

CANADA / JUDGMENT

Ahmadi-Abbasabadi v. Ahmadian

2017 BCSC 648

COURT

Supreme Court of British Columbia

DECIDED

21 April 2017

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2017 BCSC 648 Ahmadi-Abbasabadi v. Ahmadian IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Ahmadi-Abbasabadi v. Ahmadian, 2017 BCSC 648 Date: 20170421 Docket: E142492 Registry: Vancouver Between: Esfandiar Ahmadi-Abbasabadi Claimant And Seyedeh-Robabeh Ahmadian also known as Robabeh Ahmadian Respondent Before: The Honourable Mr. Justice Silverman Reasons for Judgment Counsel for the Claimant: Zahra Jenab Counsel for the Respondent: Shawna Specht Place and Date of Trial: Vancouver, B.C. November 16-18 and December 20-21, 2016 Place and Date of Judgment: Vancouver, B.C. April 21, 2017

INTRODUCTION

- [1] The parties, who are now divorced, seek the Court's assistance in dividing their assets.
- [2] The claimant, Esfandiar Ahmadi-Abbasabadi, (the "husband") seeks an order for equal division of family property and debt.
- [3] The respondent, Seyedeh-Robabeh Ahmadian, (the "wife") argues that there should be an unequal division of assets in her favour, which could be accomplished in one of two ways. Either:
 - 1. by using the earlier (at the time of separation) of two appraisals of the family home as the valuation date; or
 - 2. by an order for reapportionment pursuant to s. 95 of the Family Law Act, S.B.C. 2011, c. 25 [FLA].

FACTS

I. BACKGROUND

- [4] The husband was born April 12, 1956. He is 60 years old.
- [5] The wife was born March 21, 1967. She is 50 years old.
- [6] The parties were married in Iran on April 13, 1987.

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- [7] At the time of the marriage, the husband was a student, studying in Germany. The wife resided with her family in Iran and was attending first year university.
- [8] After the marriage, the husband returned to Germany and the wife joined him after she obtained a visa to study as well. They both attended school there.
- [9] On December 11, 1989, the parties' first daughter was born. She is now 27 years old.
- [10] On June 22, 1992, the parties' second daughter was born. She is now 24 years old.
- [11] In 1992, the husband bought an investment apartment in Iran with the assistance of both of their families. They rented it out.
- [12] The family resided in Germany until April 1996, when they immigrated to Canada and began residing in British Columbia shortly thereafter. They obtained permanent resident status in Canada.
- [13] On June 15, 2004, they purchased, as joint tenants, the family home at 3180 Sylvia Place, Coquitlam, B.C. (the "family home").
- [14] The parties had problems in their marriage for many years. Their evidence varies with respect to the cause and source of the problems. The husband has maintained that the wife constantly insulted him, swore at him, locked him out, and changed passwords and keys and so on without his knowledge and consent. The wife argues that he was secretive, dishonest, a poor earner, and that they were constantly in debt such that she could not be confident he would or could attend to the family's needs. She ultimately had to, and did, become the person responsible for the financial needs of the family.
- [15] It is clear that finances have been a source of disagreement and tension for the parties since the beginning of their relationship.
- [16] These difficulties culminated in an incident of April 17, 2013 when they refinanced their home, thereby securing a number of outstanding debts, which were primarily the husband's, but not the wife's debts. These included the husband's business, personal and credit card debts. The wife's debts, including her student loans, were not included in the mortgage refinancing. She argues that she agreed to this because of the husband's agreement that he alone would be 100% responsible to repay the entirety of the new debt that the house now secured. The husband argues that there was no such agreement. This is one of the central areas of dispute in this litigation.
- [17] He argues that the parties separated in or about April 2014. By August 2014, he had rented an apartment and lived separate from the wife. It was also during this time that he retained a lawyer to commence the family law action.
- [18] The wife denies that they separated in or about April 2014. She states that he moved out for a period of time in September of 2014.

- [19] On September 16, 2014, the husband filed the Notice of Family Claim, but did not have it served at that time.
- [20] In October, 2014, the husband returned to the family home for a few months.
- [21] On March 11, 2015, the husband left the family home with no notice, and left his house key in the door. He ceased all financial contribution to the family debts and ceased all contact with his wife and children since this date. The wife claims this as the date of separation.
- [22] Shortly after the husband left, their daughters noticed that their jewellery had gone missing from its place of safekeeping. The jewellery is of some monetary value and of some personal value. They fear that their father may have taken it inadvertently. They would like to have it returned.
- [23] On March 17, 2015, RBC sent a letter to the husband demanding full payment of the outstanding mortgage within 10 days of the date of the letter due to husband's failure to make mortgage payments for multiple months, of which the wife was unaware until the letter arrived.
- [24] On April 22, 2015, the Notice of Family Claim, which had been filed the previous September, was served.
- [25] The wife and the parties' two adult children have continued to live in the family home.
- [26] The husband has no relationship, and does not communicate, with either of his children. They have both reached out to him, but he has not responded.
- [27] On June 2, 2015, the family home was jointly appraised by the parties for the purposes of division. The gross value was established at \$730,000.
- [28] On October 17, 2016, the family home was appraised at \$910,000.
- [29] There have been changes of lawyers and adjournments by both parties. I am satisfied that neither is more to blame than the other for any delay that occurred as a result.
- [30] There were no examinations for discovery conducted by either party.
- [31] On November 16 - 18, and December 20 and 21, 2016, the evidence and submissions in this trial were heard by me.
- [32] On November 16, 2016, at the request of the parties, and on the basis of the evidence before me, I granted an order of divorce. II. WORK HISTORY The Husband's Work History
- [33] The husband's submission:

1. During the early days of their marriage, in Germany, the husband supported the family through whatever means he could. Whether it was working in the summer months, or working cash jobs, he was the sole income earner. During that time, the parties managed to save enough money to purchase the property in Iran, and come to Canada with \$4-5,000 savings.
 2. When the parties obtained permanent residence status in Canada, it was on the basis that the husband was the primary applicant under the skilled worker category. He had a talent for mechanics and working with automobiles.
 3. When they first settled in Canada, he was the sole income earner. He paid for all the living expenses, including rent and mortgage, car loans, utilities, household money, and allowances for the children. He did so by finding any means of earning an income. He has delivered pizza, driven a cab and worked in several auto repair positions.
 4. There were also times when they were on social assistance. The wife was unhappy about this.
 5. The wife wanted the parties to become proficient in English and she wanted the husband to also work. They both took English classes, and it was clear that she has much stronger language skills than he does.
 6. Eventually, he started and operated several businesses, as well as being employed at various places. Although the wife would not acknowledge it, he worked hard. At times, he had a day job, and an evening job, all to support his family.
 7. He also had salaried jobs from time to time and was sometimes on Employment Insurance.
 8. He remained the sole financial provider for the family until the wife began working in or about 2000.
 9. In 2003, the husband opened a mechanic shop in Port Coquitlam named Ed's Mechanic Shop, which he sold in 2007.
 10. He started Ed's Auto Ambulance Inc. in or about September 2009. As a new business, it needed some time for the business to grow, and he supplemented this through other employment.
 11. He paid the mortgage payments, property taxes, BC hydro, and utilities from his income and, frequently, from borrowing against lines of credit and credit cards. He continued to do so until the parties separated.
- [34] The wife's submission:
1. The husband was always more interested in not paying taxes than he was in earning an income.

2. In January 1988, while living in Germany, while attending university, he was engaging in various cash schemes to make income.
3. While professionally trained as a mechanic, he has dabbled in and out of businesses and employment, sometimes also collecting welfare or Employment Insurance while engaging in cash ventures on the side. The wife never agreed with this practice, however she suffered abuse if she spoke up. She learned instead to accept that she had no say in how the husband earned his income.
4. The husband made a false claim about his employment on a mortgage application. The wife argues it was deliberate. The husband disagrees. The Wife's Work History

[35] The wife's submission:

1. She studied and took courses in Germany, and then in Canada.
2. She took German language classes in Germany, as well as some sociology classes. In British Columbia, upon arrival, she took English classes. She was also primarily responsible for the care of the children and stayed at home to help raise them.
3. When her children were fairly young, she came to realize that she would have to find a way to support herself and them.
4. She enrolled herself in school and progressively worked her way through school, while continuing to be the primary caregiver to her children.
5. She began working in 2000, because she did not want to be dependent on the husband. She was interested in health care, and initially, trained as a resident care aide. Then she began and completed the nursing program at Douglas College.
6. She ensured that she was providing for the children's education, activities and other needs from a very modest income of less than \$30,000 a year which is her estimated income until approximately 2013. It this time period, she found it necessary to run up her credit cards. If her husband had been making even a modest income, this would not have been necessary.
7. In 2000, she obtained her certificate as a care aide worker. In 2000, she started working at Hawthorne Care Centre. In December 2000, she started working at Riverview Hospital.
8. She obtained a student loan in 2009 to finance her educations towards a nursing degree.
9. She has been working as a Registered Nurse since completing her studies in or about April 2013.
10. She earns approximately \$74,000 per year.

