

CANADA / JUDGMENT

Anka v. Ross

2025 BCSC 2472

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Supreme Court of British Columbia

DECIDED

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2025 BCSC 2472 Anka v. Ross

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Anka v. Ross,

2025 BCSC 2472

Date: 20251212

Docket: E220843

Registry: Victoria

Between:

Jaiya Alyssia Anka

Claimant

And

Michael Ronald Ross

Respondent

Before: The Honourable Justice Girn

Reasons for Judgment

Counsel for the Claimant:

M.G. Norton

Counsel for the Respondent:

C.L. Buchan

Place and Dates of Trial:

Victoria, B.C.

January 13-17, 2025

March 24, 2025 and

April 22, 2025

Place and Date of Judgment:

Victoria, B.C.

December 12, 2025

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INTRODUCTION

- [1] This family law matter arises after the breakdown of a marriage that lasted just over 10 years. The issues at trial are property division and spousal support.
- [2] The parties began living together in a marriage like relationship around January 2011 and were married on May 9, 2011. The parties separated on July 1, 2021. There are currently no children of the marriage.
- [3] The claimant seeks equal division of family property. She also seeks spousal support on a compensatory and non-compensatory basis in a lump sum amount. In the alternative, she seeks continued support on a periodic basis for a duration of six years.
- [4] The respondent agrees that the parties should equally divide the proceeds from the sale of the former family home, but he argues that he is first entitled to deduct an amount for excluded assets that he brought into the marriage. He does not dispute that the claimant is entitled to spousal support but argues that it should be limited to two additional years and opposes a lump sum award.
- [5] The claimant also seeks a divorce. Both parties agree that the requirements for a divorce are met.
- [6] Both parties testified at trial. The claimant also called additional witnesses, including her sister, Stephanie McLarty, a family friend, Philip Small and a school colleague, Dr. Erin Campbell.

FACTUAL BACKGROUND

- [7] At the time of trial, the claimant was 55 years old and the respondent was 54 years old.
- [8] The claimant is a PhD student at the University of Victoria in art history and visual studies. The program is seven years in length. Presently, the claimant is on compassionate leave from the PhD program and has been on leave since Spring 2024. She was expected to return to the program in Fall 2025.
- [9] Prior to her PhD program, the claimant worked various jobs as a freelance journalist and communications consultant. She also operated her own clothing store in Victoria called Najoie. During her studies at the University of Victoria, the claimant worked as a researcher, curator and teaching assistant. After separation, the claimant moved to Ontario to pursue employment at OCAD University. As well, prior to commencing her PhD program, she had moved to pursue studies in Montreal for a brief period before returning to Victoria.
- [10] The respondent is a financial advisor and maintains a book of business. He operates as a sole proprietor under Drumsnab Financial ("Drumsnab"). Prior to this work, the respondent was a tennis professional and yoga instructor. Drumsnab was started while the parties were still married.

- [11] While the parties did not have any children of their own, the claimant's son from a previous marriage was treated as a child of the marriage while the parties were together. The child is now an adult and is not considered a child of the marriage.
- [12] The parties agreed by way of a consent order that a payment of \$20,000 would be paid directly to the claimant's son. All issues relating to child support and special and extraordinary expenses have been resolved between the parties.

ISSUES

- [13] The following issues are to be decided:
- a) Order for divorce (by consent).
 - b) Property and debt division including excluded property.
 - c) Spousal support entitlement of the claimant.

DIVORCE

- [14] The respondent does not oppose the granting of a divorce. The conditions that must be satisfied for a divorce to be granted are set out in ss. 8-12 of the Divorce Act, R.S.C. 1985 (2nd Supp.) c. 3.
- [15] Based on the following evidence, I find that those conditions are satisfied:
- a) The parties married on May 9, 2011, in Vancouver, British Columbia;
 - b) They have been living separate and apart since July 1, 2021;
 - c) There is no collusion in relation to the application for divorce, and they are not seeking the divorce for any improper purpose or on false evidence;
 - d) There is no chance that they will reconcile; and
 - e) There are no issues with respect to reasonable arrangement for children.
- [16] I am satisfied that the requirements of the Divorce Act have been met, and I grant a divorce. Pursuant to s. 12(1) of the Divorce Act, the divorce will take effect on the thirty-first day after the issuance of this order.

DIVISION OF PROPERTY

- [17] The parties' two largest assets are the proceeds from the sale of the family home and Drumsnab. The proceeds from the family home remain in trust with the claimant's counsel. The parties have taken some advancements - the claimant received \$40,000 while the respondent received \$85,000. Most recently, the claimant, by consent, received an additional \$70,000 at the conclusion of the trial. This leaves approximately \$403,171.29 to be divided.

- [18] There are also other assets that require division. They include the parties' CPP credits, bank accounts and RRSP investment accounts. The claimant seeks equal division of these assets.
- [19] The claimant received a LIRA upon the death of her first husband. This asset is not in dispute as it is an excluded asset.

Book of Business

- [20] As noted above, the respondent started Drumsnab during the relationship. The claimant seeks an equal division of the book of business. A business valuation determined that Drumsnab was valued between \$67,000 and \$80,000. The midpoint value is \$73,500. The claimant seeks an equal division of the midpoint value. The respondent does not take issue with this. Accordingly, the book of business valued at \$73,500 will be equally divided.

Bank Accounts

- [21] The claimant seeks equalization of the bank accounts as at separation date. At separation, the respondent had \$15,169.01 in his bank account while the claimant had \$3,112.33 in hers. The respondent opposes equal division of the bank accounts and seeks that "each keep the bank accounts and debts currently in their name". However, he has not explained why there should be unequal division. I have no evidence to support that these funds were anything but family property. Accordingly, the bank account balances at the time of separation will be equally divided.

