

SUPREME COURT OF YUKON

Citation: *MJA v VSBC*,
2025 YKSC 17

Date: 20250422
S.C. No. 22-D5460
Registry: Whitehorse

BETWEEN:

M.J.A.

PLAINTIFF

AND

V.S.B.C.

DEFENDANT

Before Chief Justice S.M. Duncan

Counsel for the Plaintiff

Paul Di Libero

Appearing on his own behalf

V.S.B.C. (by videoconference)

REASONS FOR DECISION

Introduction

[1] This is a case about a couple who had a short marriage that ended very poorly. While there were some initial good times, shared dreams, and mutual attraction, much of the relationship was characterized by unmet expectations and erroneous assumptions that led to misunderstandings, frustrations, hurtful behaviour, emotional cruelty, unhealthy power dynamics, physical violence, and criminal charges.

[2] The plaintiff, M.A., currently lives in Dawson City, Yukon, with her young son. The defendant, V.C. has been deported to his home country of France. This trial was about the division of shared property in the context of a marriage agreement, non-

pecuniary damages sought by M.A. for the torts of assault, battery, and intentional infliction of mental or emotional distress, including aggravated and punitive damages, pecuniary damages for loss of employment earnings, a restraining order for no contact with M.A. and her son and to prevent V.C. from entering the Yukon, divorce, and special costs.

[3] The evidence in this trial consisted of affidavits from both parties filed for the purpose of earlier applications, documents attached as exhibits to those affidavits, evidence from witnesses at trial, additional documents introduced through those witnesses, and an agreed statement of facts.

[4] I have reviewed and considered all of the evidence in coming to my conclusions in this case, but I have not referenced in this decision every piece of evidence relevant to those conclusions.

Overview

[5] The following overview comes from the non-contested facts introduced through the evidence.

[6] M.A. and V.C. met in Yellowknife, Northwest Territories, through an on-line dating application in January 2020 and began dating in February 2020. M.A. is a Canadian citizen and has a son, I.A., born in Berlin, Germany in 2012, for whom she has sole custody and caregiving responsibilities. M.A. has two Bachelor of Arts degrees from the University of Saskatchewan and Humboldt University. She completed a Master's degree in 2016 in Psychological and Environmental Anthropology. She was raised in Saskatchewan and lived in Berlin, Germany for 13 years, where she studied, worked, and raised her son. She returned to live in Canada in 2017 after the breakdown

in the relationship with her son's father. Initially, she lived and worked in Saskatchewan, where she bought a home. She then moved to Yellowknife, in 2020, for an employment opportunity as a Curriculum Specialist for the Government of the Northwest Territories. She is of slim build.

[7] V.C. is a citizen of France. At the time the parties met, he was legally working and residing in Canada through a work permit arranged through his employer at Arctic Farmer in Yellowknife. He also worked at Aurora Geoscience in Yellowknife. At the time the parties met, he lived in a tiny home on his employer's property. While in France, he served in the French army. He also has experience in martial arts. He is of muscular, athletic build.

[8] The relationship progressed quickly. The parties began living together in March 2020 and were married in Asessippi, Manitoba, on August 1, 2020. M.A. financed the wedding. Once they were married, M.A. sponsored V.C. for permanent residence status in Canada under the Spousal Sponsorship Program. He cancelled the permanent resident application he had been pursuing through his employer, Arctic Farmer.

[9] Soon after they were married, M.A. and V.C. decided to move together from Yellowknife to the Yukon. V.C. surrendered his work permit connected to his employer in Yellowknife. In December 2020, they arrived in Marsh Lake, Yukon, where they rented a cabin. During the following months there were several altercations between the couple that escalated into physical violence.

[10] On May 31, 2021, the parties signed a marriage agreement that set out among other things the separate property for each of them, their shared property, how contributions to shared property would be calculated and how the property would be

divided on separation. The marriage agreement was motivated in part by M.A.'s decision to sell her property in Saskatchewan and to use the proceeds to obtain a Farm Credit of Canada ("FCC") loan to buy a property near Dawson City.

[11] V.C. and M.A. decided to buy an undeveloped rural land parcel near Henderson Corner, approximately 20 kilometres south of Dawson City, using M.A.'s finances. They discussed its potential as a base for a tourism business involving horseback riding and dogsledding. M.A. purchased the property, obtained title in her name, and took possession of it on June 11, 2021. V.C. moved there first and M.A. and her son followed shortly after on June 18, 2021.

[12] V.C., M.A. and her son initially lived in tents on the property, and after a few months moved into a yurt bought by M.A. They acquired sled dogs while living there.

[13] In Dawson City, M.A. worked as a writer for the Yukon First Nations Education Directorate and an instructor for Yukon University. V.C. had been working as a carpenter in Marsh Lake. While in Dawson City, he spent his time working on developing the property; helping a placer mining friend work on his property (June, July 2022); working as a landscaper (July, August 2021); cutting wood (November, December 2021); and working with a firesmart/snow removal crew (January – April 2022).

[14] During the summer of 2021, there were two more altercations between M.A. and V.C. that became physically violent. In addition, in December 2021, V.C. pushed I.A. while he was hitting a puppy on its head. In May 2022, V.C. and M.A. were walking while I.A. was riding his bike and V.C. kicked I.A.'s bike.

[15] On New's Year Eve and day in December 2021/January 2022, and over the following few days, V.C. told M.A. he was staying in the relationship with her only because she was sponsoring him for Canadian permanent residence status.

[16] Shortly after this, M.A. reported to the RCMP two alleged assaults by V.C. on her from the summer of 2021, and the alleged assault on I.A. in December 2021. V.C. was arrested on January 11, 2022, and charged with three counts of assault. He was released from custody on conditions which included a no contact undertaking with M.A. and her son. He has admitted to having contact with M.A. while the undertaking was in effect. He returned to live at the Dawson property, with M.A.'s permission, as they decided to work on their relationship.

[17] As of June 2022, V.C. was no longer sponsored for permanent residence status by M.A. because she reported to Immigration that the marriage was for immigration purposes.

[18] Just before V.C. went on a solo canoe trip in July 2022, he and M.A. had sexual relations. M.A. says she was sexually assaulted; V.C. says it was consensual. No charges were brought. On his earlier than anticipated return from his canoe trip on July 31, 2022, VC went to see M.A. at the Dawson property. That same day he was arrested, taken into custody, and charged with two counts of breaching the no contact undertaking. The parties separated the day of this arrest.

[19] In December 2022, V.C. was tried for the charges of assault and breaches of the no contact undertaking. He was found not guilty of the assault charges on February 1, 2023, and guilty of the breach charges. He was given a conditional discharge and a

probation order including a no contact order with M.A. and her son for a period of two years.

[20] Arrangements were made for V.C. to retrieve his personal belongings from the Dawson property through the RCMP in Dawson City. There was confusion about the arrangements, requiring several road trips by V.C. between Whitehorse and near Dawson City.

[21] V.C. was removed from Canada in March 2023. He has not returned, nor has he had any contact with M.A. except through this court process. He has had no contact with I.A. He expressed an intention to return to the Yukon but consents to a no contact order with M.A. for the remainder of his lifetime. He further consented to not contacting I.A. but would like to be able to respond to I.A. if he chooses to contact him.

Issues

[22] There are two primary areas of claims to be decided in the case. The first is the property division; the second is the damages claim for assault, battery and intentional infliction of emotional distress.

[23] To determine the property division, the first issue is the effect of the marriage agreement. The second issue is the valuation of the various property items to be divided.

[24] To determine the damages claim, the first issue is a factual finding about M.A.'s injuries, their cause and extent. The second issue is the amount of any compensation that may be payable.

[25] The final issues are the loss of M.A.'s employment earnings; the extent of the restraining order requested – that is, whether it can extend to prevent VC from entering the Yukon; and the divorce.

I. Division of Property

[26] M.A. seeks an unequal division of property despite the marriage agreement and the statutory requirement that family assets are generally divided equally when a married couple separates. Her rationale is two-fold – first, the marriage agreement, although initially fair and reasonable, became unfair over the course of the marriage because the relationship did not develop as anticipated, and justifies unequal property division. Second, she paid most of the expenses in the relationship - day-to-day household daily living expenses; V.C.'s credit card personal expenses; and monetary investments for the development of the Dawson property. She claims this inequitable contribution entitles her to an unequal division of property. M.A. did not argue for a specific number.

[27] V.C. in his counterclaim seeks financial compensation for his dogs, compensation for the monies spent in buying materials for the Dawson property, compensation for the increase in value of the property due to his work, and his share of the financial contribution to the Toyota Tacoma and the trailer. V.C. also seeks costs of his lawyer and rental vehicle to drive from Whitehorse to Dawson City three times to attempt to retrieve his belongings in February 2023, while there was a no contact order in place with M.A.

Brief Conclusion on Property Division

[28] The marriage agreement applies. V.C. is entitled to \$2,880 for the truck, \$1,125 for the trailer, \$14,510 for his contribution to the Dawson property, and \$2,674.74 for the dogs. There is insufficient evidence to determine which of his personal belongings he did not receive, and their value. V.C.'s claim for reimbursement of expenses to retrieve his belongings is denied.

[29] M.A. is entitled to \$4,000 from the sale of the horse to reimburse her for its purchase.

Analysis of Property Division***Issue 1 - Effect of Marriage Agreement***

[30] The first question is the applicability of the marriage agreement to the division of property.

[31] A marriage contract is defined in the *Family Property and Support Act*, RSY 2002, c. 83 (the "Act"), as an agreement between two persons entered into before their marriage, or during their marriage while cohabiting, in which they agree on their respective rights and obligations under the marriage or on the breakdown of their marriage, including (a) ownership in or division of property, (b) support obligations, and (c) any other matter in the settlement of their affairs. The marriage contract governs any matter provided for in the *Act*, unless a court is satisfied that the person has, through undue influence, secured the agreement of their spouse to any provision in the marriage contract (s. 6).

[32] In this case, the parties entered into a marriage agreement on May 31, 2021, after they had been married for approximately 11 months and cohabiting for 14 months.