[36] The husband's submission:

1. The wife took German language classes in Germany, as well as some sociology classes. In British Columbia, upon arrival, she took English classes. She was also primarily responsible for the care of the children and stayed at home to do that.
 2. After the children were slightly older, and the wife had become proficient in English, she decided that it was time to become financially independent of the husband. She began studying for her nursing degree. She now has a very good position, earning \$74,000 a year, with a pension and benefits.
- III. FINANCIAL CIRCUMSTANCES - AT SEPARATION AND AFTER The Husband's Financial Circumstances

[37] The husband's submission:

1. He acknowledges that he was not a successful businessman and he always struggled to pay the family expenses.
2. At times, he did not have sufficient funds to pay the mortgage and other expenses. He frequently took cash advances from credit cards and borrowed from lines of credit.
3. As noted in his Financial Statements sworn on September 10, 2015 and June 13, 2016, he had an annual income of \$21,000, and annual expenses of \$34-\$41,000 approximately. Of this, initially \$850.00 per month, and since February 2016, \$874.50 per month, has been for rent.
4. The respective incomes of the husband and the wife at the time of separation are important to show that the husband did not abandon his responsibility to contribute to family debt, to the extent that he was able.
5. It was after the separation, when the husband had to leave and find a separate place to live, that he could no longer afford to contribute to the mortgage. The wife started making mortgage and debt payments at that point.
6. The wife argues that the husband has not fully disclosed documents. He argues that, while some of the documents may have been disclosed late, he has made full financial disclosure. In fact, he submits that he has disclosed numerous documents, beyond what was ordered.

[38] The wife's submission:

1. The husband has continued to assert that his income is nominal and in fact, below minimum wage.
2. In 2013, he filed a tax return showing that he had zero income.
3. From January 2013 to December 2013, he paid from his business account over \$18,000 just for parts for his business.
4. His total credits to his account for Ed's Auto during the same year total close to \$58,000. What is noteworthy about many of the deposits is that they are straight round numbers (\$800, \$600, and so on).

5. The only tax year in which he filed a tax return was 2013. He showed a zero income. In 2015, the husband showed a gross income of \$66,844 and a net income of \$19,939. This would seem to indicate that from what he does actually declare he has a profit margin (adding back personal expenses), of approximately 30%.
6. The husband scoffed at the idea of working for anyone else at a rate of \$30 per hour, which would result in an income of \$57,600 per year. It must be assumed therefore that the business is actually generating more than that amount and certainly nowhere as low as the \$19,939 declared by the husband in 2015.
7. The husband has deposed, falsely, in his affidavits and in his evidence at trial, that he was paying every expense for the family, while his income tax returns showed that he had nominal or no declared income in some years.
8. The husband has never provided full disclosure of his income or his business activities. This leaves the wife at a significant disadvantage in this litigation:
 - (a) The husband has for many years earned income through cash dealings which it appears he does not declare on his income tax returns. The wife believes this continues to be the case.
 - (b) Because the husband deals mostly in cash, particularly in buying and selling cars the he fixes up, there is no practical way to know what his income is or what the business is actually worth.
 - (c) She argues that she is not in a position to evaluate the husband's financial claims because of the non-disclosure. In one financial statement he evaluated the business at \$2,500. In Court, he said maybe \$20,000. (The wife says \$50,000.)
 - (d) He has failed to provide disclosure of his business assets such that the actual value of his business is unknown. He has asserted to the family however that his business is very valuable and has a great deal of "good will" which he could capitalize on in a sale.
 - (e) In 2013, he filed a tax return showing that he had zero income. There was no gross or net business income shown. He has never to date produced an actual financial statement for his company which shows any sort of breakdown of his gross or net earnings, equipment purchases, and so on.
 - (f) The only tax year in which the husband provided any sort of breakdown for Ed Auto Ambulance was in 2015. The wife is in no position to seek a business valuation with only one year of income and with the same issues of undeclared cash income for a valuator to rely on.
 - (g) As a result of his non-disclosure, the wife is at an insurmountable disadvantage and the Court should draw an adverse inference against the husband. The Wife's Financial Circumstances

[39] The wife's submission:

1. The reality and the evidence is that since 2000 the wife was the one who was responsible for the food, clothing, activity and educational expenses for the entire family and especially the parties' two children, in addition to contributing to the direct costs of the home.
2. She now earns approximately \$74,000 per year.
3. The two adult children, who are both employed and earn very good salaries, live with the wife.

[40] The husband's submission:

1. During the relationship, any income earned by either party would (as it should) have been spent on family expenses. The wife routinely referred to income that she earned as "her money". She paid for various items, and she bought various things for herself and the children. She contributed to "her" RRSP, and things of that nature.
2. The wife also managed to accumulate substantial debt on her credit cards. The balance on her HBC credit card was increased from \$1,155.23 in August 2014 to \$8,435 by time of separation.
3. She also frequently used her RBC Visa card for purchases including clothing, pet supplies, and so on. In January 2014, the balance was \$7,754; by date of separation, the balance had increased to \$18,239.
4. The wife's evidence was that she would make clothing purchases for herself and the children, and that the children would sometimes use her card for online purchases. Saghar, however, gave evidence that, at that point, she was buying her own clothing, and that she had never used her mother's credit card for online purchases.
5. Just prior to the separation, both Saghar and Saghi were working and, although they were still living at home, Saghar had completed her studies and was earning about \$30-35,000 per year. She now earns approximately \$60,000 per year. Saghi earns \$30 - \$35,000 per year. IV. THE RE-FINANCING OF APRIL 17, 2013 The Wife's Submission

- [41] The parties had a working arrangement. He was to pay the mortgage. She was to pay all the other household expenses. This pre-dated the events of April, 2013.
- [42] The wife did her part. She believed that the husband was doing his until large sums of money began disappearing from the joint line of credit with no explanation. The husband has provided no proof of where these monies went. There is no evidence that these withdrawals went towards any payment of family debt or use.
- [43] Between 2010 and 2013, he began draining every source of credit available to him, taking large cash withdrawals from credit cards at extreme rates of interest. As they had separate credit cards, she was unaware of this.

- [44] There continued to be large cash withdrawals from his business account which were left unexplained. His pattern was that after he would withdraw large amounts of cash, he would make a mortgage payment, or make a payment on a debt, then keep the difference in cash without explanation.
- [45] He also dissipated his life insurance policy without the wife's knowledge or consent of \$9,500 and used these funds to purchase a vehicle for himself and allegedly other tools for himself.
- [46] The evidence is clear that when she realized that he had removed money, on a number of occasions, from their joint Line of Credit without her knowledge, she immediately took steps at the bank to stop that from happening. This was evident in the notes and letters from TD Canada Trust in which the bank assured her that, in the future, both of their signatures would be required on line of credit withdrawals. She was clear that the joint credit that the parties had was only for emergency use, not to pay day to day bills of the parties.
- [47] He testified that he felt entitled to take this money and that the wife should not have tried to prevent him from doing so. He barraged her with demands, had the bank calling her while she was at school and work, constantly demanding that his debts be paid. When the wife would question him on where the money was spent, he would refuse to answer.
- [48] His biggest single deception was in tricking her into agreeing to re-mortgage their home, using it as security for all his debts, including his business debts, all while planning to leave her and their daughters shortly after leaving them with that debt, as well as all the other debts.
- [49] In March 2013, he advised her that he had amassed over \$72,500 in personal debt that required her to re-mortgage the house. She initially refused, then after his continuous pressure, she reluctantly agreed to what he wanted, however she did so on strict conditions.
- [50] She finally agreed to consolidate the husband's debt into a re-financed mortgage on the family home provided the husband would be solely responsible for repaying the entire mortgage. The wife's evidence was that the husband agreed to these terms and the parties signed the paperwork at the bank in April on those conditions. In any event, that had always been the agreement between them with respect to the division of financial responsibilities. She would continue to pay all of the other household expenses.
- [51] There was a clear agreement with respect to what those conditions were. The husband was to pay the entirety of the mortgage.
- [52] The husband's odd behavior after his debts were finally secured also lends itself to suspicion as to what he was actually doing with all of his income with his sudden trip to Iran, in September 2013, which he kept secret from his wife and children. They only found out where he was after contacting the police to report him as a missing person.