CPP and RRSP

- [22] The claimant submits that their CPP division should occur for the duration of the relationship, which is January 1, 2011 to July 1, 2021. The respondent does not object. Accordingly, the parties CPP will be equally divided for this period. With respect to the RRSP, the respondent does not object to equal division. As such, the RRSP will be equally divided.

Debts

- [23] Any debts that were incurred prior to separation were paid from the proceeds of the sale of the family home. The parties agree that the debts in their own names since separation will be their own.

Proceeds from Sale of Former Family Home

- [24] The parties do not agree on whether certain funds the respondent brought with him to the marriage are to be excluded. Some background information is necessary.

- [25] The respondent owned a condo in Vancouver, referred to as the Vine Street property which he purchased in February 2009, before the parties entered a relationship. The Vine Street property was sold in May 2011, five months into their relationship.
- [26] The respondent claims that he had \$100,000 in equity from the Vine Street property when it was sold. Those funds along with money from his parents was used to purchase a property referred to as the Sophia Street property. The Sophia Street property was registered in joint tenancy with both of them as borrowers on the mortgage. The evidence establishes that the claimant did not contribute any funds towards the purchase of the Sophia Street property.
- [27] The respondent claims that his family provided cash gifts and financial support, and that the claimant herself did not contribute to the purchase of the various properties over the course of their relationship.
- [28] The respondent claims that the proceeds of the sale of the Vine Street property is derived from property acquired by him before the relationship began and is thereby excluded pursuant to ss. 85(1)(a) and 85(1)(g) of the Family Law Act, S.B.C. 2011, c. 25 [FLA]. Further, he argues that the monies gifted to him by his parents is property gifted by a third party and is thereby excluded under s. 85(1) (b.1) of the FLA. I note that the respondent did not plead this exclusion. I will address this later in these reasons.
- [29] The claimant argues that both the proceeds from the Vine Street property and the monies gifted by the respondent's parents became family property and, thus, are not excluded. She also contends that gifts from the respondent's family were gifted to both of them. The respondent applied the proceeds from the Vine Street property and the money from his parents to property jointly owned by the parties.
- [30] During the relationship, the parties purchased and sold four properties which were all jointly owned. After the Vine Street property was sold in May 2011, the parties used the funds from it and money from the respondent's parents to purchase the Sophia Street property in July 2011 for \$635,000.
- [31] The Sophia Street property was sold in February 2013 for \$609,000 at a loss so that the parties could relocate to Victoria. The equity from this property was used to purchase the Neil Street property in Victoria in April 2013. To purchase this property, the respondent's father was added to title along with the parties. The Neil Street property was purchased for \$637,000.
- [32] In August 2017, the parties sold the Neil Street property for \$970,000 and relocated to Duncan where they purchased their third home, the Arbutus property, in September 2017 for \$631,000. The Arbutus property was then sold in May 2020 for \$715,000. The parties family home in Victoria - the Ernest property - was purchased in May 2020 for \$895,000. After the parties separated, the Ernest property was sold in August 2022 for \$1,290,000.

- [33] It is not disputed that each of the four properties were in joint tenancy, and the mortgages were in both their names. The claimant submits that there was an understanding that the parties would equally share the equity in the properties. The proceeds from each property when it was sold was used to buy the next property as well as to pay off family debts. The claimant argues that this evidence is unchallenged and not disputed by the respondent.
- [34] The claimant submits that the respondent's evidence supports that equity from the Vine Street property was gifted to the marriage. It is not disputed that there was no agreement that the Vine Street property equity would be excluded. The claimant argues that the presumption of advancement applies and thus his exclusion is lost. In the alternative, the claimant submits that even if there is exclusion, the respondent has failed to trace those monies to the current asset. She points to two pieces of evidence. Firstly, much of the equity from the sale of the Neil Street property (over \$330,000) was dissipated by the respondent which includes a cheque for \$100,000 that the respondent is unable to account for. As well, the remaining funds were used to pay for expenses and debts of the family. I also note that the Sophia Street property was sold at a loss which would have decreased the respondent's equity that he brought in from the Vine Street property.
- [35] The claimant further submits that the monies from the respondent's parents were gifts to them both. No evidence was led that this money was to be treated as a gift solely to the respondent.
- [36] I note that the monetary gifts from the respondent's parents was not pleaded in his counterclaim as excluded property. It was only in the respondent's written submissions that this was first argued. As such, the parties were asked to provide supplemental submissions as to the exact amount that is sought to be excluded. The respondent submits that the amount is \$252,213.61 (\$30,000 deposit and \$222,213.61). He says the amount consists of the equity from the Vine Street property (\$100,000) along with funds provided by his parents.
- [37] The claimant submits that the respondent did not plead this amount but rather in his counterclaim only plead equity from the Vine Street property. Specifically, the counterclaim reads:

The respondent pleads the following property as excluded from family property under section 85 of the Family Law Act:

Equity in the Respondent's condo owned pre-relationship at #401 - 2091 Vine Street, Vancouver, British Columbia.

- [38] There is no reference to him seeking to exclude money received from the respondent's parents. In his supplemental submissions, the respondent submits that he pleaded in his counterclaim "such further and other relief as this honourable court may deem meet and just in the circumstances". As such, given the evidence at trial, the respondent asks the Court to exclude the entire amount the respondent seeks.

