own excluded property to make the initial down payment on 4704 in 1998. In addition, during the ensuing years of the marriage, J.K.P. performed most of the household chores and took on almost all of the child-rearing duties. She generally raised the girls on her own.

[134] Since 2006, she has also managed the family finances on her own, including the management of the rental suite. When the parties took on a heavier debt load to carry out the renovation of 4704, she took on additional overtime work while L.S.B. did not. As his abuse of alcohol grew worse in the following years, he was often working only intermittently, requiring J.K.P. to support him and his increasingly wayward lifestyle. By then, L.S.B. was spending his reduced earnings not on the family, but to satisfy his own personal needs, such as alcohol and the sexual gratification he frequently sought at massage parlours.

[135] J.K.P. testified that at times she had to deposit additional funds into the joint account just before the mortgage payment fell due because otherwise L.S.B. would drain the account before the payment could be processed. She provided him with funds to assist him in purchasing and maintaining two trucks to allow him to carry on work as a trucker. However, he failed to keep the loans current because he was often too drunk to drive, and his income was reduced accordingly. On one occasion, his driver's licence was suspended for three months after he was stopped by police while driving impaired by alcohol. The trucks were eventually disposed of at a loss.

[136] More recently, in December 2024, J.K.P. made a payment of $18,000 to reduce the principal owing on the mortgage charging 4704. L.S.B. has made no such lump-sum payments. Although J.K.P. has had exclusive use of the parties' real

property since separation, she has been bearing all of the associated expenses while receiving no child support or other assistance from L.S.B.

[137] Finally, I agree with J.K.P. that it is appropriate to draw an adverse inference against L.S.B. in relation to his property interests in India, which were not disclosed.

[138] Despite the ample justification for a reapportionment of some kind, I am not persuaded that J.K.P. should receive the entirety of the parties' equity in 4704 and 1408 by way of reapportionment, as she argues. During the early years of the marriage, L.S.B. earned more than J.K.P. and contributed his salary to the joint account from which family expenses were paid. He is entitled to at least some credit for that contribution.

[139] In coming to the appropriate division, I have been guided by the authorities cited by J.K.P. on this point, including *Hammond v. Holtz*, 2024 BCSC 447; *Jaszczewska v. Kostanski*, 2016 BCCA 286; *Chang v Chang*, 2020 BCSC 1783 and *Chand v. Shannon*, 2025 BCSC 630. Of these, I have concluded that the facts of this case resemble most closely those in *Chand*, where the family property was divided 80%/20%. Although in that case the husband was found to have made no contribution to the property subject to division, contrary to my finding in this case, there are other unique factors present here, listed above, that weigh in J.K.P.'s favour.

[140] I am therefore reapportioning the parties' interest in 4704 and 1408, a total of $2,118,024.98, 80%/20% in favour of J.K.P.

[141] In the result, J.K.P. may acquire title for herself by purchasing L.S.B.'s interest in those properties for 20% of $2,118,024.98, or $423,605, subject to the division of the family debts, to which I turn next.

[142] The mortgage charging 4704, with an outstanding balance of $243,817.73, is a family debt that must be shared by the parties. My order will be that this debt is to be shared in the same proportion as the real property it charges, which means that L.S.B. must compensate J.K.P. for his 20% share, or $48,763.55.

[143] I have reached a different conclusion with respect to the MIC mortgage, which remains owing to S.S.P. That debt should be borne by L.S.B. alone. I accept J.K.P.'s evidence that L.S.B. mortgaged his interest in 1408 after J.K.P. refused to provide her consent to a mortgage on the entire property. Once he obtained the MIC mortgage without her consent, he used the proceeds for his own personal needs, rather than for family purposes. I am therefore ordering that the price that J.K.P. must pay L.S.B. to purchase his interest in 1408 is to be reduced by $113,157.29, so that she can direct those funds instead to repay S.S.P. and thereby redeem the MIC mortgage.