- [53] After April 2013, the wife believed that the husband was making the agreed payments during this period of time. She continued to believe this until he left the family home. She believed that his credit cards had been cancelled. She was unaware that he had been issued a new credit card. For months, he failed to make several mortgage and line of credit payments on the family home without the wife's knowledge.
- [54] Within days of the bank issuing a demand for full payment of the mortgage itself, the husband walked out the front door of the family home in March of 2015, left his key in the door and never looked back.
- [55] The evidence that supports her testimony that the husband agreed to be responsible for paying the entirety of the mortgage is as follows:
1. The wife had no reason to agree to using the family home as security for the husband's debts, other than on those terms. She received no benefit from it. The debts that the husband had accrued were not "joint" debts, or something that she was liable for.
 2. The wife had consumer debt as well, including her student loan, but her debt was not consolidated in the mortgage. She got no advantage from the agreement except that the husband agreed to be responsible for the mortgage.
 3. At that same time, in April 2013, she carried tens of thousands of dollars in debt on credit cards and a line of credit which had accumulated largely because the husband had not been contributing financially. She had a student loan of over \$50,000 which became payable that same month. She was servicing all of these debts from her income, plus all of the household expenses and expenses for her and the children in addition to the children's educational costs. None of these debts were ever secured by refinancing the house. The husband has contributed nothing towards any of those debts.
- [56] The wife has incurred numerous expenses as a result of the husband failing to honour his agreement to pay the mortgage:
1. The wife has never benefitted from any income that the husband made. He has paid zero into the family account since he left in March of 2015.
 2. The wife has struggled to pay every debt associated with the home and the joint line of credit, including the \$72,500 that the husband promised to be solely responsible for. She has paid her student loans. She has paid her vehicle loan. She has been paying on the large credit card debt that she was left with at the time of the separation, all with no help from the husband.
 3. In July 2013, when the property taxes for the family home came due, rather than use credit, the wife paid these taxes directly from her personal account. This was a debt that was not related to the mortgage or line of credit. It was an overall family debt for the family home, which she sought to preserve.

[57] As a result of the foregoing, the wife now argues as follows:

1. The husband admitted in cross-examination that he was responsible for the \$72,500 debt.
2. The Court should accept the evidence of the wife that the parties made this agreement in April 2013 in relation to the \$72,500 of debt of the husband that was consolidated onto this joint line of credit and that this debt should be apportioned solely to the husband in the division of assets.
3. Now, the husband asserts that she should bear the entirety of his debts, including his business debts. The wife responds that she never benefitted from the income that the husband made. He paid zero into the family account since he left.
4. The children have become responsible for paying off his debt. If the children had not contributed to the mortgage, then it would have been necessary to sell the house at a much lower value. The Husband's Submission

[58] One significant area where the evidence of the parties differs is with respect to the refinancing of the family home in or about April 2013. The husband agrees that he was to be responsible for the monthly payments, but not the entire amount of the principal. When the wife was asked why did she agree to sign, she answered: "Because we were a family."

[59] The borrowed amount of \$72,552 was used to pay and consolidate debts.

[60] The debts owed by the husband were family debt, as he had no expenses, other than home and business expenses. The credit card debt was because he was using the credit card for regular household expenses, including payment of mortgage, utilities and property taxes.

[61] The wife testified that she agreed to this refinance because the husband harassed her, and she only relented when he agreed to assume all and sole responsibility for the debt. However, she has not provided any proof or reasoning or rationale for this assertion. Her evidence was that she did not ask for the title to the family home to be changed, and the parties did not even handwrite this "agreement" in Farsi, because she "trusted him".

[62] The husband has stated that there was no such agreement, and in fact, that there was no reason for him to agree to such a condition. The debts were family debt, and being included in the refinancing was normal and appropriate. V. THE FAMILY HOME

Introduction

[63] In June 2004, the parties bought the family home in joint names, and as joint tenants.

[64] The estimated value of the family home, based on a joint appraisal conducted by Macintosh Appraisals Ltd on June 2, 2015, was \$730,000.

[65] On October 17, 2016, Macintosh Appraisals estimated the value of the family home to be \$910,000. Husband's Submission

- [66] The family home is the major family asset and is the only real estate the parties currently own. It was purchased in June 2004 with a \$40,000 down payment, approximately. The down payment came partially from the wife's RRSP (accumulated since 2000), a line of credit and also from the sale of property in Iran (which had been purchased during the marriage and was a family asset).
- [67] Prior to the separation, and after the wife started earning an income, the husband was primarily responsible for the mortgage and the loans on the family home. The wife paid expenses such as food, clothing for herself and the children. The husband had very little knowledge of the wife's income.
- [68] On April 17, 2013, the refinancing of the home occurred with respect to numerous debts previously referred to.
- [69] It was only after the husband was forced to leave, and had to find another place to live, that he could no longer afford to contribute to the mortgage. The wife started making mortgage payments at that point.
- [70] Since March 2015, the wife has (according to her 2016 financial statement) been paying \$3,461 per month for servicing the encumbrances registered against the home, as well as paying for utilities, insurance, and an unsecured line of credit. The Wife's Submission
- [71] In September 2013, he left the family home with no notice to his wife and children, secretly visiting Iran for several weeks.
- [72] His business account statements show that he was paying for at least some of the trip from his business account.
- [73] The wife gathered together what funds she could to pay the arrears on the mortgage that the husband had left her with. She had and has continued to have to borrow money from her daughters in order to meet the mortgage, utility and property tax payments.
- [74] Since the separation, she has been paying costs, as noted in her most recent financial statement, associated with the family home in the amount of \$3,461 per month. These include payments on the various loans registered against title, mortgage insurance, property insurance, property taxes and utilities.
- [75] The encumbrances registered against the family home, as of September 30, 2016, total \$484,119.79.
- [76] She will be required to pay all of the foregoing into the future with small reductions in principal and large interest penalties. The husband will never pay any of those expenses. VI. OTHER ASSETS AND DEBTS

Introduction

- [77] These Reasons for Judgment have two appendices: Appendix A - the husband's Scott Schedule; Appendix B - the wife's Asset and Debt Schedule.
- [78] These were not exhibits at trial, but were provided to me prior to submissions and were referred to extensively at that time.
- [79] There are some problems with both of them, one of which is that they are not actually entered into evidence. However, in the broadest sense, they are each supported by the oral evidence that was given by the two witnesses. The exhibits referred to in each of the appendices are the actual exhibit designations at trial.
- [80] Some of the other problems that appear in the appendices are as follows:
1. With respect to some of the assets and debts there is little emphasis in the evidence of the witnesses.
 2. They each refer to some items that are not referred to at all in the other's appendix.
 3. Both parties sometimes refer to amounts of purported assets or debts in a way which obviously indicate they are generalizing or estimating. I come to this conclusion because of the number of figures that are simply round numbers, without any cents.
 4. Sometimes the document that one of the parties relies on leads to a different amount for the same asset or debt when a different document has been relied on by the other party (for example, a party's financial statement v. a banking document).
 5. It is sometimes unclear what is the source in the evidence of the date of the value (or the estimated value) of the asset or debt referred to in the appendices. Sometimes, there is an indication that it comes from one of the financial statements, sometimes from another supporting document (for example, a banking document), sometimes it is simply not clear. There is no consistency in what approach is used.
 6. It is sometimes unclear what portions of debts (in the appendices) pre-date the separation, and which post-date it.
 7. It is sometimes unclear to what extent the wife's payment of debts relates to pre-separation debts (therefore family debt) as opposed to post-separation debt.
- [81] The circumstances of the parties are such that all of these questions require a decision rather than a call for further submissions from counsel. For that reason, and because I am satisfied that I can do so fairly and equitably on the basis of the evidence (as missing in details as it is), I intend to arrive at a decision on the basis of the evidence which is before me, rather than to approach this in a way which would simply further the extent of the litigation and require additional legal expenses by the parties.
- [82] In Appendix A, the husband sets out the following:

1. a list of assets of both parties;
2. a list of debts of both parties;
3. a proposed solution for what should be retained by each party, and what compensation each should pay the other to resolve all outstanding financial differences.

[83] In Appendix B, the wife sets out the following:

1. a list of assets of both parties;
2. a list of debts of both parties;
3. a list of what the husband owes the wife in terms of:
 - (a) the debt of \$72,500 which she argues the husband agreed to repay;
 - (b) 50% of the amount of numerous outstanding family debts that have still have not been fully repaid;
 - (c) 50% of what the wife has paid since the date of separation to service and reduce the balance of many family debts.