Legal Principles

- [39] Section 81 of the FLA assigns each spouse on separation an undivided half interest in all family property and family debt.
- [40] Section 85 of the FLA outlines what assets can fall under excluded property. Section 85 of the FLA was amended in 2023 by Bill 17, the Family Law Amendment Act, S.B.C. 2023, c. 12. The amendments removed the presumption of advancement by adding s. 85(3). However, proceedings which were commenced before the amendments received royal assent are subject to the previous legislation. This matter was commenced before the amendments took effect, and so the previous legislation applies.
- [41] As such, under s. 85(1)(a), property acquired by a spouse before the relationship between the spouses began is excluded property. Further, under s. 85(1)(g), property derived from excluded property or the disposition of excluded property is also excluded.
- [42] Excluded property may, however, become family property and lose its exclusion. This may occur where one spouse gifts otherwise excluded property to the other spouse, wherein the presumption of advancement applies. It also may occur where one spouse applies excluded property to a joint asset, "thereby gifting it to the marriage": *K.S.P v. J.T.P.*, 2023 BCSC 1188 at para. 479 citing *V.J.F. v. S.K.W.*, 2016 BCCA 186 at para. 75.
- [43] To determine whether an exclusion is lost, the court must first look to the intention of the spouse who transfers ownership of excluded property. As our Court of Appeal stated in *Venables v. Venables*, 2019 BCCA 281 at para. 95:
- [95] What emerges from these authorities, of relevance to the current appeal, is that the intention of the spouse transferring ownership is key in determining whether the property transferred from one spouse to the other remains excluded property or becomes family property. If it is found that the spouse who transferred the property intended that the property be a gift to the other spouse, and there is no agreement that it is to remain excluded property, then it will become family property: *V.J.F.* at paras. 74-79; *Namdarpour* at para. 46.
- [44] The onus is on the party seeking exclusion to prove on a balance of probabilities that the exclusion applies, with clear and cogent evidence: *Shih v. Shih.*, 2017 BCCA 37 at paras. 40-43. In the absence of evidence demonstrating the actual intention of the transferor, the presumption of advancement applies: *Namdarpour v. Vahman*, 2019 BCCA 153 at para. 40.

Discussion

- [45] I will first address what amount ought to be excluded based on the evidence and the pleadings.

- [46] As mentioned, the monetary gift from the respondent's parents was not pleaded in the respondent's counterclaim as excluded property. He only pleaded the equity from the Vine Street property. The issue of monetary gifts was first argued in written submissions.
- [47] There is a baseline requirement for parties to plead material facts for the causes of action: *ZF Farm Ltd. v. DLA Piper (Canada) LLP*, 2024 BCSC 517 at para. 29. However, a party may apply to amend pleadings even after trial, and courts have wide discretion to allow amendments: *Edgars v. British Columbia (Children and Family Development)*, 2025 BCSC 2202 at paras. 24-26.
- [48] The respondent has not applied to amend his pleadings. However, I will briefly touch on the principles to be considered when an amendment is sought at the close of trial which were summarized by Justice Hughes in *Qi v. Qin*, 2023 BCSC 1678 at para. 34:
- a) whether the proposed amendment is inconsistent with the pleadings already filed on behalf of the party seeking the amendment;
 - b) whether the proposed amendment is inconsistent with the evidence already tendered by the applicant and his witnesses at trial and on discovery;
 - c) if the proposed amendment had been asked for at the outset of the trial, would it have changed the whole course of the trial;
 - d) would granting the amendment be unfair to the opposite party; and
 - e) is it necessary for the purpose of determining the real issues raised or depending upon the pleadings?

See also *Macdonald v. Macdonald* (1996), 21 B.C.L.R. (3d) 379 at para. 25, 1996 CanLII 1360 (S.C.); *Lam v. Chiu*, 2012 BCSC 677 at para. 10.

- [49] The foundational nature of pleadings and the important role they play in litigation was affirmed by our Court of Appeal in *Mercantile Office Systems Private Limited v. Worldwide Warranty Life Services Inc.*, 2021 BCCA 362:
- [21] Pleadings are foundational. They guide the litigation process. This is true in relation to the discovery of documents, examinations for discovery, many interlocutory applications and the trial itself.
- [22] Pleadings also give effect to the underlying policy objectives of the Rules, which are to ensure the litigation process is fair and to promote justice between the parties: *Wong v. Wong*, at paras. They enable the parties and the court "to ascertain with precision the matters on which parties differ and the points on which they agree; and thus to arrive at certain clear issues on which both parties desire a judicial decision": *1076586 Alberta Ltd. v. Stoneset Equities Ltd.*, at para, citing D.B. Casson & I.H. Dennis, eds, *Odgers' Principles of Pleading and Practice in Civil Actions in the High Court of Justice*, 21st ed (London: Stevens & Sons, 1975) at 75-76.

- [23] For the court, pleadings serve the ultimate function of defining the issues of fact and law that will be determined by the court. In order for the court to fairly decide the issues before them, the pleadings must state the material facts succinctly: *Sahyoun v. Ho*, at paras; *Shoolestani v. Ichikawa*, at para.; *Weaver v. Corcoran*, mat para. They must be organized in such a way that the court can understand what issues the court will be called upon to decide: Frederick M. Irvine, ed., *McLachlin & Taylor, British Columbia Practice*, 3rd ed, vol 1 (Markham, Ont.: LexisNexis Canada Inc., 2006) (loose-leaf updated 2021) at 3-6; *Simon v. Canada (Attorney General)*, at paras, aff'd.
- [50] Litigants have the right to know what claim they must meet so they can properly tailor their resources and evidence at trial: *Qi* at para. 52, citing *Sahyoun v. Ho*, 2013 BCSC 1143 at para. 18. In the case at bar, the respondent relies on the boilerplate language in his counterclaim that seeks any "further and other relief as this Honourable Court may deem [] just in the circumstances" to expand his pleadings. Although pleadings may be general, they must be specific enough for the other party to know the cause of action and include material facts: *Qi* at para. 52; *ZF Farm* at para. 29.
- [51] I will not go through all the factors as there is no application to amend before the Court. However, in my view, it is important to consider the fairness and prejudice to the claimant. When a party attempts to add new issues in closing written submissions, they are prejudicing the other party. The claimant had no opportunity to lead evidence to rebut or respond to this claim. In my view, this is prejudicial to the claimant.
- [52] Even if an application to amend had been made and granted, I would nonetheless have come to the same conclusion based on the evidence led during trial. The respondent failed to lead any evidence that the monetary gifts from the respondent's parents were excluded property.
- [53] In the circumstances, given that the respondent did not plead the higher amount which includes the monetary gifts from his parents nor was any evidence led in this respect, my assessment relates only to the equity from the Vine Street property.
- [54] I will now move to my assessment of whether the equity from the Vine Street property ought to be excluded. As per *Venables*, in my assessment on whether an exclusion is lost through a gift to a spouse or to the marriage, I must look at the intention of the spouse: at para. 95.
- [55] As noted previously, the parties purchased multiple properties during their marriage. The claimant and her son moved into the Vine Street property shortly after the relationship commenced.
- [56] The fact that all four properties purchased after the sale of the Vine Street property had the claimant's name on the mortgage and title as joint tenant - even though she did not make any financial contributions - is a strong indication of shared ownership.