[144] The balance owing from J.K.P. to L.S.B. to purchase his interest in the family assets, net of the family debts, is therefore **$202,849.16**, calculated as follows:

20% of equity	$423,605
less the following amounts:	
lump-sum child support	($58,835)
20% of 4704 mortgage	($48,763.55)
100% of MIC mortgage	($113,157.29)

[145] The only other family assets available for division are the parties' respective vehicles currently in their possession, which they have agreed to retain separately.

D. Protection Order

[146] J.K.P. seeks a permanent protection order prohibiting L.S.B. from contacting her and the parties' four daughters until further order, or from being within a 500-metre radius of 1408. She also seeks a police enforcement clause.

[147] The power to make such an order is found in s. 183 of the *FLA*, which states as follows:

> **183** (1) An order under this section

(a) may be made on application by a family member claiming to be an at-risk family member, by a person on behalf of an at-risk family member, or on the court's own initiative, and

(b) need not be made in conjunction with any other proceeding or claim for relief under this Act.

(2) A court may make an order against a family member for the protection of another family member if the court determines that

(a) family violence is likely to occur, and

(b) the other family member is an at-risk family member.

(3) An order under subsection (2) may include one or more of the following:

(a) a provision restraining the family member from

(i) directly or indirectly communicating with or contacting the at-risk family member or a specified person,

(ii) attending at, nearing or entering a place regularly attended by the at-risk family member, including the residence, property, business, school or place of employment of the at-risk family member, even if the family member owns the place, or has a right to possess the place,

(iii) following the at-risk family member,

(iv) possessing a weapon, a firearm or a specified object, or

(v) possessing a licence, registration certificate, authorization or other document relating to a weapon or firearm;

(b) limits on the family member in communicating with or contacting the at-risk family member, including specifying the manner or means of communication or contact;

(c) directions to a police officer to

(i) remove the family member from the residence immediately or within a specified period of time,

(ii) accompany the family member, the at-risk family member or a specified person to the residence as soon as practicable, or within a specified period of time, to supervise the removal of personal belongings, or

(iii) seize from the family member anything referred to in paragraph (a) (iv) or (v);

(d) a provision requiring the family member to report to the court, or to a person named by the court, at the time and in the manner specified by the court;

> (e) any terms or conditions the court considers necessary to
>
> (i) protect the safety and security of the at-risk family member, or
>
> (ii) implement the order.
>
> (4) Unless the court provides otherwise, an order under this section expires one year after the date it is made.
>
> (5) If an order is made under this section at the same time as another order is made under this Act, including an order made under Division 5 *[Orders Respecting Conduct]* of Part 10, the orders must not be recorded in the same document.

[148] The considerations that must be weighed in deciding whether to make that kind of order are found in s. 184(1), which states as follows:

> **184** (1) In determining whether to make an order under this Part, the court must consider at least the following risk factors:
>
> (a) any history of family violence by the family member against whom the order is to be made;
>
> (b) whether any family violence is repetitive or escalating;
>
> (c) whether any psychological or emotional abuse constitutes, or is evidence of, a pattern of coercive and controlling behaviour directed at the at-risk family member;
>
> (d) the current status of the relationship between the family member against whom the order is to be made and the at-risk family member, including any recent separation or intention to separate;
>
> (e) any circumstance of the family member against whom the order is to be made that may increase the risk of family violence by that family member, including substance abuse, employment or financial problems, mental health problems associated with a risk of violence, access to weapons, or a history of violence;
>
> (f) the at-risk family member's perception of risks to his or her own safety and security;
>
> (g) any circumstance that may increase the at-risk family member's vulnerability, including pregnancy, age, family circumstances, health or economic dependence.

[149] I have concluded that the order sought is appropriately granted. The history of family violence in this case supports the inference that, in the absence of such an order, more family violence, in some form, is likely to occur. Although there has been no contact since the parties separated, L.S.B. is prone to relapses in his abuse of

alcohol. The litigation has only exacerbated his anger at J.K.P., as was apparent from his intemperate remarks about her in his testimony, both on discovery and at trial. I have also placed considerable weight on the expressions of fear by J.K.P. and all four daughters as to the risk that L.S.B. poses to their safety.

[150] My order will include an exception to allow L.S.B. to be in contact with H.B. as and when such contact is initiated by her.