[84] I will use and refer to both appendices to assist me in the same way that counsels' submissions are used to assist any court engaged in the judgment-writing process. I will address them further under the heading of Issues, Argument and Conclusions. FINDINGS OF FACT

[85] Most relevant facts are found in the references to non-contentious evidence, and agreed to propositions contained in the evidence previously referred to.

[86] With respect to those aspects of the evidence where it is necessary and important to resolve the evidence in order to make certain findings of fact, I find as follows:

1. The husband was always a poor earner and unable to fulfill the financial needs of the family. He was always looking for a way to make a quick buck without paying taxes. He was dishonest towards the government. However, I am satisfied that he did not secretly put money away and keep it from his family. His intention and hope was always to do a better job of earning for his family but he simply did not have the ability. This led to keeping secrets from his wife, not because he was trying to cheat her, but because he was embarrassed. In turn, this led to resentment on the part of the wife and her own keeping of secrets as she went out to educate herself and become the family's financial provider.
2. He did work hard, although the wife was not content and would not acknowledge that.
3. In trying to pay family debts, the father would always have to borrow from one fund to pay another. He was kiting credit between bank accounts, lines of credit, and credit cards, always hoping and assuming that there would be more money to catch up in the future. But it was never ending.

4. The wife is mistaken in her belief that the husband has put away money for himself.
5. The value of Ed's Auto Ambulance was never \$50,000. I am satisfied that the appropriate value at the time of separation was \$20,000.
6. The husband did not make the necessary disclosure. This is partly a result of the lifestyle he had chosen. One of the consequences of working for cash all your life is that there are no documents to disclose. Nevertheless, it left the wife at a significant disadvantage in this litigation.
7. The reason the wife's credit card debts kept getting larger and larger was because the husband was not making a significant contribution to the family. The wife went to school for a long time earning very little and was unable to catch up after she started working full-time in April 2013. By that time, her credit card debt was so high that she has only been able to chip away at it after servicing the debt with interest payments.
8. The husband did agree to be solely responsible for the entire debt of \$72,500.
9. The husband did not deliberately stop making the mortgage payments with respect to the \$72,500 debt. He simply was unable to raise the money on a regular basis. Rather than tell his wife, he simply continued to try, falling farther and farther behind. He did not tell his wife because he knew that sympathy was the last thing he would get. And finally, he just gave up and left.
10. At all times since the wife began earning an income, they had an informal but clear arrangement that the husband's responsibility would be to pay the mortgage and the wife's would be to pay all other family expenses. This arrangement continued after the April, 2013, refinancing which included the \$72,500 debt. I am satisfied that whenever they used the phrase "the mortgage" they intended it to include encumbrances against title which may not legally meet the definition of the word "mortgage".
11. The date of separation of the parties was March of 2015.
12. After the separation of March, 2015, the husband has paid nothing towards family debt or any family expenses of any kind.
13. The two daughters have contributed towards payment of family debt since the father left the home. It may have been impossible for them to keep the home if they had not done so. I am satisfied that it is the mother's intention to repay them in some way depending upon what may be available for that purpose.
14. Additional findings of fact with respect to the value of family assets and debts will be made later in this Judgment under Issues, Argument and Conclusions. ISSUES, ARGUMENT AND CONCLUSIONS I. POSITIONS OF THE PARTIES The Wife's Submission

- [87] In *K.M.J. v. J.H.D.N.*, 2014 BCSC 1895 (CanLII) at paras. 155-156, and *Bilawchuk v. Bilawchuk*, 2014 BCSC 2067 (CanLII) at paras. 59-63, the issue of how to account for a party's contributions post-separation was addressed in the context of family debt. In short, the FLA provides two alternate routes to address potential unfairness that may arise from a party's post-separation contributions, namely s. 87 and s. 95:
1. Under s. 87 the Court may depart from the date of hearing or agreement as the valuation date; or
 2. Under s. 95 a court can order reapportionment to address any "significant unfairness" that may arise from an equal division of property and debt in light of the spouse's post-separation contribution.
- [88] The wife argues that it would be significantly unfair if the husband were entitled to receive 50% of the equity and the assets, while the wife has been and will continue to be responsible for 100% of the debt.
- [89] Therefore, she argues that either:
1. the Court should set the date of separation (the lower appraisal date) as the appropriate date for valuation of the property, rather than the hearing date; or
 2. the Court should order reapportionment in her favour pursuant to s. 95 of the FLA. The Husband's Submission
- [90] The husband is seeking an order for equal division of family property and debt.
- [91] The family home should be listed for sale immediately, and the net sale proceeds, after the payment of encumbrances, commission and other conduct of sale expenses, be divided equally between the parties.
- [92] Alternatively, if the wife wishes to retain the family home, she may purchase it from the husband for \$910,000, based on the October 17, 2016 appraisal date. After deduction of the encumbrances, commission and other conduct of sale expenses, they will each be entitled to 50% of the net value that remains.
- [93] The payments made by the wife towards the mortgage and property taxes shall be offset against the benefit derived by the wife for having had exclusive occupancy of the home, and the fact the husband has had to pay rent since the separation.
- [94] The husband and wife shall keep the property and debt as set out in the attached Appendix A.
- [95] Once property and debt is allocated according to Appendix A, the parties shall each be responsible for all debts in their own personal name.
- [96] All other claims between the parties shall be dismissed. II. VALUATION OF FAMILY HOME

Introduction

- [97] The parties differ on the date of valuation of the family home. The husband submits that the date of trial ought to be used, and the wife is submitting that the date of separation ought to be used.
- [98] Under s. 87, unless an agreement or order provides otherwise, the value of family property must be based on its fair market value. In the absence of an agreement dividing the family property and family debt, the valuation is made as of the date of hearing.
- [99] The Court of Appeal has recently confirmed in *Jaszczevska v. Kostanski*, 2016 BCCA 286 (CanLII) at para. 36, that the goal of the FLA is to simplify division of family property and make it more certain and predictable than was the case under the former legislation. This was done in part by reducing the court's discretion to depart from the presumptive equal division. In doing so, the Legislature clearly anticipated changes in value taking place between those dates, and courts have recognized this in prior decisions.
- [100] Both parties argue that the other contributed to a delay of the trial date and that this should affect the Court's decision with respect to which valuation date is the fair one to choose. I have already rejected this argument; they have both contributed to the delay. Husband's Submission
- [101] In *Blair v. Johnson*, 2015 BCSC 761, Fleming J. analyzed the jurisprudence and common law. She concluded that the significant unfairness threshold test should be met before the court departs from the date of trial as the valuation date pursuant to s. 87.
- [102] If the house is valued at \$730,000 (closest to the date of separation), then what would happen is this:
1. Payment of the debts required to remove the encumbrances (\$484,100) on title would be subtracted from the valuation price.
 2. This would leave a balance to be divided between the parties of \$245,900. (In reality, it would be less than that because of the costs involved in the actual sale of the property.)
 3. This would leave a balance of \$122,950 for each of the parties (again, actually less than that).
- [103] All of that assumes that the Court require the husband to pay half of the balance of the encumbrances remaining on the property, and nothing more. In fact, if the wife is successful in this claim, the Court may order him to pay a number of other things, including:
1. an additional 50% of the \$72,500 debt (he will have already paid his own 50% when the encumbrances are paid);
 2. an order for reimbursement to the wife of some or all that she has paid towards debts since the date of separation.

[104] All of the foregoing would be very unfair:

1. Even if he is left with \$122,950, this leaves him in a grossly unfair position compared to the wife who has a better education and better earning power and always will have. He will end up with little from the family home, although they lived there as a family for more than 11 years.
2. If he is required to pay other of the debts, he would end up with nothing.

[105] Section 87 expressly notes that the valuation date should be the date of hearing in the absence of an agreement dividing the family property and debt. There is no such agreement here.

[106] Even if the house is valued at \$910,000 (the appraisal closest to the date of hearing), the husband will be treated unfairly. However, it will be much closer to fairness than if valued at \$730,000. At \$910,000, the following will occur:

1. The amount of the encumbrances of \$484,100 will be subtracted off the top.
2. This will leave a balance of \$425,900. Once again, it will actually be less because of the costs of the sale of the property.

[107] When that figure is divided by two, each of the parties will receive \$212,950.