[57] Furthermore, the respondent testified that the properties purchased after the Vine Street property were put into joint tenancy because "the parties were married and were a family". He also testified that for estate planning, it made sense for them to be joint tenants. The respondent stated:

"The intention was for us to get married, and for Sam, for Jaiya, if something happened to me, I wanted to make sure they had some place to live. Having her name on there was important"

[58] There is also evidence of the respondent's intention in equal sharing of the equity from his communications with the claimant after separation. In his email of October 18, 2021, the respondent wrote:

"Yes you will receive at least half of the proceeds from the sale of the house if that's the direction you want to go".

[59] Also important to my assessment is that the respondent took no steps to keep the funds separate or to document that his contribution was to be treated as separate.

[60] Further, the respondent agreed in cross examination that he never thought of the funds as his own money and had no recollection of any agreement with the claimant that the equity from the Vine Street property would be an excluded asset in the event the parties separated.

[61] In my view, the respondent's actions, including adding the claimant to the title and mortgage, and their shared occupancy and enjoyment are consistent with an intent to share the property within the relationship. I have not been provided with documentation or other evidence to suggest that the funds from the Vine Street property were to remain separate.

[62] The respondent did not plead that an equal division of property would be significantly unfair given that the claimant did not contribute any of her own funds when the first jointly held property was purchased nor did she contribute any funds on the subsequent property purchases. Once again, the respondent did not seek to amend his pleadings. As such, I am of the view that it would be unfair and prejudicial at this point to allow the respondent to make this argument.

[63] Nonetheless, I will address this as if an application to amend had been made and granted.

[64] While the FLA aims to create a "certain and predictable" regime for the division of property, it also accounts for potential unfairness arising from equal division: *Sperring v. Shutiak*, 2023 BCCA 54 at para. 112, aff'g 2021 BCSC 1311.

[65] In *Tereposky v. Fooks*, 2023 BCSC 1989, Justice Stephens helpfully discussed the test in considering unequal division and significant unfairness:

[39] The spouse seeking an unequal division of property bears the onus of establishing significant unfairness: FLA, s. 85(2); *Toth* at para. 62. It is a higher threshold than the test for unequal division under the Family Relations Act, R.S.B.C. 1996, c. 128. However, equal property division is significantly unfair if there is evidence of something "objectively unjust,

unreasonable or unfair": *Jaszczewska v. Kostanski*, 2016 BCCA 286 at paras. 41-42. To justify an unequal distribution, the court must find that the unfairness is "compelling or meaningful" with regard to the s. 95(2) factors: *Remmen* at para. 44. However, the purpose of s. 95(2) is not to put the parties in a position of absolute equality: *A.D.J. v. F.J.*, 2022 BCSC 600 at para. 192; *L.G. v. R.G.*, 2013 BCSC 983 at para. 71.

- [40] Section 95(2) requires a consideration of several factors to assess significant unfairness, with the goal of achieving an outcome that is "reasonable and fair to both parties": *Rana v. Ullah*, 2022 BCCA 192 at para. 44, citing *Zilic* at para. 34. Evidence should not be "compartmentalized in a mechanical fashion, rather it is considered globally": *Rana* at para. 44.
- [66] The significant "unfairness test" contemplated by s. 95 of the FLA requires much more than differing financial contributions to a relationship: paras. 35-36; *Banh v. Chrysler*, 2022 BCCA 74 at paras. 33, 40, citing *Jaszczewska v. Kostanski*, 2016 BCCA 286.
- [67] The s. 95(2) significant unfairness analysis first begins with an objective assessment of the legitimacy of the parties' subjective expectations, "that is, whether the spouse truly held [their] asserted expectations and whether they were reasonable--as well as the strength of those expectations": *Hannon v. Hopson*, 2022 BCCA 314 at para. 102. Then, the court considers objectively whether equal division would meet the significant unfairness threshold.
- [68] For the reasons above, I am unable to conclude that the respondent held an expectation that their assets would be unequally divided upon the dissolution of their marriage. The evidence supports the opposite conclusion.
- [69] I have also considered the enumerated factors in s. 95(2). Specifically, the parties were together for approximately 10.5 years (s. 95(2)(a)) and the claimant did to some extent contribute to the respondent's career (s. 95(2)(c)). I accept her evidence that she hosted parties and other events for the respondent's benefit to increase his business. She also maintained the household while the respondent focussed on establishing and growing his business. I also accept the claimant's evidence that she primarily worked on and arranged for the renovations and staged their various homes to ready them for sale.
- [70] Viewed objectively, I find no circumstances that warrant a departure from the statutory requirement that family property is to be divided equally. The sale proceeds will be split equally between the parties minus the advances already received.
- [71] The remaining funds from the proceeds of the former family home will be distributed as follows:

Claimant

Respondent

Proceeds in Trust

\$473,171.29

Monies to offset advances on July 22, 2022 Order.