E. Divorce

[151] I am satisfied that the divorce is appropriately granted once the requisite certificate of pleadings is available.

V. The Civil Action

A. Proposed Mid-Trial Amendment to the Notice of Civil Claim

[152] When J.K.P. applied mid-trial to amend the notice of family claim to add the new excluded property claim, she also applied to amend the notice of civil claim to add a new allegation that, in addition to the physical assaults and battery alleged, L.S.B. had sexually assaulted her.

[153] As I indicated earlier, J.K.P. testified in her examination-in-chief that she did not always consent to their sexual relations, explaining that L.S.B. could not reasonably expect her to consent to sex with him in the evening after beating her up during the day. When cross-examined on this point, she added that:

a) she had expressly refused to consent to sex on several occasions;

b) when she did so, L.S.B. told her that she did not have to do anything and that he could do what he needed to do himself; and

c) after that exchange, he would simply force himself upon her.

[154] As with the proposed amendment to the notice of family claim, L.S.B. argued that J.K.P.'s application to amend the notice of civil claim came too late and would, if

the proposed amendment were to be allowed, cause him undue prejudice. However, he was unable to identify any specific prejudice flowing from the delay.

[155] I am satisfied that the factors set out in *Lam* favour allowing this amendment as well. In particular, the new allegation is generally consistent with the evidence given at trial and not inconsistent with any previous pleading. L.S.B. had notice of it prior to the trial because it is mentioned in the expert report of Dr. Rasmusen (discussed below). Had the proposed new allegation been advanced earlier, the trial would not have proceeded differently. L.S.B. has identified no specific prejudice to him if the proposed amendment is permitted. If permitted, it will allow for a fairer adjudication of the issues in the civil action.

[156] For those reasons, I have concluded that the proposed amendment should be allowed, with one exception. I disagree that it is necessary or appropriate for J.K.P. to be permitted to plead that the sexual assaults were carried out "viciously", as proposed. Such language is unnecessarily inflammatory and, in any event, does not conform with the evidence that was given at trial.

[157] In summary, the amended notice of civil claim may be filed as proposed, but with the word "viciously" omitted.

B. Liability and Causation

[158] In the civil action, J.K.P. seeks damages for the intentional torts of assault and battery. In *Khan v. School District No. 39*, 2021 BCSC 49, Majawa J. set out the elements of those torts as follows:

> [17] Assault is the intentional creation of the apprehension of imminent harmful or offensive contact, even if contact never actually occurs. Imminent apprehension of harm is a required [*sic*]. Frightening or threatening someone does not constitute an assault unless the event feared is imminent. To threaten to do harm at some future time does not amount to an assault. (Linden & Feldthusen, *Canadian Tort Law*, 11th ed. (Toronto: LexisNexis, 2018) [*Canadian Tort Law*] at 50–51).
>
> [18] The tort of battery involves the infliction of unlawful force on another person. In finding non-negligent battery, the court must conclude that the defendant intended to, and did in fact, make physical contact, and that this contact was harmful or offensive (*Jane Doe 72511 v. N.M.*, 2018 ONSC 6607

> at para. 33, citing *Norberg v. Wynrib*, [1992] 2 S.C.R. 226 at 246 and *Canadian Tort Law* at 46).

[159] My earlier findings of fact suffice to make out each of those elements. Liability is therefore established, and indeed, not seriously contested.

[160] In support of her claim for damages, J.K.P. has adduced an expert report from a psychiatrist, Dr. Lee Rasmusen, dated March 14, 2025. He concluded that, due to the family violence that she experienced during the relationship, J.K.P. suffers from posttraumatic stress disorder ("PTSD").