[108] That is the best that the husband can do. If the Court orders that he pay back additional debts (such as an additional 50% of the \$72,500), or reimbursement of 50% of what the wife has paid since the date of separation, then he will still end up with significantly less. Nevertheless, it will be a figure which is more fair than if the house sells for \$730,000. Wife's Submission

[109] In this case, clearly, the parties do not have an existing agreement with respect to family property and debt. Furthermore, there is no agreement providing for an alternate valuation date than that contemplated by s. 87.

[110] The value of the home when the husband abandoned it and was prepared to walk away was \$730,000. This is important because at that point, there truly was no equity to speak of with the debts being taken into consideration. He left and paid nothing since then.

[111] The wife has paid every debt associated with the home and the joint line of credit, including the \$72,500 that the husband promised to be solely responsible for. She has paid her student loans. She has paid her vehicle loan. She has been paying on the large credit card debt that she was left with at the time of the separation, all with no help from the husband.

[112] There is no doubt from the husband's own evidence that he had no interest in the family home once he left. He expected the bank to foreclose.

[113] Within three months of the husband leaving, the wife organized a joint appraisal of the family home, wanting to come to a swift and definitive resolution with the husband.

- [114] With the wife and children paying his debts, the husband had no urgency to resolve matters.
- [115] But for the actions of the wife and the children over the past two years, there would be no home and no equity.
- [116] It would be significantly unfair to use the current value (\$910,000). It would also put the wife and the children in a situation where all of their efforts for the past 20 months have been for nothing, leaving them with no option but to sell the property. On the other hand, if valued at \$730,000, they will be able to afford to buy the home from the husband.
- [117] This situation justifies the Court utilizing its discretion and departing from the use of the property's current market value.
- [118] The appraised value as at June 2015 should be the value used for division; alternatively, reapportionment of assets pursuant to s. 95 of the FLA.

Conclusion

- [119] Section 87 of the FLA says this: 87 Unless an agreement or order provides otherwise and except in relation to a division of family property under Part 6,
- (a) the value of family property must be based on its fair market value, and
 - (b) the value of family property and family debt must be determined as of the date
 - (i) an agreement dividing the family property and family debt is made, or (ii) of the hearing before the court respecting the division of property and family debt.
- [120] I am satisfied that, in the circumstances of this case, there is no valid reason to depart from the date of trial as the valuation date.
- [121] It follows that the date that the Court considers appropriate for assessing the value of the family home is the date of the most recent appraisal (October 17, 2016) which sets the value at \$910,000.
- [122] The question of whether there should be a reapportionment to address any unfairness pursuant to s. 95 will be dealt with later in these Reasons. III. OTHER ASSETS AND DEBTS
The Law
- [123] Under s. 81 of the FLA, on separation, each spouse "has a right to an undivided half interest in all family property as a tenant in common, and is equally responsible for family debt.
- [124] Relevant sections of the FLA are as follows: 81 Subject to an agreement or order that provides otherwise and except as set out in this Part and Part 6 [Pension Division],
- (a) spouses are both entitled to family property and responsible for family debt, regardless of their respective use or contribution, and

- (b) on separation, each spouse has a right to an undivided half interest in all family property as a tenant in common, and is equally responsible for family debt. 86 Family debt includes all financial obligations incurred by a spouse
- (a) during the period beginning when the relationship between the spouses begins and ending when the spouses separate, and
- (b) after the date of separation, if incurred for the purpose of maintaining family property. 92 Despite any provision of this Part but subject to section 93 [setting aside agreements respecting property division], spouses may make agreements respecting the division of property and debt, including agreements to do one or more of the following:
 - (a) divide family property or family debt, or both, and do so equally or unequally;
 - (b) include as family property or family debt items of property or debt that would not otherwise be included;
 - (c) exclude as family property or family debt items of property or debt that would otherwise be included;
 - (d) value family property or family debt differently than it would be valued under section 87 [valuing family property and family debt]. 97 (2) Without limiting subsection (1), the Supreme Court may make an order to do one or more of the following:
 - (h) subject to subsection (3), declare that one spouse is responsible for payment of an item of family debt and must indemnify the other spouse for the item of family debt. The Wife's Submission

[125] In Appendix B, the wife has prepared an analysis of what should occur if the Court grants her exclusion possession and ownership of the family home now valued at \$910,000.

[126] The premises of that analysis as noted in Appendix B are as follows:

1. wife's net assets - \$369,777 (including the full value of the family home and of the mortgage liability on the home);
2. husband's net assets - \$54,000 (valuing Ed's Auto Ambulance at \$50,000); and
3. debts owed by the husband to the wife \$127,168.50.

[127] With respect to the \$127,168.50 which the wife argues is owed to her by the husband, she argues that she has been paying the mortgage, line of credit, property taxes and city utilities because it would not make sense for her to move elsewhere and rent. Both daughters live with her as well and for all of them and her two dogs to seek accommodation elsewhere would cost more than the cost of maintaining the house.

[128] The wife then conducts an analysis resulting in the following:

1. she would be the exclusive owner of the home (and responsible for the mortgage);

2. she would owe the husband \$30,720 as an equalization payment; and
3. she would remain responsible for paying all outstanding family debts. He would be absolved of legal responsibility for any of them. Husband's Submission

[129] The husband would argue that the foregoing is a grossly unfair approach. The wife ends up with a \$910,000 asset while he ends up with \$30,000. However, that argument ignores the additional financial benefit that the husband will have received - all of his debts to the wife would be paid.

[130] Appendix A (the husband's Scott Schedule) takes a different approach, has a number of different premises, and leads to a very different conclusion. One of the largest differences is in the amount of family debt that the husband is actually responsible for.

[131] With respect to the debts that he owes to the wife for maintenance of the home:

1. He agrees that he has paid nothing since he left in March of 2015.
2. The respective incomes of the husband and the wife at the time of separation are important to show that the husband did not abandon his responsibility to contribute to family debt, as if he had financial resources at his disposal.
3. While it is true that he has paid nothing towards the debt secured by the home, since March of 2015, it is also true that the wife and their two daughters have continued to live there without paying rent.

[132] His ultimate conclusion is that the parties will (and should) end up with almost exactly the same amount of value after all of the calculations are completed.

[133] At the end of the Appendix A, the summation of the various input factors is as follows:

Value to be retained by Husband	Value to be retained by Wife	Family Property Retained by Husband and Wife
\$24,000	\$502,921.69	
Net compensation from Wife to Husband for Property	\$213,573.50	(\$213,573.50)
Net compensation from Husband to Wife for Debt	(\$12,244.58)	\$12,244.58
Net family property retained	\$225,328.92	\$301,592.77
Less family debt for which each party is responsible	(\$10,560.00)	(\$84,001.16)
Total Net Property retained by each party	\$214,768.92	\$217,591.61

Conclusion

[134] I have come to different conclusions (than those suggested in the two appendices) concerning the family assets and debts and their values and amounts at the time of separation. In doing so, I rely upon the evidence of both parties, the exhibits, the two appendices and the submissions of counsel.

[135] For the reasons previously noted, I have rounded and estimated where necessary, particularly where the evidence is unclear as to the precise date of the values and amounts noted in the two appendices.

[136] Although I have determined that the date for valuation of the family home is the date of hearing, the evidence does not permit me to come to the same conclusion concerning the other family assets. Although I am conscious of s. 87 of the FLA, the evidence permits me to draw better conclusions with respect to the value of the other family assets at the time of separation, and I propose to proceed on that basis. Fortunately, I am satisfied that this will cause no injustice for a number of reasons:

1. I come to the same conclusion with respect to not only family assets, but also family debts;
2. the evidence suggests that there is little change in the value of any of the assets (except the family home) from the time of separation until the time of hearing with the exception of the consequences of certain debts being incurred to make payments against certain assets;
3. those additional debts incurred since the time of separation are accounted for in this analysis.

[137] Because the value of the family home and the encumbrances on title are determined as of the hearing date, but the other assets and debts will be determined at the time of separation, it is appropriate that their values be determined separately. Consequently, the values of the family home and the encumbrances will be added to the values of the other assets and debts after the latter have been determined.