(\$45,000)

\$45,000

Received \$45,000 pursuant to the July 21, 2022 order.

\$428,171.29

\$214,085.65

\$214,085.65

Sub Total

\$259,085.65

\$214,085.65

[72] The claimant will receive \$259,085.65. The respondent will receive \$214,085.65. The claimant received a \$70,000 advancement at the conclusion of the trial, which will be deducted from her share.

SPOUSAL SUPPORT

- [73] Since this is a divorce action, I am proceeding on the basis that the claims for spousal support are being sought pursuant to the Divorce Act and I make the orders herein pursuant to that legislation.
- [74] The claimant seeks compensatory and non-compensatory spousal support in a lump sum payment, or in the alternative, on a periodic basis.
- [75] The claimant submits that a lump sum award is appropriate having regard to the respondent's previous disregard for court orders and his late payments; the respondent's non-disclosure of his income deductions; the need for the claimant to cease contact with the respondent; the claimant's need for financial independence; and the ability of the respondent to pay a lump sum.
- [76] The claimant has been receiving spousal support in the amount of \$2,850 per month since August 2022, which is, to the date of the trial, two years, eight months. She seeks support for an additional six years.
- [77] The respondent does not dispute that the claimant is entitled to spousal support but says it should be limited in duration and not awarded as a lump sum. The respondent argues that the claimant has failed to pursue gainful employment post separation. He further submits that the claimant has already received a significant amount of spousal support. The

respondent takes the position that he has been paying spousal support for three years and nine months: a year in which the respondent paid the expenses for the family home where the claimant lived after separation and thereafter by consent in the sum of \$2,850 per month since August 2022.

- [78] The respondent argues that he should not be responsible for the claimant's post separation decisions: moving to Ontario, prolonging her PhD, and taking ill-paying jobs. The respondent submits that spousal support should only be awarded for an additional two years. In final submissions, counsel for the respondent noted that while the respondent, in theory, is not opposed to lump sum spousal support, it would result in him receiving little or no money from the proceeds of the sale of the family home. This, he submits, would be substantially unfair to him given that he came into the relationship with equity from the Vine Street property.
- [79] The background of their relationship requires examination, particularly as to the objectives of and the entitlement to spousal support.
- [80] As I have noted, the parties relationship began in early 2011. The claimant was living in Victoria when she met the respondent while he was living in Vancouver. Eventually, the claimant and her son moved to Vancouver and lived with the respondent in the Vine Street property. The claimant admits that she was not getting consistent work in her field while she lived in Victoria.
- [81] As I have noted above, when she moved to Vancouver, the claimant worked as a freelance consultant and story producer for a TV show. The respondent was working as a tennis professional and yoga instructor. When their first jointly owned home, Sophia Street property, was purchased, the claimant did not contribute any funds. The funds were from the equity in the Vine Street property and from the respondent's parents.
- [82] They married in May 2011. Sometime after this, the claimant enrolled in a textiles program at Capilano College but did not complete it. In 2012, she registered in another program in Nelson, B.C. where she stayed for six weeks while the respondent and the child stayed in Vancouver. In November 2012, the claimant left that program early mostly because she struggled being away from her son.
- [83] The parties were also struggling in their relationship during this period. Part of the struggle concerned the claimant's desire to have another child, but they were not successful. The claimant testified that it was a challenging few years which caused her stress and impacted their marriage. This was confirmed by the respondent. The claimant testified that she missed living in Victoria and wanted to move back but acknowledged that her career options would be limited in Victoria. Despite this, the family moved to Victoria in 2013.
- [84] The claimant testified that the respondent suggested that she find a business in Victoria that would suit her interests in textiles. The respondent borrowed \$100,000 against a life insurance policy for the claimant to purchase a clothing store, Najoie. The respondent

continued to work as a tennis professional and at a friend's sports store. The parties purchased the Neil Street property with the respondent's father co-signing on the mortgage because they were unable to get mortgage approval on their own. The claimant testified that during the relationship the respondent handled all the finances while she took care of the household including shopping and cooking and caring for the child.

- [85] After moving to Victoria, the respondent enrolled in a course to become a financial advisor. Meanwhile, the claimant's store was not profitable enough to continue and closed in 2014. At this point, the claimant decided to go back to school and enrolled in a master's program at the University of Victoria. She worked as a researcher and teaching assistant while in school. The respondent's work as a financial advisor primarily supported the family's expenses including mortgage payments. The respondent did not dispute that the claimant paid for her education through work during her studies and scholarships.
- [86] In Fall 2017, the claimant moved to Montreal to begin a PhD program at McGill University. Her son also moved to Montreal to attend Concordia University. However, a month after she commenced her program, the claimant moved back to Victoria citing she felt it was better for their marriage. The claimant states that she "gave up a full scholarship" to return to Victoria. The respondent does not see it that way. Prior to her moving to Victoria, the parties agreed to sell the Neil Street property and some of the funds were used to set up the claimant and her son at their respective universities in Montreal.
- [87] The parties then relocated after the claimant moved back from Montreal and purchased a home in Duncan. She contends that they moved there to support the respondent's career. The Arbutus property in Duncan was sold at the end of May 2020 and the parties moved back to Victoria residing in the family home.
- [88] After moving back to Victoria, in January 2018, the claimant commenced a doctoral program in art history and visual studies at the University of Victoria. It was expected that she would complete the program in seven years. While the respondent disputes the length of time it would take one to complete a PhD program, the evidence of Dr. Campbell (the claimant's dissertation supervisor) supports the claimant's evidence. I accept Dr. Campbell's evidence that the earliest a PhD student who is studying in the field of Italian Renaissance could complete the program is seven years. This is because the program requires additional language requirements and field study in Italy. Dr. Campbell finished her PhD in the same program in nine years.
- [89] The claimant testified that she struggled in completing her PhD program due to physical and mental health challenges both before and after separation, in part attributed to the respondent. She points to panic attacks, anxiety and depression and symptoms relating to a concussion sustained in January 2020 which set her back several months in her studies. This was supported by the evidence of her sister, Stephanie McLarty and family friend, Philip Small. I found them to be credible and honest witnesses and accept their evidence in this regard.