The marriage agreement was suggested by M.A. Both parties were legally represented during this process. Neither party alleges duress or undue influence at the time of signing. Both parties ask that the agreement be applied to the division of property in this case.

[33] However, counsel for M.A. asks the Court to exercise its discretion ‘on the smaller items’ and award an unequal division of assets in favour of M.A., after applying the factors set out in s. 13 of the *Act* as though there were no marriage agreement in effect. Section 13 allows the Court to make an unequal division of family assets after considering such things as any agreement other than a marriage contract, the duration of the marriage cohabitation, the duration of the separation, the date the property was acquired, the existence of an inheritance or gift, any other circumstance relating to the property and the date of valuation of the family assets.

[34] The basis for counsel’s argument appears to be the decision in *Hartshorne v Hartshorne*, 2004 SCC 22 (“*Hartshorne*”), where the Court applied s. 65 of the *Family Relations Act*, RSBC 1996, c. 128 (“*FRA*”). This section provides a court can order an unequal division of assets where there is unfairness in the marriage agreement. The Supreme Court of Canada stated that a court applying s. 65 should take into account how the marriage unfolded, especially if it did not turn out as contemplated or expected, and this unexpected development creates an unfairness. Any unfairness then supports an unequal asset division. In other words, if the party had known at the time of signing the agreement that circumstances would unfold as they did, they would not have agreed to the terms of that marriage agreement. The unforeseen circumstances made the original marriage agreement provisions unfair.

[35] *Hartshorne* is distinguishable from this case because it is interpreting a different statutory regime. Section 65 of the *FRA* permits more expansive court intervention than the Yukon statute. It allows the court to determine whether a marriage agreement is unfair. The Yukon statute confines the ability of the court to override the terms of a marriage agreement only if there is a finding of undue influence by one of the parties with respect to the agreement at the time of signing (s.2(4)). Section 13 of the *Act* dealing with unequal division of assets does not include the ability to consider a marriage agreement. As a result, the Supreme Court of Canada's decision in *Hartshorne* permitting the court under the *FRA* to intervene and exercise discretion to determine whether unfairness of the marriage agreement exists not only at the time of the signing of the agreement, but also at the time of the court application, cannot apply in the Yukon.

[36] In this case, neither party alleges undue influence. While counsel for M.A. suggests that undue influence of M.A. may have developed over time in the relationship due to the coercive control she describes, the unexpected negative developments in the marriage cannot be used in the context of the Yukon statutory scheme to set aside part of the marriage agreement.

[37] Further, contrary to what was suggested by counsel for M.A., the decision of *JAC v VRC*, 2015 YKSC 15, is not applicable here, because a marriage agreement exists. In *JAC v VRC*, there was no marriage agreement. The factors in section 13 of the *Act* could therefore be considered in a determination of unequal division of assets.

[38] I also note that when the marriage agreement was signed in May 2021, there were already challenges in the relationship. M.A. had experienced some 'red flags' early

on in the relationship, before they moved to the Yukon – V.C. had never had a long term relationship; he became unjustifiably angry with M.A. on an overnight ski trip in Yellowknife and temporarily abandoned her at their camp; and he said as they were driving to the Yukon that he wished he were going there on his own and not with M.A. and her son. M.A. described three difficult incidents while they were living in Marsh Lake, several months before the marriage agreement was signed. Her friend and neighbour Katherine Sandiford testified that she feared for the safety of M.A. and I.A. after hearing the description of the interactions with V.C. and seeing their effect on M.A. Part of M.A.'s motivation for entering into a marriage agreement was her concern for her financial vulnerability before selling her Saskatchewan property and purchasing the Dawson property, in the context of a relationship that was showing cracks.

[39] The marriage agreement specifically states (Recital K) that the agreement is in place of and prevails over the rights, interests, and provisions of the *Act*, the *Divorce Act*, RSC 1985 c.3 2nd supp., the *Estate Administration Act*, RSY 2002, c. 77, and the *Dependant's Relief Act*, RSY 2022, c. 56, as well as the common law of equity and unjust enrichment.

[40] As a result, I find the marriage agreement applies to the property division in this case.

[41] The marriage agreement contains the following provisions governing property division:

- M.A.'s separate property set out in Schedule A remains her separate property during the relationship and after it ends and V.C. gives up any claim to it. Schedule A includes her 2017 Ford Escape, her pensions,

RRSP, TFSA, Savings and Chequing accounts, and the Dawson property (Recital M and Schedule A).

- V.C.'s separate property set out in Schedule B remains his separate property during the relationship and after it ends, and M.A. gives up any claim to it. Schedule B includes a kayak (Recital O and Schedule B).
- Any property acquired by either party during the relationship is the separate property of that party unless it is registered in both parties' names with the written consent of both parties, in which case it is shared property, or the parties record in a written signed agreement that the property is shared property. (s. 5.3.2).
- Shared property is set out in Schedule C and includes the Toyota Tacoma (\$14,000 value), 16-foot Flat Deck Trailer (\$3,000 value), and a horse (\$4,500 value) (Recital P and Schedule C).
- Ownership of shared property is in the same proportion as the contribution made by each party (s. 5.3.3). Contribution means a direct financial contribution and does not include value for labour unless otherwise agreed in writing (s. 5.3.4).
- When shared property is sold, the net proceeds, if any, will be divided between the parties in proportion to their ownership as determined under s. 5.3.3. – that is, the same proportion as the direct financial contribution made by each party (s. 5.3.7).

- At the end of the relationship, all shared property shall be divided in proportion to the respective contributions of each party as defined in s. 5.3.3. (s. 5.5.5).
- If one party intends to retain shared property to the exclusion of the other, that party shall compensate the other for their interest in the shared property based on their direct financial contribution to it as defined in s. 5.3.3. (s. 5.5.6).
- The Dawson property, although M.A.'s separate property, is subject to V.C.'s entitlement to a share of its value based on his labour (s. 6.1) in certain circumstances. If the relationship ends before the substantial completion of the construction of the main residence, V.C. is entitled to a proportionate share of any increase in value his labour has contributed to the property's increase in value.
- At the end of the relationship, all of M.A.'s separate property remains her separate property and all of V.C.'s separate property remains his separate property (s. 5.5.2).
- Neither party shall claim an interest in or right to compensation with respect to the separate property of the other, and neither party will make a claim based on the law of trusts or unjust enrichment, the *Act* or other similar legislation, whether or not the property was used for a family purpose, or any direct or indirect contribution to property owned by the other (s. 5.5.3).

- Each party is solely responsible for the debts and liabilities described in Schedules A and B (none listed) and neither party is responsible for any past, present, or future debt or liability of the other (ss. 5.2.1., 5.2.2, 5.2.3).
- Each party agrees that he or she is capable of supporting himself or herself, both at the time of the agreement and in the future, notwithstanding any change of circumstances; there is no express or implied agreement that either party has a responsibility to support or maintain the other; and neither party will claim interim or permanent support or compensatory support from the other and each gives up forever any claim for support, whether contractual, compensatory or non-compensatory against the other (ss. 7.1, 7.2, 7.3, 7.4).

Issue 2 – Valuation of property

[42] The property division to be decided according to the marriage agreement consists of the shared property of the Toyota Tacoma and the trailer. The horse, listed as shared property, was sold during the relationship and there is a dispute about who received the proceeds of sale, which I will address as well.

[43] Although the dogs were not listed on the schedules to the marriage agreement, because most had not been acquired at the time of signing, they were property that must be characterized as separate or shared property under the marriage agreement. The degree of contribution of V.C. to the Dawson property must also be decided.

[44] V.C., in one of his affidavits, provided a list of his personal belongings prepared by M.A.'s counsel and his counsel at the time that he says he acquired as separate property during the relationship and left at the Dawson property. The list includes

reasons and comments from both parties about each item. He also included his own list of items he claimed he left at the property, which is different from counsels' list. V.C. claimed some items have been returned via the RCMP to V.C., but not all. The assessment of which items have not been returned, and their value remains outstanding.

[45] V.C. also claims the costs of hiring a lawyer to assist with retrieving his belongings, and the costs of renting a car and driving to Dawson three times to retrieve his belongings, when one trip should have been sufficient, according to him.

Horse

[46] The horse, shared property, was bought by M.A. for \$4,500, in January 2021, as evidenced through her financial statements. She also paid for board at \$200 per month beginning in April 2021, for an unknown number of months. V.C. says he paid for the initial transport of the horse at an unknown time, in the amount of \$1,050. M.A. says she is not sure who paid for the transportation but provides no evidence that she did.

[47] The horse was sold by V.C. for \$4,000. M.A. says V.C. kept the sale proceeds; V.C. says he divided the proceeds equally with M.A. There is no evidence of the date of the sale or receipt of the proceeds.

[48] There is no evidence in any bank or credit card statements to support either claim that the sale proceeds were split or not, only the parties' assertions. However, given the purchase price and the sale price, M.A. is entitled to the entire amount of the \$4,000 in sale proceeds. The marriage agreement provides the proceeds of sale of shared property are split on the basis of each party's direct financial contribution towards ownership (s.5.3.7). M.A. paid the full \$4,500 purchase price of the horse.

[49] Given V.C.'s overall inferior financial contribution during the marriage combined with the absence of any evidence that he paid half of the horse sale proceeds to M.A, I do not accept his assertion on its own. V.C. owes M.A. \$4,000 for the horse.

Toyota Tacoma

[50] The 2003 Toyota Tacoma was purchased in October 2020 for \$14,000. M.A. paid \$11,000 and V.C. paid \$3,000. V.C. also bought a topper/cab for \$500 and transferred his winter tires from another vehicle to the Tacoma.

[51] M.A. provided no value of the Tacoma on separation. V.C. provided the Kelley Blue Book value of \$15,711, attached to his March 1, 2023 affidavit. M.A. disputes this value because she said the Tacoma was damaged during a trip up the Dempster and has lost value. She provided a receipt for \$1,445 for repairs in Dawson in October 2022 after that trip, and a receipt for \$297.03 dated December 2022 for further repairs. After separation, M.A. paid for more repairs in the amounts of \$1,686.35 and \$4,049.11. She did not provide a specific number representing the current value of the truck.