[161] The report contains the following explanation for that conclusion:

> [J.K.P.] has, in spite of repetitive violence been more resilient than many individuals might be otherwise. However, it has taken a toll on her and she has developed a diagnosis consistent with posttraumatic stress disorder.
>
> By definition, post-traumatic stress disorder requires significant traumas to occur to meet the diagnostic criteria. Specifically, the criteria states that the trauma must be one in which a person is either exposed to or actually threatened of potential death, serious injury or being sexually violated.
>
> [J.K.P.] has experienced these threats and fears on a frequent basis that have involved being struck, choked, having objects thrown at her head and having fear that when police were contacted there would be greater violence committed due to retaliation.
>
> The family violence is what has caused the post-traumatic stress disorder. Although her multiple tumours have affected her ability regarding her energy, and possibly her concentration, those are minor in comparison to the assaults and violence that she has experienced. There were no other factors contributing to [J.K.P.]'s symptoms in the past or currently.
>
> In my opinion, if the assailant does not have any contact with her for more than five years, she will still likely have some symptoms of a lingering disorder due to a fear of him showing up again given his history of repeated breaching conditions in the past. However, the symptoms will likely be less severe with time and with ongoing supportive treatment.

[162] While acknowledging that there was family violence during the relationship, L.S.B. argues that J.K.P. has failed to prove the harm that she alleges. In particular, he says that Dr. Rasmusen's conclusions are unreliable because they rest entirely on J.K.P.'s self-report. However, I have already found J.K.P. to be a credible and reliable witness. Her acknowledged difficulties with short-term memory do not cast

doubt on the conclusions in Dr. Rasmusen's report, which rest on a solid evidentiary footing, confirmed by the other evidence I received at trial.

[163] Although Dr. Rasmusen acknowledged in cross-examination that J.K.P.'s pre-existing medical condition was also a source of stress for her, he specifically rejected the suggestion that her illness could have caused the kind of trauma that justifies the diagnosis of PTSD.

[164] I am satisfied, in summary, that:

a) L.S.B. is liable to J.K.P. for the torts of assault and battery; and

b) the psychiatric harm described in Dr. Rasmusen's report is attributable to that tortious conduct.

C. General and Aggravated Damages

[165] J.K.P. seeks general damages of $400,000 and aggravated damages of $50,000.

[166] The purpose of general or non-pecuniary damages was conveniently explained by this court in *A.B. v. C.D.*, 2011 BCSC 775, as follows:

> [159] The purpose of an award for non-pecuniary damages is to provide solace to AB for such things as pain, suffering, inconvenience, and loss of enjoyment of life. Non-pecuniary losses are the personal injury losses that have not required an actual outlay of money. One purpose of an award for damages for non-pecuniary losses is to substitute other amenities for those that AB has lost. The award must address losses AB suffered not only to the date of trial, but also those that AB will suffer in the future.
>
> [160] Non-pecuniary losses have no objective ascertainable value, because there is no market in health and happiness. It is generally not possible to put a claimant back in the position she would have been in had the injury not occurred, and this is especially true of non-pecuniary loss. The Court must fix a sum that is tailored to AB, and that is moderate but fair and reasonable to both parties, keeping in mind that AB will be fully compensated for her future care needs and other pecuniary losses. The Court does not try to assess a sum for which AB would have voluntarily chosen to suffer such pain, inconvenience, and loss of enjoyment of life.
>
> [161] Awards in other cases can provide some assistance, but each case varies depending on its facts.

[167] An award of general damages may, in appropriate circumstances, be augmented by an additional amount as aggravated damages. In *Andrews v. Shelemey*, 2021 BCSC 2221, Mayer J., then of this court, explained the purpose of aggravated damages as follows:

> [114] Aggravated damages are intended to take into account intangible injuries such as distress and humiliation that may have been caused by a defendant's behaviour: *Vorvis v. Insurance Corporation of British Columbia,* [1989] 1 S.C.R. 1085 at 1099 [*Vorvis*].
>
> [115] Aggravated damages are measured by a plaintiff's suffering, as distinct from punitive damages which are measured by the wrongdoer's moral culpability: *Vorvis,* at para. 16. Suffering may arise from factors such, for example, as humiliation, wounded pride, damaged-self confidence: *Huff v. Price,* [1990] B.C.J. No. 2692, at page 13.