[138] Excluding the family home and the encumbrances on title, I am satisfied that the family assets at the time of separation were as follows: Family Assets Amount 2014 Toyota (Wife) \$16,000 RRSPs (Wife) \$18,000 Provincial Health Authority Pension (Wife) \$10,000 Public Service Pension (Wife) \$34,000 1996 Ford (Husband) \$1,500 Ed's Auto Ambulance (Husband) \$20,000 TD Chequing Account (Husband) \$80 TD Business Account (Husband) \$415 Household furnishings \$10,000 Canada Pension Plan (CPP) and Old Age Security (OAS) unknown Total: \$109,995

[139] Excluding the encumbrances against title on the family home, I am satisfied that the family debts at the time of separation were as follows: Family Debts Amount 2014 Toyota Loan (Wife) \$24,000 RBC Visa (Wife) \$16,700 RBC LOC (Wife) \$8,000 HBC MasterCard (Wife) \$8,400 Best Buy (Wife) \$1,900 Student Loan (Wife) \$48,950 TD LOC (Husband) \$2,375 TD Business Visa (Husband) \$4,200 TD Visa (Husband) \$3,975 Total: \$118,500

[140] When the value of the family home is added to the value of the other assets, the total assets are as follows: Value of Family Home Other Assets Total \$910,000 \$109,995 \$1,019,995

[141] The foregoing total (and all calculations that follow in this Judgment) will vary if, as is likely, the family home sells for a price different from \$910,000.

[142] When the value of the encumbrances on title is added to the amount of the other debts, the total debts are as follows: Amount of the Encumbrances Other Debts Total \$484,100 \$118,500 \$602,600

[143] When the total debts are subtracted from the total assets, the amount remaining is as follows: Assets \$1,019,995 Debts

- \$602,600 Net Family Assets: \$417,395

[144] If the balance of \$417,395 were to be divided equally between the two parties, they would each receive \$208,697.50.

[145] The husband argues that by virtue of s. 81 of the FLA, he is entitled to 50% of the net family assets and therefore entitled to \$208,697.50.

[146] However, this ignores the reality that the wife has been servicing all of the family debts, paying primarily interest, and reducing the principal only minimally since the date of separation. The husband has paid zero. He is responsible for repaying to her 50% of those amounts paid.

[147] He is also responsible for one further debt, that is, the \$72,500 which arises from the re-financing of April, 2013. Two additional factors concerning this:

1. Earlier in this Judgment, I found as a fact that the parties had agreed that he would be responsible for repaying the entirety of this debt. As a matter of law, I now invoke ss. 92 and 97(2)(h) of the FLA in determining that this must be repaid in accordance with their agreement.
2. Since this debt was secured by a charge on the property, it will be repaid (to the bank) when the property is sold and the encumbrances paid. The effect of this will benefit the parties equally. Each will have, in the course of this transaction, already paid 50% of that debt. In other words, the husband will have already repaid \$36,250. The wife will also have paid that amount, and the husband is responsible for reimbursing her for the amount she has paid. Therefore, assuming the house is sold and the mortgage paid, he will owe her \$36,250 for this debt.

[148] In Appendix B, the wife has set out a list of the debts owed by the husband to her. As can be seen, the total is \$127,168.50. I am satisfied, on the basis of the evidence, that list is accurate with one exception: it includes the debt of \$72,500, which should be reduced to \$36,250. Therefore, the amount of debt owed by the husband to the wife is \$90,918.50.

[149] In order to determine the entitlement of each party, the following must first occur:

1. That figure must be subtracted from what would otherwise be the husband's tentative entitlement of 50%. When this occurs (\$208,697.50 less \$90,918.50), a balance of \$117,779 remains.
2. That figure must be added to the wife's tentative entitlement of 50%. When those two figures are added, (\$208,697.50 + \$90,918.50) the total is \$299,616.

- [150] It is important that their entitlements be expressed in percentage terms rather than pure dollar terms. This is because the home may ultimately sell for less than the price of \$910,000. Further, there will undoubtedly be expenses (commission, legal fees and so on) related to the sale of the house. Therefore, it is impossible to express their entitlements in dollar terms at this time.
- [151] The calculations related to the husband (leaving a balance of \$117,779 as calculated above) represents 28.22% of the net family assets of \$417,395. His tentative entitlement therefore arising out of this Judgment would be 28.22% of the net family assets.
- [152] The calculations related to the wife (leaving a balance of \$299,616 as calculated above) represents 71.78% of the net family assets of \$417,395. Her tentative entitlement therefore arising out of this Judgment would be 71.78% of the net family assets.
- [153] I refer to the foregoing as "tentative entitlements" because they are subject to consideration of the wife's application for reapportionment pursuant to s. 95 of the FLA which I will address shortly.
- [154] I have declined to give any value to whatever entitlements the parties might have to the other's CPP or OAS which is referred to in the list of family assets set out under this section of the Judgment. Based on all of the evidence, I am satisfied, subject to the s. 95 analysis which follows, that the calculations and conclusions to this point in this Judgment adequately address the issues concerning family assets, family debts, and other debts. I will have a further comment with respect to this under the s. 95 analysis. IV. SECTION 95 General
- [155] The wife argues that there should be a reapportionment of family assets in her favour.
- [156] Section 95 of the FLA is as follows: 95 (1) The Supreme Court may order an unequal division of family property or family debt, or both, if it would be significantly unfair to
- (a) equally divide family property or family debt, or both, or
 - (b) divide family property as required under Part 6 [Pension Division].
- (2) For the purposes of subsection (1), the Supreme Court may consider one or more of the following:
- (a) the duration of the relationship between the spouses;
 - (b) the terms of any agreement between the spouses, other than an agreement described in section 93 (1) [setting aside agreements respecting property division];
 - (c) a spouse's contribution to the career or career potential of the other spouse;
 - (d) whether family debt was incurred in the normal course of the relationship between the spouses;

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

[157] While the wife currently is entitled to receive a larger amount from this Judgment than the husband, this is not because the family assets have been unevenly divided. Rather, it is because I have determined that the husband owes debt to the wife.

[158] Consequently, s. 95 is available for consideration. The Wife's Submission

[159] This Judgment has only addressed the financial differences between the husband and wife since the separation. Fairness requires that it also address the financial situation between them before the separation. The husband never provided for his family. It is only because the wife educated herself, went to work, and was financially responsible, that the family has survived financially. This should be reflected in the Judgment.

[160] The husband will already receive from this Judgment more than he deserves. He has done nothing to earn any of it. It is only because the wife (with the help of her daughters) was financially responsible and maintained the home that he receives a benefit from its increase in value.

[161] Concerning their daughters:

1. The wife's daughters have contributed financially to the home and the expenses without which the wife would have been unable to maintain it. The wife intends to repay the daughters either with money or with equity in the home.

2. Although they are adults, they really only have one parent left to help them in every sense, including financial. Is their father without responsibility in this regard?

[162] With respect to "occupational rent", the wife argues that this cannot be considered against her for the following reasons:

1. It has not been pleaded.
2. He walked away from the home. The law says that this consideration is available only if he has been thrown out and told to leave. Here, he just left. He could have stayed.
3. The husband has benefited by the wife staying in the home with their daughters. That is the only reason why he earns a windfall from the increase in value of the property. Otherwise, it would have been sold several years ago at a much lower price. Husband's Submission

[163] This was a 28-year relationship. The family lived together in the family home for 11 years.

[164] Whatever complaints the wife may have about the husband's finances, they have been addressed by the Judgment to this point. All debts are repaid by what has already been decided in this Judgment.

[165] Under the Judgment to this point, the husband receives 28.22% of assets; the wife, 71.78%. It would be unfair to erode the husband's share further.

[166] Into the future, the wife has much more earning potential. She is better educated and currently earns \$74,000 per year. The husband earns \$21,000 per year.

[167] The home did not increase in value because of the wife's financial abilities or hard work. She was simply a beneficiary of a rising market. The husband is entitled to benefit from that as well.

[168] Any loans or gift that the daughters made to their mother is irrelevant in assessing the interests of the wife and the husband. Similarly, the daughters' financial futures are irrelevant.

[169] The question of occupational rent is a factor to be considered in determining what is fair. The wife has enjoyed the use of the home without having to pay any rent. In the meantime, the husband continues to pay \$874.50 a month in rent: *Donovan v. Donovan*, 1986 CanLII 774 (BC SC); *Wilson v. Wilson*, 2016 BCSC 1315.

Conclusion

[170] After consideration of the foregoing, and of the evidence in the context of those factors set out in s. 95(2), I am satisfied that it would be significantly unfair to divide the family property and debt equally (as I have done prior to determining the husband's additional debts owed to the wife). Fairness requires that there be a reapportionment in favour of the wife.

[171] There are two main reasons for this:

1. The husband's non-disclosure has put the wife at a great disadvantage. It has made it impossible for her to determine, with the certainty to which she is entitled, precisely what the relative finances were and are. While I have not drawn an adverse inference against the husband with respect to various of the findings I have made to this point, I am satisfied that this is the point in my analysis where this unfairness should and can be addressed.
2. The ultimate receipt of the shares of family assets that the parties will be entitled to is many months away. It is dependent upon when the family home will be sold and when completion of that sale will take place. In the meantime, the wife will continue to have the burden of making payments towards the family debts. The husband will not be paying anything towards those. While the principal amounts of those payments has been accounted for in my determination with respect to the husband repaying those debts, this does not account for whatever interest will be paid on those debts in the meantime. It is impossible for me to determine what those amounts will be, however, I am satisfied that they will be something more than zero.