- [90] Additionally, the claimant's field research in Italy was delayed due to the Covid-19 pandemic and partly due to her concussion. She was ultimately able to complete the research trip in Summer 2023. The respondent acknowledges that the claimant was in counselling, on anti-depressants, and suffered from panic attacks and anxiety. However, he denies being responsible.
- [91] In June 2021, the claimant made the decision to separate. Although the respondent wanted to sell, the claimant remained in the family home and could not afford to buy him out. After separation, the respondent paid for the household expenses including mortgage payments while also maintaining a separate residence for himself. The parties had no interim spousal support in place after separation.
- [92] The family home was ultimately sold in August 2022. The parties were able to arrive at an agreement on interim spousal support where the respondent paid \$2,850 per month based on his income set at \$185,000 per year and the claimant's income at \$13,000 per year. The claimant testified that the respondent was late on occasion with spousal support which caused her significant stress. The respondent says that he was late twice in the almost three years that he has been paying spousal support but that it was not intentional.
- [93] After the family home was sold, the claimant testified that she was having difficulty finding affordable and suitable housing in Victoria. Around this time, she accepted a teaching position at the OCAD in Toronto and moved there in Fall 2022. She continued to work on her PhD albeit at a slower pace while working in Toronto. She then took compassionate leave from the program.
- [94] Dr. Campbell described the claimant as an exceptional student who has won every award available, including the prestigious Joseph Armand Bombardier Doctoral SSHRC Award. She will not be eligible for any further awards or teaching assistant assignments when she returns to complete her program. Dr. Campbell testified that the claimant's prospects at a professional career are good if she can focus her efforts to completing her PhD.
- [95] Part of the funds from the sale of the family home were used to pay off family debts. As well, each party received an advancement. The remaining amount was placed in trust with the claimant's counsel. At the conclusion of the trial, the parties agreed to advance the claimant another \$70,000 to allow her to return to her studies which she hoped to resume in May or September 2025 and complete her PhD by Fall 2026.

Legal Principles

- [96] Entitlement to spousal support is a threshold issue which is analyzed before the Court can determine the appropriate quantum and duration of support.
- [97] The Divorce Act outlines the objectives of a spousal support order as follows, in s. 15.2(6):

- (a) recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown;
- (b) apportion between the spouses any financial consequences arising from the care of any child of the marriage over and above any obligation for the support of any child of the marriage;
- (c) relieve any economic hardship of the spouses arising from the breakdown of the marriage; and
- (d) in so far as practicable, promote the economic self-sufficiency of each spouse within a reasonable period of time.

[98] Justice Blake outlined the bases for entitlement to spousal support in *Hagman v. Yasmina*, 2024 BCSC 807:

[152] Compensatory entitlement arises where, as a result of the parties' roles during the marriage, one spouse suffers economic disadvantage, or has conferred economic advantages on the other. It most often arises where one spouse has sacrificed career opportunities to take on more of the family's household or child-rearing responsibilities. Non-compensatory entitlement arises from the concept that spouses, by virtue of marriage, have some ongoing responsibility to care for one another. Non-compensatory support aims to narrow the gap between the needs and means of the spouses upon the breakdown of a marriage. Finally, contractual entitlement arises out of agreements entered into by the parties: *Zacharias v. Zacharias*, 2015 BCCA 376 at paras. 26-28; *Chutter* at paras. 54-55.

[99] Compensatory support primarily relates to the first two objectives under the Divorce Act, and non-compensatory support primarily relates to the latter two: *Chutter v. Chutter*, 2008 BCCA 507 at para. 47.

[100] No single objective is paramount. The court must assess all four objectives considering the specific circumstances of the parties and promote the overall legislative intent to achieve an equitable sharing of economic consequences of marriage or marriage breakdown: *McGrail v. McGrail*, 2016 BCSC 104 at para. 96.

[101] Once entitlement is established, the court may assess the appropriate quantum and duration of the spousal support award. The starting point for determining income under the Spousal Support Advisory Guidelines [SSAG] is with the definition of income under the Federal Child Support Guidelines SOR/97-175 [FCSG]: *Hagman* at paras. 153-154. The SSAG provide a range for periodic or lump sum support based on factors such as the length of the marriage, the parties' ages, their incomes, and the earning capacities. The SSAG follows two formulas - one for parties with children and one for parties without.

[102] The quantum and duration of support is guided by an analysis of the condition, means, needs, and other circumstances of each spouse: *Parton v. Parton*, 2018 BCCA 273 at para. 43. This includes a consideration of the factors listed in s. 15.2(4) of the Divorce Act:

- (a) the length of time the spouses cohabited;
- (b) the functions performed by each spouse during cohabitation; and
- (c) any order, agreement or arrangement relating to support of either spouse.