[52] V.C. agreed that the right rear axel was leaking as a result of the Dempster trip but insisted the truck has retained its book value. He said he spent \$3,631 on parts for the vehicle, including to fix the rear axle leak.

[53] Repairs and maintenance are not accounted for in the consideration of contributions towards property in the marriage agreement; only direct financial contributions towards ownership are relevant.

[54] Given the absence of an actual number value for the truck except the book value on the date of separation (July 2024), I will apply that number to its value. There is no dispute that there was some damage to the truck during the trip up the Dempster, and

the cost of repairs indicate a likely loss of some value. I will reduce the estimated value to \$12,000 at the date of separation. Each party is entitled to a proportionate share of their contribution to the purchase price in 2020 – i.e. \$9,120 (76%) to M.A. and \$2,880 (24%) to V.C.

Trailer

[55] The initial cost of the trailer is not clear. M.A. said in answer to an interrogatory that she paid \$2,500 for the trailer. V.C. said he paid \$1,500. There is no evidence of the trailer's value on separation; M.A. said depreciation may have occurred but provided no evidence of that amount.

[56] I accord a value of \$3,000 for the trailer. According to the marriage agreement, V.C. is entitled to his proportionate share of direct financial contribution which is \$1,125.

Dogs

[57] At law, dogs are considered personal property:

Dogs are personal property much like other chattels (albeit indivisible), even when purchased during the course of a relationship. The question is one of ownership, not who wants the dog more, who loves the dog more or who would be the best owner. (Carvalho v Verma, 2024 ONSC 1183 at para. 24.)

At one time M.A. and V.C. had nine dogs. Klondike was M.A.'s dog, acquired before the relationship. V.C. sold Alaska during the relationship and is not claiming any compensation for Klondike or Alaska.

[58] V.C. claims compensation for Ulu, Ivavik, Jak, Tuk, Torngat, Altai, and Ogilvie. He claims \$500 per dog to cover their purchase and transport as well as \$10,000 for the food costs.

[59] V.C. purchased Ulu in September 2021 for \$300 and paid \$315 for transportation and \$80 for a crate. He paid an unknown amount for vaccination. M.A. said she paid \$134.84 for transportation of Ulu.

[60] V.C. was gifted Ivavik in the spring of 2022 and paid \$457.50 for a crate and transportation.

[61] V.C. purchased Jak and Tuk in June 2022 for \$250 each and paid \$768.58 for crates and shipping and \$388.50 for boarding for both.

[62] V.C. and M.A. acquired Torngat, Altai and Ogilvie from Silas Smith in the fall of 2021. V.C. said the pups were provided to both him and M.A.

[63] M.A. still had Ulu, Jak, Tuk, Ivavik, Ogilvie, and Klondike as of March 3, 2023 in her care. Torngat and Altai were rehomed in July 2022, after the date of separation and while V.C. was incarcerated, because they became unmanageable. Also, after the separation, M.A. gave Ulu to the Humane Society. M.A. said she could not give Ulu back to V.C. at the time he could have taken her as Ulu was feeding a litter of puppies then.

[64] M.A. does not dispute V.C.'s purchase and transport of Ulu, Jak, Tuk and transport of Ivavik. She disputes Ogilvie was given to him or both of them; saying Silas Smith gave Ogilvie (and the other two dogs now rehomed) to her alone in September 2021, supported by a produced note to this effect dated February 13, 2023, and signed by Silas Smith. M.A. says she and Silas Smith became good friends, shortly after she moved to Dawson in June or July 2021.

[65] V.C. relies on the marriage agreement provisions to support his claim that Ulu, Jak, Tuk, Ivavik were all his separate property, for which he is entitled to financial

compensation. He said the dogs were his idea, he provided care for them, and he has an emotional attachment to them. There was no written agreement between the parties to show that the dogs were shared property.

[66] V.C. further said that Torngat, Altai, and Ogilvie were shared property. He explained that he knew Silas Smith first, having met him in Resolute Bay years earlier, and arranged to obtain pups from Silas Smith's remaining female Greenland dog. He introduced Silas Smith to M.A. once the arrangement was made, and he agreed that M.A. and Silas Smith became friends. Silas Smith gifted the three dogs to both V.C. and M.A. V.C. disputes the veracity of the note signed by Silas Smith and provided by M.A.

[67] M.A. said she did not understand that the dogs were considered property when the marriage agreement was drafted. She seeks to keep the remaining dogs, which is now the only realistic alternative given V.C.'s deportation to France. She objected to the payment of any compensation to V.C. because of the money, time, and emotional investment spent by her on the dogs. M.A. stated she paid for most of the vet bills for the dogs and was left to take care of them alone while V.C. was away. A chart attached to one of M.A.'s affidavits showed invoices in her name from the vet of \$386.90 in January 2022, and \$338.68 in June 2022. No supporting receipts for those payments were provided. There is evidence of receipts for payment of vet bills by her of \$138.60 in April 2022; \$187.30 in Dec 2022; \$119.70 in August 2022, the latter two both after the separation date.

[68] V.C. provided a vet bill addressed to him for \$197.42 from July 2022, without a receipt showing payment, and said he paid for other vaccinations of dogs by cash and has no receipts.

[69] V.C. provided evidence of a \$1,054.20 payment by him for food in October 2021 and \$3,508 in May 2022. M.A. said he sold the dog food on Front Street in Dawson City and so it was not money spent on their dogs. No date is provided as to when this alleged sale occurred. V.C. said the food he bought in May 2022 could have fed the dogs until the fall of 2022. M.A. provided evidence of a payment of \$2,367 in October 2022 for food, after the separation date.

[70] The marriage agreement applies. The dogs at issue were all obtained after the marriage agreement was signed in May 2021. Although the marriage agreement was never amended to include the dogs in the schedules as either separate property or shared property, I find that they were all shared property. V.C. initiated the purchases or the gifts of the dogs. This is consistent with the evidence of both M.A. and V.C. who said it was his dream to have a dog team and a dogsledding and horseback riding tourist business. But both M.A. and V.C. cared for and fed the dogs, although they disagree on the contribution of each. I accept that M.A. grew to love the dogs and invested time and money into caring for them.

[71] I accept V.C.'s evidence that he arranged for Silas Smith's Greenland dog to be bred, and that Silas Smith gave the resulting pups to both V.C. and M.A. The note Silas Smith wrote in 2023 saying he gave the pups to M.A. alone in 2021 was done to support M.A. He was a close friend and confidante of M.A., according to both V.C. and M.A. M.A. further testified that Silas Smith did not like V.C. and was sympathetic to M.A.'s situation.

[72] The marriage agreement provisions related to shared property apply. V.C. is entitled to financial compensation from M.A. representing the amount he spent to

acquire the dogs, less any amount she paid towards transportation –\$2,674.74. He is not entitled to reimbursement for food costs, as that is not covered in the marriage agreement and both parties in any event contributed to the food costs.

V.C.'s contribution to Dawson property

[73] Both parties agreed that M.A. would purchase the vacant property with the monies from the sale of her property in Saskatchewan. They further agreed she would pay for the materials for the development of the land including building the various structures. V.C. would provide the labour either by doing the construction himself or managing the construction.

[74] This division of payment of costs and labour was reflected in the marriage agreement (s. 6.1). The Dawson property was characterized as M.A.'s separate property (s. 6.1).

[75] As noted, V.C. wanted to use the Dawson property for a tourism business including dogsledding and horseback riding. Although initially agreeing with this, M.A. had to ensure they had a farming business – greenhouse, honeybees, mushrooms, and chickens - because of the FCC loan conditions. This difference in priority between the two of them was a source of conflict and stress. For example, V.C. wanted to build a pad for a horse barn, not in the plan presented to FCC or in M.A.'s budget. They eventually gave up on the horseback riding aspect of the business but still intended to pursue dogsledding.

[76] When they first moved to Dawson in June 2021, they lived in tents. Building a more permanent structure for living was a shared priority. M.A. ordered a yurt, but it became stuck on a ship during the pandemic and did not arrive when expected. As

winter was approaching, M.A. ordered and paid for a cabin to be delivered to the property. They lived in the cabin only for a day, because the yurt then arrived. The cabin needed renovation work before it was habitable for a longer term.

[77] V.C. described his work on the Dawson property as follows:

Summer 2021

- cut trees to clear the land for the driveway and living area, and built a pad for construction and area for the dog kennels; and
- built the floor/pad for the yurt.

Summer 2022

- began renovations of the cabin M.A. bought by stripping everything down to the insulation, replacing the logs, and redoing the roof;
- improved the sauna;
- built a raised garden bed; and
- began building a paddock for the horse.

[78] M.A. described V.C.'s work as follows:

- clearing trees – he cut and she stacked;
- built a pad for the yurt with her help; and
- drafted a blueprint for the sauna (for the mushrooms and the honeybees) and began to build it with her help (sauna was completed by a contractor).

[79] In describing the work V.C. did on the property, M.A. omitted in her testimony in chief V.C.'s contribution to the cabin renovation. In cross-examination however, she confirmed that she helped V.C. cut insulation; measured; stapled plastic vapour barrier; used hammer and nails and a screwdriver. I infer that these activities related to the

cabin renovations. M.A. confirmed in cross examination that the cabin is now on the pad that was built by V.C. (for the yurt). As a result, there are not significant differences in their respective descriptions of the work he did. M.A. left out in her listing the work on the gardening bed and the horse paddock.

[80] The marriage agreement provides in s. 6.2: If the relationship ends prior to substantial completion of the construction of the main residence on the Dawson property, V.C. shall be entitled to a proportionate share of any increase in value his labour has contributed to the property's increase in value.

[81] M.A. argued there was no value added to the property as a result of his labour.