[168] In support of the proposed general damages award of $400,000, J.K.P. cites the following authorities:

a) *Ahluwalia* (in which an award of $50,000 in general damages and another $50,000 in aggravated damages was upheld by the Ontario Court of Appeal);

b) *Barreto v. Salema*, 2024 ONSC 4972 [*Barreto*] (in which an award of $150,000 in general damages was made, including a $50,000 component for aggravation);

c) *K.H.C. v. Scheirer*, 2025 BCSC 998 (in which an award of $150,000 in general damages was made);

d) *Schuetze v. Pyper*, 2021 BCSC 2209 [*Schuetze*] (in which an award of $100,000 in general damages was made); and

e) *Anderson v. Molon*, 2020 BCSC 1247 (in which an award of $275,000 in general damages was made).

[169] The facts of this case most closely resemble those of *Barreto*. That case, like this one, was a civil action in which damages were sought for family violence, in conjunction with a family law action. The plaintiff in that case had been choked on

one occasion, repeatedly restrained on numerous occasions and had her head banged into the wall on at least four occasions.

[170] I agree with J.K.P. that her pain and suffering was even more extensive than that described in *Barreto*. The family violence in this case went on intermittently for most of the 26 years that the parties were together. When L.S.B.'s alcohol abuse was at its peak, he insulted and beat her regularly, sometimes in the presence of the children and the parties' parents, who themselves fell victim to the family violence on some of those occasions. He continued to abuse her physically and emotionally regardless of her deteriorating medical condition. He beat her when he suspected, without foundation, that she was having an affair, despite boasting to her on other occasions about his own lack of commitment to marital fidelity.

[171] J.K.P. testified about the shame she felt and the cultural factors that kept her trapped in the relationship. L.S.B. punished her with even more severe beatings when she complained to the police, taunting her about the futility of her attempts to find help. He also exploited and compounded the cultural and economic pressures placed upon her to keep her in the relationship, to secure her ongoing financial support and to satisfy his sexual appetite, regardless of her wishes.

[172] In this case, unlike any of the others cited, J.K.P. has established a pattern of physical and sexual assaults as well as resulting psychiatric injury in the form of PTSD.

[173] I have concluded that in these circumstances, J.K.P. is entitled to a general damages award, including an aggravated damages component, of $185,000, which sum is to be paid by way of a setoff against the amount owing to purchase L.S.B.'s interest in the family assets.

D. Punitive Damages

[174] J.K.P. seeks an award of $1 million in punitive damages.

[175] The purpose of punitive damages was explained in *M.R.P. v. Smith*, 2025 BCSC 1002, as follows:

> [364] Aggravated general damages are to be distinguished from punitive damages. Aggravated damages, as part of general damages, are to provide some compensation and solace to victim. The purpose of punitive damages, by contrast, was explained by the Supreme Court of Canada in *Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130, 1995 CanLII 59:
>
> > [196] Punitive damages may be awarded in situations where the defendant's misconduct is so malicious, oppressive and high-handed that it offends the court's sense of decency. Punitive damages bear no relation to what the plaintiff should receive by way of compensation. Their aim is not to compensate the plaintiff, but rather to punish the defendant. It is the means by which the jury or judge expresses its outrage at the egregious conduct of the defendant. They are in the nature of a fine which is meant to act as a deterrent to the defendant and to others from acting in this manner.
>
> [365] The question of punitive damages is particularly relevant in civil cases where no related criminal conviction has been entered. As explained by the Supreme Court of Canada in *Whiten v. Pilot Insurance Co.*, 2002 SCC 18 at para. 69:
>
> > … there is recognition that the primary vehicle of punishment is the criminal law (and regulatory offences) and that punitive damages should be resorted to only in exceptional cases and with restraint. Where punishment has actually been imposed by a criminal court for an offence arising out of substantially the same facts, some jurisdictions, such as Australia and New Zealand, bar punitive damages in certain contexts (*Gray*, *supra*; *Daniels*, *supra*), but the dominant approach in other jurisdictions, including Canada, is to treat it as another factor, albeit a factor of potentially great importance.
>
> [366] Punitive damages have generally not been awarded in cases where the defendant has been sentenced criminally for the same acts: see Justice Gropper's discussion in *A.B.* at paras. 958–969.
>
> [367] In this case, there has been no criminal trial or conviction, nor any punishment imposed by a criminal court.
>
> [368] Both parties agree that the Supreme Court of Canada's judgment in *Whiten* guides the analysis in assessing a claim for punitive damages. The Court should consider:
>
> > (1) whether the misconduct was planned and deliberate;
> >
> > (2) the intent and motive of the defendant;
> >
> > (3) whether the defendant persisted in the outrageous conduct over a lengthy period of time;