[103] The parties' incomes are typically established with reference to income tax records, however, the Court may, pursuant to s. 17 of the FCSG, have regard to a party's income over the past three years and determine an amount that is fair and reasonable considering any pattern or fluctuation in the party's income. This occurs where calculation of annual income with reference to the income tax records for that year (which is the default means of calculation pursuant to s. 16 of the FCSG) would not be the fairest determination: *A.J.S.A. v. K.L.W.*, 2024 BCSC 453 at para. 120.

[104] Fulsome disclosure of financial information is crucial to determine appropriate support awards. Where the court is unable to determine a party's income due to a lack of fulsome financial disclosure, the court may impute income on that party under s. 19(1) of the FCSG: *A.K.K. v. A.S.K.*, 2024 BCSC 1237 at para. 414. As the Court of Appeal stated in *Bodine-Shah v. Shah*, 2014 BCCA 191:

[62] This Court has forewarned litigants of the potential, for those who fail or refuse to make full and frank disclosure of their financial circumstances, of having adverse or negative inferences drawn against them with attendant consequences that may include the imputation of income

[105] In *Parton*, our Court of Appeal, with reference to *Davis v. Crawford*, 2011 ONCA 294, discussed when a lump sum award may be ordered:

[47] In some cases, a lump sum spousal support award is preferable to an order for periodic payments. When deciding whether to make such an award, the court should weigh the advantages and disadvantages of a spousal support order in lump sum form compared to those of an order made in the more common periodic payment form. In *Davis v. Crawford*, 2011 ONCA 294, the Ontario Court of Appeal discussed the relevant factors for consideration and, in doing so, emphasized the need to distinguish the purpose of a lump sum spousal support award from the effect of such an order. As the Court noted, any lump sum spousal support order will, in effect, involve the transfer of property from one spouse to another, although the redistribution of assets is not the purpose of spousal support:

[60] It is well accepted - and undisputed - that a lump sum award should not be made in the guise of support for the purpose of redistributing assets: *Mannarino; Willemze-Davidson v. Davidson* (1997), 1997 CanLII 1440 (ON CA), 98 O.A.C. 335 (C.A.), at para. 32. Moreover, the governing legislation does not recognize redistribution of assets as one of the purposes of a spousal support award.

- [61] That said, a lump sum order can be made to "relieve [against] financial hardship, if this has not been done by orders under Parts I (Family Property) and II (Matrimonial Home)": Family Law Act, s. 33(8)(d).
- [62] In any event, the purpose of an award must always be distinguished from its effect. Any lump sum award that is made will have the effect of transferring assets from one spouse to the other. The real question in any particular case is the underlying purpose of the order: Willemze-Davidson at para. 32.
- [63] Similarly, it is well accepted that an important consideration in determining whether to make a lump sum spousal support award is whether the payor has the ability to make a lump sum payment without undermining the payor's future self-sufficiency.
- ...
- [66] Most importantly, a court considering an award of lump sum spousal support must weigh the perceived advantages of making a lump sum award in the particular case against any presenting disadvantages of making such an order.
- [67] The advantages of making such an award will be highly variable and case-specific. They can include but are not limited to: terminating ongoing contact or ties between the spouses for any number of reasons (for example, short-term marriage; domestic violence; second marriage with no children, etc.); providing capital to meet an immediate need on the part of a dependant spouse; ensuring adequate support will be paid in circumstances where there is a real risk of non-payment of periodic support, a lack of proper financial disclosure or where the payor has the ability to pay lump sum but not periodic support; and satisfying immediately an award of retroactive spousal support.
- [68] Similarly, the disadvantages of such an award can include the real possibility that the means and needs of the parties will change over time, leading to the need for a variation; the fact that the parties will be effectively deprived of the right to apply for a variation of the lump sum award; and the difficulties inherent in calculating an appropriate award of lump sum spousal support where lump sum support is awarded in place of ongoing indefinite periodic support.
- [69] In the end, it is for the presiding judge to consider the factors relevant to making a spousal support award on the facts of the particular case and to exercise his or her discretion in determining whether a lump sum award is appropriate and the appropriate quantum of such an award.
- [Emphasis added.]
- [48] The factors discussed in Davis generally apply in this province when lump sum spousal support is considered. In Robinson v. Robinson, 2011 BCSC 1489, for example, after quoting extensively from Davis, Justice Watchuk awarded \$330,000 in lump sum spousal support. In explaining her reasoning, Justice Watchuk noted that a lump sum award is appropriate in

circumstances where the payor spouse has insufficient income to pay spousal support on an ongoing basis, but has capital assets with which to make a lump sum payment. She also noted that lump sum spousal support may contribute to self-sufficiency and assist the recipient spouse to achieve an appropriate standard of living. This Court upheld her decision in reasons indexed as 2012 BCCA 497.

Discussion

- [106] As I have noted, the respondent does not take issue with the claimant's entitlement to both non-compensatory and compensatory spousal support. It is the amount and duration of the spousal support with which he takes issue, and he is opposed to a lump sum award.
- [107] This was a 10.5 year long relationship. The SSAG range for support for a marriage of this duration is 5.5 to 10.5 years. The claimant seeks another six years in addition to the two years, eight months that the respondent has already paid spousal support. The respondent submits that he has paid spousal support for the past three years and nine months, which includes a year in the form of the respondent paying the expenses for the former family home where the claimant lived after separation. He submits that an additional two years of spousal support is fair and reasonable.
- [108] Given that the respondent paid for the household expenses after the parties separated and the claimant lived in the family home prior to its sale, I am of the view that this period ought to be included in the calculation of when spousal support commenced.
- [109] In *L.T.F. v R.B.F.*, 2023 BCSC 834, Justice Branch noted the following in the context of retroactive spousal support:
- [118] The respondent submits that unless her payment of post-separation household expenses was characterized as spousal support, there should be an offsetting reapportionment to her on account of "occupational rent" under s. 95 of the FLA. The claimant accepts that it would be appropriate to treat the respondent's payment of expenses on Salish Drive as offsetting any spousal support obligation: *Pidwerbeski v. Garcia*, 2020 BCSC 2022 at paras. 171-172. I agree that it is reasonable to give the respondent credit for her payment of the house expenses, and as such, there is no need to consider the occupational rent argument."
- [110] In the case at bar, the respondent did not seek occupational rent for the period post separation when the claimant resided in the home. I am of the view that it is both reasonable and fair that the one year during which the claimant paid the household expenses of the family home in which the claimant resided be included in my assessment of how long spousal support has been in place. I note also that the claimant did not dispute the respondent's position that he paid spousal support for this additional year. Accordingly, I find that the respondent has been paying spousal support for three years and nine months.