[82] V.C. argued he should be reimbursed for the \$14,510.33 he spent on construction materials and tools for building on the property – including costs for five water barrels, three water tanks and tin roofing sheets. He further argued that he contributed his time and labour to partially develop the property and deserves compensation under the marriage agreement.

[83] Section 6.2 of the marriage agreement applies, as the relationship ended before substantial completion of the construction of the main residence. There is no provision in the marriage agreement for reimbursement to V.C. for expenditures on materials for the residence.

[84] However, V.C.'s clearing of the land, building of the pad, help with the sauna, work on the gardening bed and initial renovation work on the cabin contributed to the increase in value of the property. No monetary value was introduced into evidence to represent this value.

[85] I find that reimbursement of the \$14,510.33 that V.C. spent on tools and materials, to compensate him for the labour he provided is a compromise solution. This amount is characterized as the increase in the value of the property from his labour.

Personal belongings of V.C.

[86] V.C. claimed he did not receive all of his personal belongings as requested through his lawyer. The chart prepared by the parties' respective lawyers and submitted as evidence contained disagreements about the nature of the belongings and whether or not they were returned. V.C. provided evidence in his affidavits of the specific items and their value. M.A. did not respond by way of affidavit or oral testimony to the claims of V.C.

[87] On a review of the list prepared by counsel, I find that the reasons provided by M.A. for not being able to find the items, strain credulity. For example, she stated that V.C. abandoned a tent, canoe, sleeping bag and other camping supplies in Fort Macpherson after his canoe trip in July 2022. V.C. disputes all of this. I agree with him that there was no reason for him to have abandoned items after his canoe trip, and that he did not have one of the items with him that M.A. claimed he had abandoned because it was a winter sleeping bag. For many other items listed, M.A. inserted a question mark on the list, and for all of those, V.C. provided a location for the item. In a previous application, V.C. asked for a return of a paddle that he could see from the R.C.M.P. photo taken of his belongings, that had not been brought to the R.C.M.P. detachment with his other belongings. After the Court directed M.A. to retrieve it, she did so and brought it to the detachment. This supports V.C.'s claim that he has other belongings still there that have not been returned.

[88] V.C. claims a value of \$5,101.98, of personal belongings not returned to him. These are supported by extensive documentation in one of his affidavits of the costs of times and expenditures. However, I also accept the evidence of M.A. that she paid several of V.C.'s credit card debts, some of which included his expenditures on personal gear. I will therefore award V.C. half of the amount he claims for his personal belongings that were not returned - \$2,550.99.

Costs of two rental cars and legal fees for retrieval of belongings

[89] Legal costs for this entire matter will be spoken to in case management if the parties are unable to agree. I will make no ruling at this time on the reimbursement of legal fees for V.C.'s lawyer.

[90] A rental van was needed for V.C. to go to Dawson and retrieve belongings from the R.C.M.P. because of the no contact order, because he was on probation, and because he was facing deportation. Involvement of several third parties- probation officer, R.C.M.P., Victim Services – was required. Just before the first date that V.C. was to come to Dawson, February 18, 2023, M.A. was advised by the R.C.M.P. that V.C. was arriving to retrieve his guns from the R.C.M.P., in order to sell them and he was travelling without a letter from his probation officer. This scared her so she did not bring the belongings to the detachment in the hope that he would not come to Dawson. V.C. was part way to Dawson, and returned to Whitehorse when he received the message from the R.C.M.P. that they did not have his belongings. V.C. testified the R.C.M.P. were clear with him that he could not have his guns back and further, that he planned to be dropped off 100 kilometres away from Dawson. M.A. did drop off his

belongings at the detachment on March 2, 2023. V.C. retrieved them at some point. The evidence is unclear as to why he had to return a third time to Dawson for this purpose.

[91] I deny this request for reimbursement of costs of the rental van. The additional trip was a result of miscommunication, a justifiable concern of M.A. related to the guns, and the situation that V.C. was in as a result of his probation order after conviction of the breaches in Territorial Court.

II. Torts of Assault, Battery and Intentional Infliction of Emotional Distress

[92] M.A. claims damages in the amount of \$200,000 for the torts of assault, battery and intentional infliction of mental suffering, and loss of past employment earnings. The employment claim will be assessed separately below. M.A. did not break down the amount other than to claim \$150,000 in general damages, and \$50,000 in aggravated damages.

Law of intentional torts and damages

[93] The Ontario Superior Court in *Constantini v Constantini*, 2013 ONSC 1626 (“*Constantini*”), noted tort actions for domestic violence are becoming more commonplace in family law, because of increased public awareness and society’s desire to condemn the behaviour. It is not sufficient for the conduct at issue to reflect a dysfunctional relationship; instead, it must reach the level of tortious behaviour.

[94] Tort claims of physical violence may be in battery or assault. The underlying policy of both torts is the reduction of violence.

[95] Battery has been described as an intentional harmful or offensive contact with another person, without that person’s consent (*Constantini* at para. 30). A battery may occur when no harm is intended; the intention is confined to the contact. The contact

must be more than of a trivial nature. The person allegedly battered must prove on a balance of probabilities that the misconduct occurred, but it is not necessary to prove fault or negligence.

[96] Assault is the intentional creation of the apprehension of imminent harmful or offensive contact (*Constantini* at para. 46). The victim must prove this on a balance of probabilities. The tort of assault protects victims from fear of being physically interfered with.

[97] An assault can occur without battery – for example, swinging at someone and missing – and battery can occur without an assault – for example, hitting someone from behind, without their knowledge (*Constantini* at para. 30). Conduct that intentionally arouses apprehension of an imminent battery constitutes an assault.

[98] Self-defence can be a legal justification for applying force to another person. “However, the degree of physical force used must be reasonable and proportionate to the harm threatened and must be in response to an unprovoked assault and battery.” (*Barreto v Salema*, 2024 ONSC 4972 (“*Barreto*”) at para. 261). The onus of proof on a balance of probabilities lies with the person relying on the defence.

[99] The tort of intentional infliction of emotional distress does not have to include physical contact. For a successful claim of intentional infliction of mental suffering or emotional distress, the following three elements must be proved on a balance of probabilities: i) flagrant or outrageous conduct; ii) calculated to produce harm; and iii) resulting in a visible and provable illness (*Constantini* at para. 41, quoting *McLean v Danicic* (2009), 95 OR (3d) 570 at para. 85). The third factor has now been interpreted to require that the illness is “serious and prolonged and rise[s] above the ordinary

annoyances, anxieties and fears that people living in society routinely, if sometimes reluctantly, accept” (*Barreto* at para. 170) and not necessarily a medically diagnosed psychiatric disorder. “Another way to put it is that clinically significant psychological impairments of the victim’s functioning (in one or more of the functioning domains) will satisfy the requirement of a visible and provable illness. The court may infer the requisite intent for this tort where the perpetrator wishes for the consequences that follow the act or if the consequences are known to be substantially certain to follow” (*Barreto* at paras. 170-1).

[100] Courts can consider the context of the relationship and pattern of behaviour causing harm when assessing the elements of this tort (*Ahluwalia v Ahluwalia*, 2023 ONCA 476 (“*Ahluwalia*”) at para. 107).

[101] In determining damages “... [t]he monetary evaluation of non-pecuniary losses is a philosophical and policy exercise more than a legal or logical one. The award must be fair and reasonable, fairness being gauged by earlier decisions; but the award must also of necessity be arbitrary or conventional. No money can provide true restitution. ...” (*Shaw v Shaw*, 2012 ONSC 590 at para. 100, quoting *Andrews v Grand and Toy Alberta Ltd*, [1978] 2 SCR 229 at 261).

[102] Damages for assault and battery are presumed because they are intentional torts, designed to protect the physical integrity and bodily autonomy of a person. For compensation beyond a nominal amount, there must be evidence of harm caused.

[103] Damages for intentional infliction of emotional distress or mental suffering in the context of intimate partner violence have often been subsumed in damages for assault and battery. Acts of physical violence can be a cause of the mental distress. There is,

however, now also an increased understanding of the complexities of intimate partner violence and a recognition that it can include verbal violence, psychological manipulation, and financial control, all of which can contribute on their own to a finding of intentional infliction of emotional distress.

[104] Aggravated damages are not awarded in addition to general damages, but general damages are assessed “taking into account any aggravating features of the case and to that extent increasing the amount awarded” (*Norberg v Wynrib*, [1992] 2 SCR 226 (“*Norberg*”) at 263, quoting *N(JL) v L(AM)* (1988), 47 CCLT 65 (MBQB) at 71). In *Weingerl v Seo* (2005), 256 DLR (4th) 1, the court said:

[69] General non-pecuniary damage should be assessed after taking into account any aggravating features of the defendant’s conduct. The court may separately identify the aggravated damages, however, in principle they are not to be assessed separately. The purpose of aggravated damages, in cases of intentional torts, is to compensate the plaintiff for humiliating, oppressive, and malicious aspects of the defendant’s conduct which aggravate the plaintiff’s suffering...

[70] The following are aggravating factors which should be taken into account to determine whether the non-pecuniary damages should be increased: humiliation, degradation, violence, oppression, inability to complain, reckless conduct which displays a disregard for the victim, and post-incident conduct which aggravates the harm to the victim.

[105] Aggravated damages are designed to compensate.

[106] By contrast, punitive damages are designed to punish the perpetrator and make an example of them to deter others from committing the same tort. They are awarded for conduct that offends “the ordinary standards of morality and decency” (*Barreto* at para. 450, quoting *Norberg* at 267).

Law on Credibility and Reliability

[107] Deciding the property issues for the most part does not depend on a credibility and reliability assessment because the disputes revolve around the interpretation of the marriage agreement and the other documentary evidence. However, the tort claims are dependent upon findings of what occurred between M.A. and V.C., based on their respective testimony. Where the testimony differs, a credibility and reliability assessment is required.

[108] In this case, unlike in many family violence cases, there are many areas of agreement in the parties' accounts of what occurred. V.C. has admitted that the physical altercations described by M.A. occurred.