> (4) whether the defendant concealed or attempted to cover up its misconduct;
>
> (5) the defendant's awareness that what he or she was doing was wrong;
>
> (6) whether the defendant profited from its misconduct;
>
> (7) whether the interest violated by the misconduct was known to be deeply personal to the plaintiff or a thing that was irreplaceable.
>
> [Citations omitted.] (*Whiten* at para. 113)

[369] Additionally, an award of punitive damages must be:

> a) proportionate to the degree of vulnerability of the plaintiff;
>
> b) proportionate to the harm or potential harm directed specifically at the plaintiff;
>
> c) proportionate to the need for deterrence;
>
> d) proportionate, even after taking into account the other penalties, both civil and criminal, which have been or are likely to be inflicted on the defendant for the same misconduct;
>
> e) proportionate to the advantage wrongfully gained by a defendant from the misconduct. (*Whiten* at paras. 114–126.)

[176] In support of her claim for $1 million in punitive damages, J.K.P. cites *Barreto*, a case involving fewer acts of intimate partner violence, over a shorter period of time, in which the court awarded $10,000 in punitive damages.

[177] As I noted earlier, L.S.B. has already been punished criminally for some of the incidents that are the subject of J.K.P.'s civil claim. However, the associated convictions cover only a small fraction of the tortious conduct that has been proven in the trial before me. He has yet to be punished for most of the physical violence and verbal abuse that J.K.P. endured over the 26 years of their relationship. He has yet to be punished for any of the sexual assaults. Far from demonstrating genuine remorse for that conduct at trial, L.S.B. repeatedly blamed J.K.P. for it in his testimony.

[178] The pressing need to denounce and deter the kind of conduct in issue here is highlighted in a recent report commissioned by the Provincial Government to examine how the legal system in British Columbia has historically responded to it (see the final report of Dr. Kim Stanton, dated June 2025, entitled, "The British

Columbia Legal System's Treatment of Intimate Partner Violence and Sexual Violence", which can be found at the following link: https://www2.gov.bc.ca/assets/gov/law-crime-and-justice/about-bc-justice-system/justice-reform-initiatives/systemic-review/dr_kim_stantons_june_2025_final_report_-_independent_systemic_review__the_british_columbia_legal_systems_treatment_of_intimate_partner_violence_and_sexual_violence.pdf).

[179] Among other things, Dr. Stanton observes that, within the legal system, including the courts, there has been "a normalizing of gender-based violence in Canada that devalues it as crime." She adds that "[t]here is a need to underscore the prevalence of these forms of violence and the urgency required to address them" (at pp. 13-14).

[180] In *Ahluwalia*, the Ontario Court of Appeal began its judgment by stating as follows:

> Intimate partner violence is a pervasive social problem. It takes many forms, including physical violence, psychological abuse, financial abuse and intimidation. In Canada, nearly half of women and a third of men have experienced intimate partner violence and rates are on the rise. What was once thought to be a private matter is now properly recognized for its widespread and intergenerational effects.
>
> [Footnote omitted.]

[181] The facts of this case are particularly egregious. There is a residual need to denounce and deter that extends beyond the compensatory damages I have already awarded. J.K.P.'s counsel candidly stated in closing argument that her main objective in this litigation is to obtain title to 4704 and 1408 for herself. I have concluded that the interests of denunciation and deterrence can be satisfied in that manner. I am therefore awarding J.K.P., as punitive damages, the remaining balance that J.K.P. must pay L.S.B. to acquire his interest in 4704 and 1408, or $17,849.16.

E. Cost of Future Care

[182] J.K.P. seeks to be compensated for the anticipated cost of attending 24 therapy sessions at $200 per session, for a total of $4,800. In seeking that relief, she relies on the following recommendation by Dr. Rasmusen:

> I would recommend that she have ongoing supportive therapy until this separation agreement is made and that this should be every two weeks. I would then recommend that she have further supportive therapy on a monthly basis for an additional year.