[172] Nevertheless, I do find some merit in the submissions of the husband, with respect to the s. 95 analysis and consequently, the reapportionment should not be large.

[173] In all the circumstances, I order reapportionment in favour of the wife in two different ways:

1. The tentative entitlement to net family assets of 28.22% in favour of the husband will be reduced to 27%. The tentative entitlement of 71.78% of net family assets to the wife will be increased to 73%.
2. In paragraph 154 of this Judgment, I indicated that there would be no future entitlement by either party to the other's CPP or OAS benefits. If it is necessary to rely upon s. 95 to come to that conclusion, then I do so here. DECISION

[174] This Judgment addresses and finalizes all outstanding financial matters and issues between these parties:

1. The value of the family home is \$910,000.
2. The total value of family assets is \$1,019,995 (subject to the sale and adjusted price of the family home).
3. The total amount of family debts, (including encumbrances against the home) is \$602,600.
4. The value of net family assets is \$417,395.
5. The parties would divide the net family assets equally except that the husband owes the wife further debt. The amount of that further debt is \$90,918.50.

6. After accounting for the amount of further debt that the husband owes to the wife, and as a consequence of reapportionment pursuant to s. 95, the husband is entitled to 27% of the net family assets; the wife is entitled to 73% of the net family assets.
7. Neither party has any entitlement to future benefits from the other's CPP or OAS plans in the future.
8. Either party may purchase the family home from the other party for the price of \$910,000, or such other price as they may agree upon.
9. If neither party has agreed to purchase the home as noted above within 60 days of the date of this Judgment, or such later date that the parties may agree to in writing, then the home will be sold according to the following terms:
 - (a) The wife will have exclusive conduct of the sale.
 - (b) She will sign a listing agreement with a real estate agent within 90 days of this Judgment.
 - (c) It need not be listed for \$910,000. The wife will receive and act upon proper advice from one or more real estate agents in that regard.
 - (d) The wife will forward a copy of the listing agreement together with the name and phone number of the listing agent to the husband or his lawyer forthwith upon the agreement being entered into.
 - (e) While the husband will have no authority to give the real estate agent any instructions, he shall be entitled to all relevant information about the listing and relevant developments concerning the home directly from the real estate agent. The real estate agent will be advised that he/she can and should receive the husband's requests, or his lawyer's requests, and answer all reasonable requests for information.
 - (f) The real estate agent will be told that he/she is to advise the husband forthwith if the wife does not accept any offer to purchase, including the amount of the offer.
 - (g) The husband is at liberty to make an application to the court that may arise out of his reasonable belief that the wife is delaying the sale of the house unreasonably.
 - (h) Any accepted offer for sale must be approved by the court, with Notice to the husband.
 - (i) Property taxes, property insurance, utilities, and other property-related expenses will be shared on a 50/50 basis until a sale is completed. Accounting for the foregoing will be completed together with other adjustments at the time of sale.
10. Subject to any subsequent agreement to the contrary, all financial obligations that either might have towards the other party will end when the property sells and they have each received their respective shares in accordance with this Judgment.

11. If the husband is in possession of his daughters' jewellery, which he may have taken inadvertently from the home, he will return it to the wife so that she may return it to their daughters. Alternatively, he will arrange to return it to his daughters directly. COSTS

[175] It is not clear to me if the parties wish to make submissions with respect to costs. If they do, they may do so in writing by simply forwarding submissions to me through the Registry. I would ask them to limit their submissions to two pages each. If they wish to provide me with authorities, they need not copy cases. They can forward case names and citations to me together with paragraph numbers.

[176] If they wish to make submissions orally, they can arrange to set a convenient date through the Registry.

[177] Finally, if I do not hear from them, I will presume that they have resolved this issue to their mutual satisfaction. "Silverman J."

The Honourable Mr. Justice Silverman APPENDIX A SCOTT SCHEDULE (HUSBAND) Esfandiar Ahmadi-Abbasabadi v. Seyedeh-Robabeh Ahmadian 15-Nov-16 Issues: Division of Assets, Support Date of Marriage: April 13, 1987 Date of Separation: March 2015 Nature of Property/Debt Value Basis Associated Liability % Entitlement/ Responsibility Esfandiar % Entitlement/ Responsibility Robabeh Net Value of family property/Debt for Division Proposed Allocation of Family Property Value or Share retained by Esfandiar Value or Share retained by Robabeh Compensation payment to Robabeh Compensation Payment to Esfandiar REAL PROPERTY 3180 Sylvia Place, Coquitlam, BC \$730,000 per June 2015 appraisal, \$910,000 per October 2016 appraisal, Ex10, Tab 80 and 88 mortgage of approx \$484,119.00 in total, Ex10, Tab 91 50% 50% \$425,881 based on 2016 appraisal and \$484,119.00 total liability

1. property to be sold and equally divided; or
2. the Resp to buy the Claim's share \$425,881.00 \$212,940.50 VEHICLES 2014 Toyota Corolla in name and possession of Robabeh \$16,000 as per Fin Stat of Resp sworn on June 10, 2016 Ex6 \$24,022.87 as per Fin Stat of Resp sworn on June 10, 2016 Ex6 50% 50% (\$8,000) Robabeh to retain and continue to make payments -\$8,000.00 \$4,000.00 \$0.00 1999 Ford F350 in name and possession of Esfandiar \$2,500 as per Fin Stat of Claim sworn Sep 10, 2015, Ex1 Nil 50% 50% \$2,500.00 Esfandiar to retain \$2,500.00 \$1,250.00 1996 Ford Windstar in name and possession of Esfandiar \$1,500 as per Fin Stat of Claim sworn Sep 10, 2015, Ex1 Nil 50% 50% \$1,500.00 Esfandiar to retain \$1,500.00 \$750.00 BUSINESS INTEREST Ed's Auto Ambulance \$20,000 as per evidence of Claimant 50% 50% \$20,000.00 Esfandiar to retain \$20,000.00 \$10,000.00 RRSP's/RESP's RBC RRSP in Robabeh's name \$18,266.12 as per Ex7, Tab 24, p. 194 Latent tax on withdrawal 50% 50% \$18,266.00 Robabeh to retain \$18,266.00 \$9,133.00 PENSIONS Robabeh's Provincial Health Authority Pension \$10,554.00 total contribution to Dec 31, 2015, as per Ex7 Tab 25 50% 50% \$10,554.00 Robabeh to retain - in lieu of student loan \$10,544.00 Robabeh's Public Service Pension (2013+) \$41,230.69 as per Ex6, Fin Stat of