[109] However, he has alleged provocation by M.A. and asserted he acted in self-defence. He also minimized the seriousness of the incidents and denied the face pinching incident and the sexual assault, which he says was consensual sex. He challenged the causal relationship between the altercations and M.A.'s psychological state. For the most part, he attributed her deteriorating psychological state to a pre-existing mental health condition, described by him as borderline personality disorder that he said will continue to afflict her for life. He described her as jealous, mistrustful, and authoritarian with him. He described several incidents where she showed physically self-destructive and self-harming behaviour.

[110] Given the pertinence of the areas in which credibility and reliability findings are pertinent, I will review the applicable general principles.

[111] *Faryna v Chorny*, [1952] 2 DLR 354 at 357(BCCA) remains the leading case in describing the relevant approach to determining credibility:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions. ...

[112] Factors such as: the capacity and opportunity of the witness to observe the events at issue; the witness's ability to remember those events; the ability of the witness to resist being influenced by their interest in recalling those events; inconsistency in the witness's evidence, meaning a change in their testimony between direct and cross-examination, or inconsistencies between prior statements, discovery evidence and their evidence at trial; whether the witness's evidence harmonizes with or is contradicted by other evidence, particularly independent or undisputed evidence; whether their evidence seems unreasonable, improbable or unlikely, bearing in mind the probabilities affecting the case; and the witness's demeanour, meaning the way they presented while testifying. Many courts have cautioned against relying too heavily on demeanour to determine credibility, as an honest witness may present poorly, and a dishonest witness may present very well (*Schuetze v Pyper*, 2021 BCSC 2209 ("*Schuetze*") at paras. 338-9 and in *Hunt v Hunt*, 2024 BCSC 1048 ("*Hunt*") at para. 74).

[113] While credibility relates to a witness's veracity, reliability relates to the accuracy of the witness's testimony (*Zunnurain v Chowdhury*, 2004 ONSC 5552 at para. 29) – that is, whether the witness can accurately observe, recall, and recount events. A

witness who is not credible cannot be reliable. However, a credible witness may give unreliable evidence.

[114] In civil cases, the standard of proof is the balance of probabilities, and the judge is deciding whether it is more likely than not that an alleged event occurred. As a result, where there is conflicting testimony, especially where one party says something occurred and the other denies it, a finding that one party is credible and reliable may be conclusive of whether that event occurred or did not (*Schuetze* at para. 340, quoting from *FH v McDougall*, 2008 SCC 53 paras. 49 and 86).

Brief Conclusion on Tort claims

[115] This is a somewhat unusual case of intimate partner violence because of V.C.'s admissions that are detrimental to his position, his expressions of regret and his apologies, and the resulting similarity of the testimony on the significant incidents that occurred in their relationship.

[116] Here, in the areas in which their testimony differs, I have found that both witnesses have been influenced by their own interests in recalling the incidents that occurred between them. It is in V.C.'s interest to minimize their seriousness and to explain his conduct through provocation and self-defence. It is in M.A.'s interest to minimize or deny her role in the altercations and to interpret the intention of V.C. in each incident in the most negative way possible - that is, as deliberately designed to hurt her as part of a pattern of coercive control.

[117] Given V.C.'s admissions as well as the volatility, intensity of feeling and frustrations in the relationship, I accept his evidence that M.A. contributed to some of the physical altercations. Despite these findings however, I conclude that (a) the

physical altercations occurred; (b) given the difference in size and strength between V.C. and M.A., any reliance by V.C. on self-defence was disproportionate and unreasonable; and (c) the severe and lasting impact of the incidents and the other negative aspects of the relationship upon M.A. is confirmed by the objective expert evidence provided by Dr. Peter Jaffe.

[118] Further, and significantly, there is ample evidence of a pattern of behaviour throughout the relationship of intentional infliction of emotional distress on M.A. by V.C. apart from the physical altercations. He was deliberately humiliating, authoritarian, oppressive, cruel, unsympathetic, belittling, and unkind to M.A. This aspect of their relationship had a significant negative impact on M.A., described by her and verified by Dr. Jaffe.

[119] As a result, the tortious claims are proved and damages in the amount of \$50,000 are payable.

Issue 1 – Did M.A. sustain injuries as a result of V.C.’s tortious acts?

[120] The various incidents occurring in the relationship as described in evidence are as follows. I will first describe them all from the perspectives of each party and then set out my findings in the analysis.

Assaults and battery

Marsh Lake laundry line incident - early 2021

[121] M.A. described a night she came home late from work. She and I.A. had planned to speak with friends from Saskatchewan by SKYPE. V.C. was not there. As she was lighting the fire and starting dinner, she asked her son, then eight years old, to help by hanging the laundry to dry on a rope strung across the cabin. He did so, and while they

were on the call V.C. returned home and joined in. When the call was over, he began screaming with expletives about the laundry, saying it was not hung properly because it left no room for his laundry. Neither M.A. nor her son knew he had done laundry. M.A. explained to V.C. that I.A. had helped her by hanging the rope and the clothes. V.C. remained angry, ripped their clothing off the clothesline, and threw it on the floor. M.A. asked him to stop and when he did not, she removed one of his shirts from the line and asked him how it felt. He warned her not to remove any more. She then removed another shirt. V.C. grabbed some of their clothes from the floor and threw them in the wood stove where they burned. He hung the rest of his clothes up. I.A. hit V.C. with his teddy bear, and V.C. grabbed it and threw it out the window. M.A. retrieved it and she and her son went to bed.

[122] V.C. agreed that he burnt some of their clothing in the wood stove and agreed he was angry about the way the laundry was hung. He explained his actions as reactions to provocation. The rope was hung in a way that provided no room for his clothes, only enough room for clothes for M.A. and her son. V.C. pointed this out to her and wanted her to take down her clothes and reset the rope. M.A. refused, so V.C. took her clothes down, set them on the son's bed, reset the rope and hung his clothes, leaving room for hers. M.A. became so angry that she ripped his clothes off the line and threw them on the floor. After he re-hung them, she did it again and he re-hung them again. She threw his clothes off the line for a third time, and V.C. then grabbed a handful of her clothes – he says a bra and a pair of socks – from the son's bed and threw them in the woodstove. V.C. did not testify about the teddy bear incident. He also testified that he later apologized, recognizing he had overreacted.

Marsh Lake beer over the head incident - early 2021

[123] M.A. described an incident occurring approximately a week after the laundry incident. She came home from work before V.C. Her son was at a sleepover. M.A. cooked dinner and dressed in lingerie. When V.C. arrived, he called her pathetic and a whore, wondering why she had nothing better to do than sit around and wait for him to have sex with her. She began crying from the humiliation and he left the cabin. On his return, she tried to explain to him that she wanted to have a nice time with him as it was rare for them to be alone. He ignored her and she went outside and had a beer. When she came back inside, she began crying. He grabbed her beer and poured it on her, saying if she wanted to act like white trash, she might as well smell like it.

[124] V.C. agreed with some of M.A.'s testimony about this incident. He admitted he poured beer over her and called her white trash. He testified he did not recall why they were arguing. He said M.A. slapped him across the face twice and he ignored her. She went outside to have a beer. He got some cheese and crackers for a snack. When M.A. came back inside to get another beer, she opened it, then lunged at V.C., grabbed the cheese and rubbed it on his face. M.A. denied doing this. She then hit herself hard across the face with the beer and dropped to the floor, crying. V.C. did not respond right away as he did not understand this behaviour, and then he became angry with her for acting this way. He said he grabbed the partially empty beer bottle and poured the rest of the beer on her, telling her that if she wanted to act like white trash, she might as well smell like it. He then left. He testified that he regretted his actions.

[125] Katherine Sandiford, their neighbour at Marsh Lake and someone with whom M.A. had become friendly, in part because they had sons the same age who were

friends, testified about her knowledge of this incident. She received a text from M.A., provided in evidence, saying she needed help. M.A. referenced briefly the laundry incident from the week before and added that V.C. had just poured beer over her head. Katherine Sandiford told her to come over for a shower. When she arrived, Katherine Sandiford described her as stinking of alcohol, with matted hair, and very quiet. Previously she had been extraverted, funny and open, and now she was stunned, with darting eyes, and found it hard to talk. M.A. and her son stayed with Katherine Sandiford and her husband, a social worker, for a couple of days. They discussed developing a safety plan and also advised her to speak with Victim Services. She agreed she would develop a safety plan, and she advised several days later she had called Victim Services anonymously and they encouraged her to speak to the RCMP, who referred her to Family and Children's Services. There was no evidence about third party involvement at this stage.

Dawson City incident - June 2021

[126] V.C. arrived at the Dawson property the day M.A. got possession, June 11, 2021 and M.A. and her son arrived approximately a week later. M.A. described the incident occurring shortly after she arrived. She was excited to see the property as she had only seen it previously in winter. V.C. came to her car quickly, told her to get out of the way as he was backing up the trailer and there was a lot of work to do. He then pushed her; she fell backwards and injured her finger and hit the back of her head. She did not seek medical attention.

[127] V.C. said they were arguing, standing in front of each other and she began hitting him, aiming at his face. He covered his face and asked her to stop, but she did not. He

then swept her legs out from under her, so she fell down, but then got back up and began hitting him again. He did the same thing, so she fell again, and then got back up but stopped hitting him. He did not see or hear anything about a broken finger.

Dawson City- summer 2021

[128] A few weeks later, M.A. had planned a visit to Saskatchewan to see her parents as her father was ill. The night before she left, they were in their tent. M.A. says V.C. asked her to leave her credit card with him so he could use it to buy building materials. M.A. refused and said they could be invoiced for any materials he needed. M.A. did not think V.C. was good at financial management and she did not trust him with her credit card. He ignored her after this refusal. She tried to talk with him about it, asking why he was so angry and reminding him that she was doing all she could to make it easier for them by paying for their future home, groceries and other expenses, and the current situation was destabilizing. He swore at her, pushed and kicked her to the end of the tent, and punched her in the stomach.

[129] The next morning, M.A. tried to give him a hug as she wanted to leave for Saskatchewan in a good way. V.C. then kicked her feet out from under her, got in the truck, and locked the doors. He said she was a horrible wife for not trusting him. She began crying hysterically and he began to film her with his phone and threatened to show the world how crazy she was.