[183] The principles to be applied in assessing such a claim were set out in *Schuetze*, as follows:

> [413] A plaintiff is entitled to compensation for the cost of future care based on what is reasonably necessary to restore them to their "pre-accident" condition, insofar as that is possible, and to preserve and promote their mental and physical health: *Milina v. Bartsch* (1985), 49 B.C.L.R. (2d) 33 at para. 182 (S.C.), aff'd (1987), 49 B.C.L.R. (2d) 99 (C.A.); *Spehar v. Beazley*, 2002 BCSC 1104 at para. 55, aff'd 2004 BCCA 290; and *Gignac v. Insurance Corporation of British Columbia*, 2012 BCCA 351 at paras. 29–30.
>
> [414] The test for assessing an appropriate award is an objective one, based on the medical evidence. An item of future care must be reasonable and medically justified, not medically necessary, to be recoverable: *Milina* at para. 211. An evidentiary link between the "physician's" assessment of pain, disability and recommended treatment and the care recommendations of a qualified health care professional is required: *Gregory v. Insurance Corporation of British Columbia*, 2011 BCCA 144 at para. 39.

[184] in *Campbell v. Swetland*, 2012 BCSC 423, Wong J. summarised the applicable principles as follows, at para. 198:

> There must be a medical justification for claims for cost of future care. ... The expense should not be a squandering of money. In considering any particular item of future care, the test is whether a reasonably minded person of ample means would incur the expense. …
>
> The weight to be given to an opinion on future care will depend on the extent to which recommendations for things like psychological counseling and physiotherapy are supported by the evidence of experts within the relevant field of expertise. …
>
> Awards for cost of future care must be reasonable, both in the sense of being medically required and in the sense of being costs that, on the evidence, the plaintiff will be likely to incur. …

[185] It has also been held that there should also be evidence that the plaintiff is likely to make use of the recommended treatment: *O'Connell v. Yung,* 2012 BCCA 57; *Langille v. Nguyen,* 2013 BCSC 1460.

[186] The evidence falls short of establishing J.K.P.'s entitlement to such damages. She did not testify that she would in fact attend any future therapy sessions. Also, there was no evidence to support the alleged cost per session. I am therefore refusing to award any damages in this category.

F. Health Care Recovery Costs

[187] J.K.P. seeks an order that the Minister of Health be awarded $779.75 for health care costs incurred because of L.S.B.'s tortious conduct, relying on the certificate issued under s. 16 of the *HCCRA* that was entered into evidence. L.S.B. made no submissions in opposition to such an order. I am therefore granting it.

VI. Summary and Conclusion

[188] In summary, I am making the following orders:

a) The appeal is allowed, with the result that the order absolute is set aside and the redemption period extended until the division of property called for by this order is completed;

b) J.K.P.'s mid-trial applications to amend the notice of family claim and the notice of civil claim are allowed, subject to the exception set out above;

c) J.K.P.'s financial claims in the *FLA* action and the civil action are to be satisfied entirely by a transfer of title to 4704 and 1408 into her name alone, for no other consideration, and the financial claims in those actions are otherwise dismissed;

d) After that transfer of title is complete:

i. J.K.P. will be solely responsible as between the parties for the mortgage charging 4704, and will indemnify L.S.B. for any liability he may have in relation to it; and

ii. J.K.P. will redeem the MIC mortgage by paying S.S.P. $113,157.29;

e) J.K.P. is granted a permanent protection order in the terms sought, with an exception to allow L.S.B. to have contact with H.B. if H.B. initiates it;

f) The divorce is granted, subject to procurement of the requisite certificate of pleadings; and

g) The Minister of Health is granted judgment against L.S.B. in the amount of $779.75.

[189] I am making no order as to costs at this time. If any of the parties wish to pursue an award of costs, they may do so by delivering written submissions on costs to my attention through Supreme Court Scheduling, copied to the other parties, within 30 days of the release of these reasons for judgment. The other parties will have 30 days after receipt to deliver a reply submission on costs in the same manner.

“Milman J.”