Resp sworn June 10, 2016 50% 50% \$41,230.69 Robabeh to retain in lieu of student loan \$41,230.69 CPP Credits Unknown To be divided pursuant to legislation BANK ACCOUNTS RBC TFSA in Robabeh's name \$134.21 as per Ex6 Fin Stat of Resp sworn on June 10, 2016 Robabeh to retain RBC chequing account in Robabeh's name \$149.62 as per Ex6 Fin Stat of Resp sworn on June 10, 2016 Robabeh to retain TD chequing account in Esfandiar's name \$81.49 as at March 2, 2015, Ex8, Tab 4, p28 - same balance until March 17, 2015 Esfandiar to retain TD Business Account in Esfandiar's name \$417.01 as at March 11, 2015 per Ex9 Tab 27 p80 Esfandiar to retain PERSONAL PROPERTY Household furnishings in the possession of Resp Unknown, but at least \$15,000 Nil 50% 50% \$15,000.00 \$15,000.00 \$7,500.00 SUBTOTAL OF FAMILY PROPERTY \$24,000.00 \$502,921.69 \$16,000.00 \$229,573.50 Debt (Unsecured) Robabeh's RBC Visa \$16,713.53 as at March 2105, per Ex7, Tab 18, p. 158 N/A 50% 50% (\$16,714) Robabeh to retain (\$16,714) \$8,356.77 Robabeh's RBC LOC \$8,000 as at March 23, 2015, per Ex9. Tab 48 50% 50% (\$8,000) Robabeh to retain (\$8,000) \$4,000.00 Robabeh's HBC Mastercard \$8,435.63 as at April 2015, Ex7 Tab 17, p. 119 50% 50% (\$8,436) Robabeh to retain (\$8,436) \$4,217.82 Robabeh's Best Buy \$1,900.15 as of April 2015 per Ex7 Tab 16, p. 91 50% 50% (\$1,900) Robabeh to retain (\$1,900) \$950.00 Robabeh's student loan \$48,952.00 as at March 2015, Ex7 Tab 15 0% 100% (\$48,952) Robabeh to retain full responsibility in lieu of pension and RSP (\$48,952) Esfandiar's TD Line of Credit \$2,380.93 as at separation, Ex8, Tab 9, p. 100 50% 50% (\$2,381) Esfandiar to retain (\$2,381) \$1,190.50 Esfandiar's TD Business Visa \$4,203 as at separation, Ex9 Tab 36, p. 19 50% 50% (\$4,203) Esfandiar to retain (\$4,203) \$2,101.50 Esfandiar's TD Platinum Visa \$3,976 at statement dated Feb 4, 2015, Ex8 Tab 13, p11 50% 50% (\$3,976) Esfandiar to retain (\$3,976) \$1,988.00 SUBTOTAL OF FAMILY DEBT (\$10,560.00) (\$84,001.16) \$17,524.58 \$5,280.00 Family Property Retained by Esfandiar & Robabeh \$24,000.00 \$502,921.69 Net compensation from Robabeh to Esfandiar for Property \$213,573.50 (\$213,573.50) Net compensation from Esfandiar to Robabeh for Debt (\$12,244.58) \$12,244.58 Net family property retained \$225,328.92 \$301,592.77 Less family debt for which each party is responsible (\$10,560.00) (\$84,001.16) Total Net Property Retained by each party \$214,768.92 \$217,591.61 APPENDIX B WIFE'S ASSET & DEBT SCHEDULE VALUE AS AT JUNE 2015 3180 Sylvia Place, Coquitlam, BC (June 2015 value) \$730,000 Ex 7, Tab 1 2014 Toyota Corolla \$16,000 Ex 6 RBC RRSP \$7,000 Ex 7, Tab 24 Public Service Pension Plan \$34,000 (as at date of separation) Ex 7, Tab 25 Mortgage on Sylvia Place (\$490,000) Ex 7, Tab 9 Student Loan (\$46,000) Ex 7, Tab 15, pg 85 Car Loan for Corolla (\$24,000) Ex 7, Tab 21 Credit Card debt (incurred during the marriage which still exists) (\$27,223) Ex 7, Tab 17, pg 119 Ex 7, Tab 18, pg 161 Ex 7, Tab 16, pg 104 RBC Line of Credit (incurred during the marriage) (\$10,000) Ex 7, Tab 20, pg. 182 TOTAL ASSETS OF WIFE \$189,777 THE HUSBAND 1996 Ford Windstar \$1,500 Asserted by Claimant in Financial Statement, no evidence 1999 Ford F-350 \$2,500 Asserted by Claimant in Financial Statement, no evidence Ed Auto Ambulance (no valuation provided or proper disclosure, imputed value) \$50,000 Claimant asserts \$25,000. No evidence of assets or actual income. TOTAL: \$54,000 MONIES OWING FROM HUSBAND TO WIFE One half of property taxes (2015 & 2016) \$3,500 Ex 7, Tab 2, pg 19 Ex 7, Tab 3. pg 24 One half of property insurance - \$145 x 22 months/2 \$1,595 Ex 7, Tab 13 One half of mortgage insurance payments - \$335 x 22 months/2 \$3,685 Ex 7, Tab 10, pg 62 One half of mortgage payments- \$1926 x 2

months/2 \$21,186 Ex 7, Tab 10, pg. 62 One half of municipal utilities - \$70 x 22 months/2 \$770 Ex 7, Tab 3, pg 24a & 24b & 24c One half of RBC Credit Card interest payments - \$300 x 22/2 \$3,300 Ex 7, Tab 18, pg 161 One half of Respondent's personal RBC LOC - \$57 x 22/2 \$627 Ex 7, Tab 20, pg. 182 One half of Student Loan - \$584 x 22 months/2 \$6,424 Ex 7, Tab 15, pg. 86 One half of HBC Credit Card payments - \$443.50 x 22 months/2 (average interest over past 2 years) \$4,878.50 Ex 7, Tab 17, pg. 119 & 121 One half of Best Buy Credit Card payments - \$85 x 22 months/2 plus reduction in principal of \$906/2 \$1,388 Ex 7, Tab 16, pg. 102 Line of Credit incurred for Husband's credit card consolidation \$72,500 Ex 7, Tab 7, pg 57 Ex 7, Tab 8, pg 58 Payments made by Wife on LOC for Husband's debt since the date of separation (\$665 x 22 months/2) \$7,315 Ex 7, Tab 10, pg. 62 TOTAL: \$127,168.50 WIFE: \$189,777 HUSBAND: \$54,000 DIFFERENCE: \$135,777 DIVIDED BY 2: \$67,888.50 MINUS WHAT ED OWES TO WIFE: \$127,168.50 HUSBAND OWES WIFE: \$59,280 VALUE OF HOME AS AT NOVEMBER 2016 (WIFE) 3180 Sylvia Place, Coquitlam, BC (June 2015 value) \$910,000 Ex 10, Tab 88 2014 Toyota Corolla \$16,000 Ex 6 RBC RRSP \$7,000 Ex 7, Tab 24 Public Service Pension Plan \$34,000 (as at date of separation) Ex 7, Tab 25 Mortgage on Sylvia Place (\$490,000) Ex 7, Tab 9 Student Loan (\$46,000) Ex 7, Tab 15, pg 85 Car Loan for Corolla (\$24,000) Ex 7, Tab 21 Credit Card debt (incurred during the marriage which still exists) (\$27,223) Ex 7, Tab 17, pg 119 Ex 7, Tab 18, pg 161 Ex 7, Tab 16, pg104 RBC Line of Credit (incurred during the marriage) (\$10,000) Ex 7, Tab 20, pg. 182 TOTAL ASSETS OF WIFE \$369,777 HUSBAND 1996 Ford Windstar \$1,500 Asserted by Claimant in Financial Statement, no evidence 1999 Ford F-350 \$2,500 Asserted by Claimant in Financial Statement, no evidence Ed Auto Ambulance (no valuation provided or proper disclosure, imputed value) \$50,000 Claimant asserts \$25,000. No evidence of assets or actual income TOTAL: \$54,000 MONIES OWING FROM HUSBAND TO WIFE One half of property taxes (2015 & 2016) \$3,500 Ex 7, Tab 2, pg 19 Ex 7, Tab 3. pg 24 One half of property insurance - \$145 x 22 months/2 \$1,595 Ex 7, Tab 13 One half of mortgage insurance payments - \$335 x 22 months/2 \$3,685 Ex 7, Tab 10, pg 62 One half of mortgage payments- \$1926 x 2 months/2 \$21,186 Ex 7, Tab 10, pg. 62 One half of municipal utilities - \$70 x 22 months/2 \$770 Ex 7, Tab 3, pg 24a & 24b & 24c One half of RBC Credit Card interest payments - \$300 x 22/2 \$3,300 Ex 7, Tab 18, pg 161 One half of Respondent's personal RBC LOC - \$57 x 22/2 \$627 Ex 7, Tab 20, pg. 182 One half of Student Loan - \$584 x 22 months/2 \$6,424 Ex 7, Tab 15, pg. 86 One half of HBC Credit Card payments - \$443.50 x 22 months/2 (average interest over past 2 years) \$4,878.50 Ex 7, Tab 17, pg. 119 & 121 One half of Best Buy Credit Card payments - \$85 x 22 months/2 plus reduction in principal of \$906/2 \$1,388 Ex 7, Tab 16, pg. 102 Line of Credit incurred for Husband's credit card consolidation \$72,500 Ex 7, Tab 7, pg 57 Ex 7, Tab 8, pg 58 Payments made by Wife on LOC for Husband's debt since the date of separation (\$665 x 22 months/2) \$7,315 Ex 7, Tab 10, pg. 62 TOTAL: \$127,168.50 WIFE: \$369,777 HUSBAND: \$54,000 DIFFERENCE: \$315,777 DIVIDED BY 2: \$157,888.50 MINUS WHAT HUSBAND OWES TO WIFE: \$127,168.50 WIFE OWES HUSBAND: \$30,720 ***THIS DOES NOT ACCOUNT FOR THE FUTURE INTEREST AND CARRYING COSTS THAT THE RESPONDENT WILL INCUR AS A RESULT OF THE LINE OF CREDIT DEBT INCURRED BY THE CLAIMANT OR HER FUTURE INTEREST COSTS FOR THE FAMILY DEBT IN HER NAME

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