[130] V.C. agreed that the night before M.A. left for Saskatchewan they were in their tent. He said she wanted to cuddle before leaving. He was not in the mood, but she harassed him by sitting on him, whining, crying, and hitting him. He repeatedly asked her to leave him alone so he could sleep. When she continued to hit him, he pushed her

and kicked her off of him. She took the kick in her stomach. She then rolled over and left him alone.

[131] V.C. described the incident with the truck as occurring another day, not the day she left to visit her parents. They had an argument; he jumped in the truck and began to drive away. M.A. ran in front of the truck, jumped on the hood, while screaming and hitting the vehicle. V.C. kept driving slowly, hoping when they reached the road, she would get off the truck. He began to film her in case of a need to defend himself. She then got in the truck by prying open the back window and opening the passenger door, and begged him to erase the video of her, which he did.

Sexual assault allegation - July 2022

[132] M.A. said the day she returned to Dawson from delivering I.A. to her parents in Saskatchewan, she entered their place cautiously. V.C. was lying on the bed, using his computer. She began to unpack, asked how he was doing; he did not answer. They exchanged a few words and then she began to have a panic attack, feeling like she could not breathe. V.C. asked what was wrong and after she washed her face and tried to calm herself, he told her to lie down beside him. She testified she was afraid not to do as he said. He began to touch and kiss her and took off their clothes. They had sexual intercourse, but she said she did not move, she shut down and did what he wanted. After he finished, he got up and began to yell at her. She had another panic attack. She then drove him to the river as he was leaving on his solo canoe trip. Shortly after this, she went to the Women's shelter and the RCMP and tried to make a safety plan for his return.

[133] V.C. denied any sexual assault. He said they had consensual sex. He also introduced into evidence the criminal trial transcript where M.A. referred to this incident and called it making love, not a sexual assault. He said they did not argue afterwards, although he noted M.A. was upset that he was leaving on a solo canoe trip.

Face-pinching incident – spring 2022

[134] M.A. describes an incident in the spring of 2022 during the time he was attending counselling. She testified that V.C. held her face between his two hands, squeezed it tightly and told her she should never call the police about him again.

[135] V.C. denies that this incident occurred.

Hitting I.A. – December 2021 and May 2022

[136] The first incident involving I.A. in December 2021, was described by M.A. as occurring when I.A. tried to remove his toy one of the puppies had in her mouth, by hitting the puppy on the head. When V.C. saw this, he became angry and pushed I.A. face first into a table and chairs. M.A. did not see V.C. push I.A. but she saw him fall into the table and chairs. After hugging her son, M.A. sent him outside to play while she told V.C. it was unacceptable for him to touch her son. V.C. replied she was not good at parenting.

[137] V.C. agreed with these facts, except for the degree of force he used to push I.A. away from the puppy. He explained that I.A.'s repeated blows on the puppy's head could have given her permanent cerebral damage. He denied that I.A. hit a table or anything but instead said he rolled beside the puppy and was fine. He agreed I.A. went outside to play after the incident and said this confirmed he was not hurt.

[138] The second incident involving I.A. occurred in May 2022 when M.A. and V.C. were out for a walk and I.A. was riding his bike ahead of them. M.A. did not see what happened but saw I.A. crying while sitting on the grass when she and V.C. caught up to him. She explained that I.A. said V.C. had kicked him while he was riding his bike. V.C. denied this and told M.A. all the way home that she was a bad parent and a bad wife.

[139] V.C. said I.A. tried to turn around on his bike directly in front of him. V.C. did not see him until the last second as he was looking at the neighbour's property. He walked into the bike and nearly tripped. V.C. reasoned that because I.A. was in front of V.C., he did not see what happened and thought V.C. had kicked his bike. V.C. explained to I.A. what had happened and told him to be more careful. I.A. rode ahead and when V.C. and M.A. caught up to him, he was sitting in the grass beside the road, and said he was upset V.C. had kicked his bike. V.C. explained to M.A. what happened but I.A. remained upset and M.A. asked V.C. to apologize to him, which he refused to do because he said he was not at fault.

Intentional infliction of emotional distress

Psychological stress

[140] Throughout the relationship, V.C.'s behaviour caused a negative emotional impact on M.A. The incidents were in contrast to the beginning of their relationship and the expectations of M.A. for the relationship. As time went on and the trust between them began to erode, maintaining a balanced emotional state became more and more difficult.

[141] When M.A. met V.C. in January 2020 in Yellowknife, she found him charming and that he shared her adventurous spirit, outdoor interests, and desire to travel. He

interacted well with her son. “He made a good impression. He was solid and I trusted him.” The relationship progressed quickly.

[142] However, these initial positive feelings and shared dreams soon disintegrated for both parties. M.A. described at least one warning sign about different expectations between the two of them before the marriage. One was the incident described briefly above where they were winter camping in Yellowknife and M.A. remarked the tarp was too close to their heads and sought to turn their heads the other way. V.C. became angry and said she would never fit in with his lifestyle. The next morning, he was still angry and skied away quickly, leaving her behind. M.A. was very upset. After about an hour he returned and skied back with M.A.

[143] Generally, M.A. testified that V.C. was controlling, belittling, authoritarian, critical and unkind to both her and I.A. He would unpredictably insult and say cruel things to her, but then soon after would tell her he loved her and would do nice things for her. He criticized and mocked her education, saying it detrimentally affected her thinking. M.A. felt as though she were constantly walking on eggshells, afraid that if she did not do what V.C. wanted he would resort to explosive verbal outbursts.

[144] V.C.’s affidavit evidence in this proceeding supported M.A.’s testimony of his views of her. V.C. labelled her mentally ill, suffering from borderline personality disorder, without any expert evidence or diagnosis. V.C. admitted on cross-examination to calling M.A. white trash, stupid, pathetic, as well as saying she was like Putin or Hitler.

[145] A significant turning point in the relationship was V.C.’s hurtful statements in early January 2022, that he was staying in the relationship with her only because she was sponsoring him for permanent residence in Canada. The evidence of both parties

about this event was the same. On New Year's Eve 2021, V.C. reluctantly accompanied M.A. to her office where she had scheduled an online game with her family. Once there, he refused to play and completely disengaged by going to another room, saying he wanted to be alone. V.C. described himself as being in a dark mood. The next day when M.A. asked what was wrong, V.C. told her he was only staying with her for the purpose of immigration, and she did not deserve it because she was a good person. Very upset, M.A. asked him several times whether this was true and he repeated the statement. This continued for approximately three days. M.A. was at her wits' end and finally went to the police. She reported the two assaults of her from the summer of 2021, and the assault of I.A. in December 2021. V.C. was arrested and charged in January 2022.

[146] V.C. testified that while he was in custody, he reflected on what he had said to M.A. about the immigration, felt badly and apologized to her. She testified that at that time she still hoped they would be a family; that things would get better. She wanted him to attend counselling and enter into a peace bond. The Crown did not withdraw the charges. V.C. was released on conditions, including a no contact order with M.A. and I.A. He did start counselling. He was soon living again on the Dawson property with M.A.'s consent. They kept living together because as they both testified, they believed and hoped they could fix their relationship. This belief that things could improve and their attempts to work on their relationship continued off and on for some months, until the summer of 2022, not without volatility and continuing difficulties.

[147] For example, after agreeing they would spend time working on their relationship, V.C. announced he was going on a solo canoe trip for 5-6 weeks. This was hurtful to M.A. not only because of her expectation that they would be together over the summer,

but also because he was leaving her to care for the property and the dogs on her own, and because they had originally planned to enjoy outdoor adventures together and now, he was rejecting her by travelling alone.

[148] Another example of hurtful behaviour occurred after the date of separation. V.C. posted on a Facebook page for people in the Yukon with sled dogs. M.A. was trying to rehome some puppies from a litter and V.C. blamed her publicly for allowing the mother to be bred too young by her brother and the puppies were no good as a result. M.A. said this was not true, but nevertheless she believed her reputation among the dog community was ruined.

Financial control

[149] M.A. supplied evidence of her payment of \$12,676 for V.C.'s credit card debt, through e-transfers to him, including the \$4,500 she paid for the horse. She testified that most of these payments were for his personal gear or other solo pursuits, and not for their family. She testified that in general, she felt forced to make those payments by him, although she did not refer to specific incidents where he forced her.

[150] M.A. also provided evidence through her bank and credit card statements of many grocery purchases, which she claims were for the family.

[151] V.C. disputes that M.A. was the primary financial contributor towards the family expenses and provided evidence in a chart he created (without documentary back-up) of his earnings during the period they were together of \$61,217.17. By August 2022, he had only \$3,418.53 remaining in his bank account and owed \$4,167.25 on his credit card. He attested that his credit card statements show payments towards groceries,

transportation and other family expenses. He provided no explanation of the e-transfers to him from M.A.

[152] A review of V.C.'s statements shows payments towards groceries and gas in Dawson, among many other purchases.

[153] Without further evidence from both parties, it is impossible to know how much each of them paid towards family expenses. However, my review of the statements shows M.A.'s expenditures on groceries were generally higher than those in V.C.'s statements.

Analysis of Tort Claims

[154] Considering the evidence as a whole, I make the following findings:

- While V.C.'s admissions contrary to his interests and his apologies and expressions of regret contribute to his credibility, they do not result in my acceptance of all of his testimony without question. He described many of the incidents in a way that minimized their seriousness and blamed M.A. for their happening (for example: minimizing the number of pieces of clothing he threw into the wood stove and increasing the number of times M.A. took clothes from the line; sweeping M.A.'s feet from under her as a response to her hitting him, rather than walking away). I have preferred M.A.'s testimony where the explanations she provided of the reasons for the altercation or argument were more detailed and more consistent with the altercation. In the few instances where the evidence of M.A. did not provide a plausible explanation of the altercation, I preferred the evidence of V.C.

- V.C. assaulted M.A. while they were in Marsh Lake by pouring beer on her head and calling her white trash;
- M.A. contributed to that altercation by smearing cheese on V.C.'s face out of anger and frustration. I believe V.C.'s evidence because of the unusual nature of this occurrence and because of the intensity of feelings they both describe this situation evoked in M.A., beginning from M.A.'s evidence, which I accept, of V.C.'s cruel rejection of her when she was attempting to create a nice evening for them.
- V.C.'s response was not self-defence as it was disproportionate to M.A.'s actions, based on the deliberate humiliation and disrespect he showed by rejecting and belittling her, by pouring beer on her head, and by calling her white trash.
- V.C. assaulted M.A. in Dawson in June 2021 by pushing her so that she fell and hurt her finger after an argument shortly after her arrival on the Dawson property. I accept M.A.'s evidence of this incident as she described in detail what occurred on their arrival – she was excited to see the property, V.C. was irritable about her being in the way of his work and wanted her out of the way. V.C. provided no details except they were arguing about something he could not remember. I accept her finger was hurt but not that it was broken as there is no evidence of this.
- V.C. committed battery by pushing M.A. away in their tent the night before she left for Saskatchewan and hurting her stomach.

- I accept V.C.'s evidence that this altercation began as a result of her seeking attention from him that he was unwilling to provide, which irritated him, and is consistent with him shoving her away from him. M.A.'s explanation that she would not give him her credit card while she was away in Saskatchewan and seeking validation from him of her financial contribution to the relationship is a less plausible or reasonable explanation of V.C.'s reaction, especially since at that time M.A. was making his credit card payments.
- V.C.'s actions were disproportionate to this situation and not justified by self-defence.
- V.C. humiliated and endangered M.A. by first sweeping her legs out from under her after an argument and then locking her out of the truck and driving and filming her while she was in an emotional state. I do not accept that M.A. contributed to the altercation by hitting him as there are no details from V.C. about the nature of their argument or reasons provided by him or M.A. that she would be upset.
- I find V.C. did not sexually assault M.A. During that time period, despite all that had occurred, they still referred in evidence to working on their relationship. There was no evidence that M.A. refused to engage in sexual relations, although I accept her evidence that she was not an active participant. During the criminal trial, she described their relations that day as making love. She did not report any sexual assault to Victim Services or the police, even though she spoke to both shortly after V.C. left that

same day on his solo canoe trip. In concluding this, I am alive to the dangers of relying on the myths surrounding sexual assault of delayed reporting, as well as the fact that a lack of resistance or silence does not constitute consent. However, I find on considering all of the evidence there is insufficient evidence of a sexual assault.

- I accept M.A.'s evidence that V.C. squeezed her face and implored her not to go to the police again. This is consistent with V.C.'s evidence at trial that he was upset about her reporting him to police for what he considered unjustifiable reasons.
- V.C. hurt I.A. by shoving him with unreasonable force away from the puppy, causing him to fall against a table, instead of asking him to stop hitting the puppy; and by hitting his bike inadvertently, while on a walk together, causing justifiable fear and upset in I.A. as he did not realize that the contact was inadvertent, and he was subject to V.C.'s scolding of him. I.A. was also witness to many arguments and incidents between M.A. and V.C. because of their close living quarters.
- Throughout the relationship, V.C. took advantage of M.A. financially, as, other than the dogs, the expenses for which were shared, she paid for most of the assets in their relationship and supported his spending on his own outdoor pursuits by paying off his credit card. In making this determination, I do not conclude that V.C. made no financial contributions to the family, only that M.A. contributed more than he did.

- Throughout the relationship, V.C. exhibited controlling behaviour and unpredictable angry outbursts. I accept M.A.'s description of the laundry incident at Marsh Lake, where he humiliated and insulted M.A. and I.A. and engendered fear in both of them. The accounts of that situation by both M.A. and V.C. were similar. However, VC's account minimized his reaction and actions by saying he placed their clothes on I.A.'s bed and M.A. continually removed articles of his clothing from the line. His account does not plausibly explain the escalation of the situation.
- I find V.C. caused emotional distress by swearing at M.A. and insulting her regularly, calling her stupid, pathetic and other hurtful names; by remaining emotionally distant and non-communicative for extended periods of time or by leaving the cabin without explanation and without saying when he would be returning; by using verbal violence and unpredictable angry outbursts; by telling her he was only staying in the relationship with her in order to obtain Canadian permanent residence status.
- I find that the primary reason V.C. did not leave the relationship earlier was due to M.A. sponsoring him for permanent residence status, combined with his dream to live in the Yukon. While I accept that at the outset V.C. did hope that the relationship would work, that changed immediately after the marriage, and perhaps even earlier, and his primary motivation for the relationship was to obtain Canadian immigration status and to establish a way of life in the Yukon.

- I find that V.C.'s actions qualify as flagrant and outrageous conduct; calculated to produce harm; and resulting in a visible and provable illness – i.e. Post Traumatic Stress Disorder (“PTSD”), depression and anxiety disorder, recovery from which is likely to take at least five years with the help of supports and counselling. The consequences of the actions by V.C. against M.A., especially with his acknowledgement that she had mental health challenges, in his view, were known by him to be substantially certain to follow.
- I accept that even though M.A. had financial independence, she felt trapped in the relationship for various reasons: she found it difficult and hurtful to admit that the continuing marriage was a sham for his immigration purposes; she had invested significant funds in an off-grid property, with her living accommodation a work in progress, her caring for a young son and for eight or nine sled dogs, making it a daunting prospect to continue this life on her own without help; her confidence and self-esteem had been significantly eroded as a result of the emotional distress of the relationship; she feared repercussions from V.C. if she initiated a break-up with him; she and her son were vulnerable living where they were, on an isolated off-grid property without close neighbours and no consistent phone access.

Damages***Impact of V.C.'s behaviour on M.A.***

[155] There is no question that M.A.'s mental health is suffering. She was diagnosed with PTSD, anxiety disorder, and depression by Dr. Adam Shephard in November 2022, and has been prescribed medication to assist with associated symptoms. She has been receiving therapeutic supports from a social worker since January 2022. A risk assessment done at the Dawson Women's Shelter in the summer of 2022, showed that she felt she was at an extreme safety risk. I have found that these conditions were caused by her relationship with V.C. The following sets out in more detail the extent of the impact.

[156] Dr. Jaffe performed an assessment of M.A. for the purpose of preparing an expert report on the impact of family violence she suffered. Dr. Jaffe is a registered psychologist and professor emeritus in the Faculty of Education at Western University, and one of the founding directors of the Centre for Research and Education on Violence Against Women & Children. He is also the Director Emeritus at the London Family Court Clinic, a children's mental health centre specializing in issues that bring families and children into the justice system. He has published many academic writings –11 books, 40 book chapters, and more than 90 articles about children, families and the justice system and has provided numerous workshops in Canada and internationally on family violence. He has testified in four provinces and seven US states about issues of family violence and child abuse in civil and criminal proceedings and has been qualified as an expert witness in various domestic violence inquests and inquiries in Ontario, Prince

Edward Island, Nova Scotia and Alberta. He was accepted as a qualified expert witness in this case on the assessment of impacts of family or intimate partner violence.

[157] Dr. Jaffe's assessment of M.A. consisted of his review of the court documents; including three of V.C.'s affidavits and his Territorial Court documents; interviews - eight hours with M.A., one hour with I.A., and for 30 to 60 minutes with Katherine Sandiford, M.A.'s friend from Marsh Lake who testified at trial, M.A.'s new partner, I.A.'s therapist, I.A.'s teacher, M.A.'s mother and a victim services worker at the Dawson Women's Shelter; and a review of two psychological tests of M.A. – the personality assessment inventory and the trauma symptom inventory. He also reviewed a child behaviour checklist completed by M.A. and I.A.'s teacher to assess I.A.'s current adjustment.

[158] Dr. Jaffe concluded that M.A. suffered significant domestic violence during her marriage to V.C. including physical, emotional, financial, and sexual abuse. He concludes this formed part of an overwhelming pattern of coercive control.

[159] The impact of this domestic violence on M.A., resulting from an analysis of the results emanating from all the assessment tools is described by Dr. Jaffe as follows:

- disruption in her sense of safety and security;
- existence of a sense of shame for choosing a partner who created this sense of insecurity, lack of safety and well-being in her and her son;
- suffering from PTSD symptoms, including flashbacks, regular nightmares, hypervigilance, and panic attacks;
- feeling insecurity about her employment as a result of losing her job during a time when V.C. was disseminating untrue information about her on social media (related to the dog breeding);

- demonstrating introversion and emotional distance from others, instead of her previous friendly, outgoing, community active self before meeting V.C.; and
- evidence through test results of traumatic stress producing recurrent episodes of anxiety including fear surrounding specific situations, described as concerns about her safety and that of her son since her relationship with V.C.

[160] Dr. Jaffe noted that M.A. has many strengths, including high intelligence, a good education including a deep understanding of diverse cultures, solid roots and supports from her Saskatchewan family, all of which will help her to recover from the traumatic marriage. There were no other previous mental health conditions reported by her that could have contributed to her current condition. He noted she had high hopes initially for a successful marriage given the compatibility of their interests and dreams, but that hope quickly deteriorated into worry for her safety and that of I.A. Dr. Jaffe concluded that her resulting mental health problems will require ongoing counselling for the next five years.

[161] Dr. Jaffe described the effect of the marriage on I.A. as follows:

- He is a thoughtful and sensitive young man with lingering concerns from living with the domestic violence and child abuse he reported (the incidents described above by M.A. are included in Dr. Jaffe's report). I.A. is fearful of V.C. coming back into his mother's life to harm her. While he could see some of V.C.'s good qualities, the overriding picture is of a man who hurt him and his mother.

[162] Dr. Jaffe noted that although both I.A. and M.A. are receiving ongoing counselling, they may require more specialized mother-son counselling to assist in their healing process.

[163] I accept Dr. Jaffe's conclusions, despite some differences based on some of my findings of fact that differ from his factual assumptions (for example no sexual assault occurred). I do not find that those differences are sufficient for his opinion to be inapplicable.

Quantum of damages

[164] Given these findings, in what amounts should M.A. be compensated? I will address the purpose and factors to be considered in this kind of damage claim, apply these to the facts of three torts at issue here, review similar cases as guidance, and then determine an appropriate amount of compensation.

[165] The purposes of non-pecuniary damages awards in assault and battery are:

- to compensate the plaintiff for pain, suffering, loss of enjoyment of life;
- to recognize the violation of the person's physical autonomy and integrity;
and
- to reflect the humiliating and degrading nature of the tortious conduct and betrayal of trust as aggravating factors (*Barreto* at para. 432).

[166] The factors to be considered in determining the appropriate amount of non-pecuniary damage awards in assault and battery cases are:

- the circumstances of the victim at the time of the events, including factors such as age and vulnerability;

- the circumstances of the assaults, including their number, frequency, and how violent, invasive and degrading they were;
- the circumstances of the perpetrator, including age and whether they were in a position of trust; and
- the consequences for the victim of the wrongful behaviour, including ongoing psychological injuries (*Barreto* at para. 433).

[167] Each case must be determined on its own facts. Other decisions on similar facts can serve as guidance only and do not bind a court in the case before it (*Hunt* at para. 121).

[168] Generally, proven assault and battery claims give rise to presumptive damages. The amounts are nominal if there is no evidence of injuries sustained.

[169] Here there is no evidence, medical or otherwise, of any physical injuries sustained by M.A. from the assaults and battery, either short term or long-lasting.

[170] However, I find that the physical altercations, which constitute intimate partner violence, in the context of the relationship and considering the overall pattern of behaviour of V.C. in the relationship have resulted in psychological effects on M.A. I have considered her vulnerability in living in a new place, an isolated location, away from her family and friend supports; her increased vulnerability as a result of her sense of responsibility and caring for her young son; the existence of a relationship of trust between her and V.C.; and the degree of humiliation and oppression she endured that eroded her self-esteem.

[171] M.A. is also entitled to compensation for the intentional infliction of emotional distress on her by V.C. Given that the psychological injuries she has sustained result

from all three of the torts claimed, and this is the primary basis for the damage award, I will assess damages for all three torts on a global basis.

[172] As noted above, aggravated damages are awarded to recognize the circumstances or manner in which the tortious conduct was committed. They are additional factors to consider when assessing general non-pecuniary damages, and not a separate head of damages. Most courts include the aggravated damages amount within the general pecuniary damages award.

[173] M.A. has PTSD symptoms and has difficulty feeling safe and secure in her own home. Once outgoing and friendly, she is now withdrawn, reserved, and experiences trust issues with her intimate partner. There has been a significant breach of trust given the behaviour that occurred in the context of a marital relationship. She endured humiliation, degradation, dismissiveness, disrespect, and belittling.

[174] Other cases, while providing some guidance, are distinguishable. The Court of Appeal decision in *Ahluwalia* awarded \$100,000, a higher damage award than previously issued by courts, reflecting an “emerging understanding of the evils of intimate partner violence and its harms” (at para. 128). In that case, there was a pattern of conditioning and control. The husband punched and slapped his wife, causing extensive bruising; slapped and grabbed her by the neck, pulled her hair and strangled her; restrained her by her wrists, shook her by the upper arms and slapped her across the side of the head, all while he was drunk. The relationship lasted 17 years.

[175] Here, the physical injuries were not of the same degree of seriousness and the marriage was of much shorter duration – less than two years, not 17.

[176] In *Jane Doe 72511 v Morgan*, 2018 ONSC 6607, \$120,000 in damages was awarded for violent abuse and threats over a six-month period. Some of the abuse occurred when she was pregnant. The woman had no long-lasting physical injuries but the endured physical and verbal abuse left her with significant psychological trauma. The woman testified about incidents of a terrifying nature. To punish her for reporting the assaults and threats to police, the man posted a sexually explicit video of the woman on a pornographic website without her knowledge.

[177] The primary damage award in that case was to compensate the woman for the posting of the video, which had been viewed over 60,000 times by the time the woman discovered it and had it taken down. The Court awarded \$50,000 for public disclosure of private facts (that is, the video), as well as \$25,000 for aggravated damages, and \$25,000 for punitive damages. This is distinguishable on the facts from the case at bar. The assault and battery damages award in *Jane Doe* for the psychological trauma occurring after a six-month period was \$20,000. This is more similar to the case at bar.

[178] In *Pichie v Pichie*, 2024 ONSC 2868 ("*Pichie*"), the Court awarded \$75,000 in general damages and \$25,000 in aggravated damages to the plaintiff wife for physical and psychological injuries sustained from the actions of the defendant husband, occurring over the course of an 11-year marriage. There was evidence of emotional, physical, verbal, and financial abuse. The description of the incidents included the husband, while drunk, dragging her from the shower through the house and threatening to throw her naked onto the street, continually verbally abusing her. She suffered a tear to her shoulder as a result of the assaults that caused chronic pain and a frozen

shoulder with a significantly reduced range of motion in almost all directions. It affected her ability to earn a living. She had lasting psychological impairments.

[179] The existence of a chronic physical injury resulting from multiple assaults over an 11-year marriage is a distinguishing feature of *Pichie* as compared to the case at bar.

[180] Here, the assaults, battery and intentional infliction of emotional distress occurred over approximately 18 months. While the physical abuse did not result in lasting physical injuries, it contributed to emotional and psychological distress. The harm occurred in the context of a marital relationship and constituted a breach of trust, a significant aggravating factor. M.A.'s son was exposed to the violence and experienced some of it himself. This contributed to her sense of shame in failing to protect her son, creating increased emotional distress, and fear and insecurity for both her and her son in their own home, another aggravating circumstance. M.A. suffered a violation of her personal autonomy and dignity by being financially exploited, used for immigration purposes by V.C., mocked for achieving a high level of education and regularly insulted, belittled and humiliated.

[181] However, the short duration of the relationship, the absence of a long-term impact of the physical assaults, and the guarded prognosis of a full recovery, given M.A.'s support system, intelligence and resilience, means that the damage award will be lower than claimed and lower than set out in the other cases. In the circumstances of this case, I find that the appropriate award of damages, both general and aggravated is \$50,000.

[182] I decline to exercise my discretion to order punitive damages in this case. They are designed to punish V.C. and make an example of him for deterrence purposes,

when actions go beyond the ordinary level of morality and decency. While some of his acts do reach that level, I conclude that the impact of his loss of the ability to apply for permanent residence status in Canada, his deportation from Canada, and his time spent in prison all had a punitive dimension that perhaps have a greater if not similar impact to an additional monetary damage award.

III. Loss of employment earnings

[183] M.A. claims approximately \$33,404 for loss of employment earnings for 22 weeks, less employment insurance payments and vacation pay-out. She attributes the loss of her employment to the ordeal she suffered with V.C. She testified that after the verdict of not guilty on the assault trial received on February 1, 2023, she was very emotional as it brought back the trauma she had experienced. She was unable to give a scheduled work presentation because she could not stop crying. Her union president advised her to take special leave, which she did. Upon her return to work several days later, her supervisor advised her that her employment was terminated without providing any reason. She complained to the Yukon Human Rights Commission (the “Commission”) that she was discriminated against on the basis of sex and marital or family status. This complaint was accepted for investigation. A further human rights complaint against her supervisor individually, and for discrimination based on physical or mental disability – specifically that she was a single mother suffering from PTSD - was not accepted by the Commission for investigation. Her complaint contained no facts to link the alleged unfavourable treatment to her disability.

[184] Similarly, here, there is no evidence that M.A.’s termination of employment was linked to the trauma she experienced with V.C. At the time of her termination, she had

had no physical contact with him other than the criminal trial for over seven months. This is not to suggest of course that the effects of trauma cannot continue after the relationship is over, but without knowing more information about M.A.'s work history, the specific effects of the situation on her work performance, the knowledge of her employer about her situation, and any other potential reasons for the termination of her employment, I am not persuaded on a balance of probabilities that the sole reason for her termination was the impact of her relationship with V.C.

IV. Restraining order

[185] M.A. seeks a restraining order preventing any contact between her and V.C. and I.A. and V.C. for life. She also seeks a restraining order that prevents him from re-entering the Yukon for the rest of his life. She provided no case law to support this.

[186] V.C. consents to a restraining order of no contact with M.A. for the rest of his life. He agrees not to contact I.A., but wishes to leave it open for I.A. to contact him if he desires. Although he consents not to go to Whitehorse if M.A. moves there, he does not consent to an order preventing him from entering the Yukon.

[187] I will order that V.C. is restrained from having any contact with M.A. and I.A. for the rest of his life. He will not be permitted to go within 20 kilometers of M.A.'s home, wherever that may be. I leave it to M.A. and her lawyer to determine how notice of her location may be provided to V.C. so that he does not inadvertently breach the Order. This is sufficient to protect M.A. from any interference in her life from V.C., which he has said he has no interest in pursuing. It is not necessary to prevent him from entering the Yukon for the rest of his life.

V. Divorce

[188] A divorce shall be granted on the basis of a greater than one year separation.

The thirty day waiting period is waived.

VI. Costs

[189] No costs submissions were made except that special costs were requested.

Costs may be spoken to in case management if the parties are unable to agree.

Conclusion

[190] To conclude, I order as follows:

- V.C. is entitled to \$2,880 for the truck; \$1,125 for the trailer; \$14,510.33 for the increase in value of the Dawson property; \$2,674.74 for the dogs; and \$2,551 for his personal belongings.
- M.A. is entitled to \$4,000 of the horse sale proceeds.
- M.A. is entitled to \$50,000 in damages.
- V.C. therefore owes M.A. \$30,258.93.
- V.C. shall be restrained from having any contact with M.A. and I.A. for the rest of his life. He may not attend within 20 kilometers of their place of residence, work or school.
- The divorce is granted.
- Costs to be spoken to, if no agreement.

DUNCAN C.J.