- [111] The respondent submits that if the Court makes a lump sum award, that it should be on the low end for two years in the sum of \$18,000 for quick completion and to encourage independence. The claimant submits a lump sum award should reflect an additional six years (in addition to the two years and eight months of spousal support paid to date).
- [112] In the alternative, she says if the Court is to award periodic spousal support it should be for an additional six years. The amount proposed by the claimant falls between the mid and high range of the SSAG at \$3,250 per month, which is based on the respondent's income set at \$170,000 per year, with expenses unreasonably deducted at \$27,500 and the claimant's income at \$20,000 per year. The claimant also submits that the first review of spousal support should occur two years from the date of my order.
- [113] The respondent has been successful in his line of work. His income grew substantially as a financial advisor, particularly after the parties separated. He was the primary earner while the claimant pursued her education. I accept that the claimant was able to fund her education through the various scholarships and while working as a researcher and teaching assistant. I also accept that the claimant helped the respondent in advancing his career. He was able to build a successful business because of the claimant's contributions in maintaining the home, and networking and promoting his business.
- [114] However, I am of the view that this did not impact her ability to do what she wanted with her career. I agree with the respondent that the claimant was not disadvantaged at the expense of supporting the respondent's career. In fact, her pursuing her PhD program which the respondent supported improved her skills and she is likely to make more than she was prior to her educational pursuits. The respondent financially supported them throughout the claimant's many educational endeavors, including the programs that she failed to complete or left early.
- [115] The claimant submitted that she moved to Victoria so that the respondent could start his financial advising business. The evidence does not support this conclusion. There is undisputed evidence that the respondent was initially working as a tennis instructor and at his friend's sports store after the move to Victoria. I find that the parties moved to Victoria because the claimant missed living there and for her to purchase the clothing store. It is also not disputed that the funds to purchase the store came from the respondent upon cashing his life insurance policy.
- [116] However, compensation is not limited to losses caused by the marriage and can include losses caused by the breakup of the marriage which would not have been suffered otherwise: Chutter at para. 50.
- [117] I have also considered the fact that the parties substantial family debt was paid off when the family home was sold. As such, it is likely that they lived beyond their means. The parties were also able to travel through gifts from the respondent's parents, which included multiple trips to Florida, Finland and other locations.

[118] Having considered all the evidence, I am satisfied that the claimant is entitled to non-compensatory and compensatory spousal support, which the respondent does not oppose.

[119] I now move to what is contentious: whether spousal support ought to be lump sum or periodic and the duration of ongoing spousal support.

Should the claimant be awarded lump sum spousal support?

[120] The court's assessment mandates a balancing of the advantages and disadvantages of awarding lump sum spousal support. Recently, in *Armstrong v. Abramowicz*, 2025 BCCA 318, our Court of Appeal reaffirmed the balancing test established in *Parton*.

[121] I am mindful that the choice to make a lump sum award is dependent on the facts in each case. The claimant asks for a lump sum because she wishes to terminate ongoing contact with the respondent. She submits that having contact with the respondent causes her further stress and anxiety. While that may be the case, in my view, there are ways to avoid contact such as direct payments to the claimant's bank account. This is just one factor I must consider in my assessment. It is not a determinative one.

[122] Other considerations such as domestic abuse or second marriage are not relevant factors in the case at bar.

[123] The claimant submits that in the past the respondent has been late in his spousal support payments. She says this adds stress as she lives paycheck to paycheck. I have also considered the fact that the claimant most recently received another advancement of \$70,000 at the conclusion of the trial to assist her to get back to her studies. This is on top of the monthly spousal support payments.

[124] The respondent has been making spousal support payments for over three years now. This is not a situation where the spouse is consistently delinquent in making payments. On the contrary, the respondent testified that there were two late payments and on both occasions it was inadvertent. The respondent's evidence was not disputed and I accept his evidence. I am not convinced there is a real risk of non-payment of periodic support.

[125] However, I accept the claimant's argument that there has been a lack of proper financial disclosure as it relates to the respondent's business expenses. The respondent failed to do so despite court orders. I also accept there are sufficient funds from the distribution of family property such that the respondent could pay a lump sum. That said I have also considered that if I were to grant a lump sum award, the respondent would be left with very little to allow him to start over.

[126] Additionally, there is a real possibility that the means and needs of the parties will change over time. In my view, while the claimant has proposed an income of \$80,000 for years three and four, it is possible that she could make more than that, but it is also possible that the claimant may not land a fulltime teaching or curating position immediately after completing her program. As well, given the economic uncertainty that lies ahead, the

respondent's income may change. In this regard, a lump sum amount would effectively deprive the respondent of the right to a review.

[127] Considering all the circumstances, including the advantages and disadvantages, I decline to award lump sum spousal support.

Duration of Spousal Support

[128] Turning now to the duration of spousal support. Considering the parties' standard of living during the relationship, their ages, their incomes, and the financial assets available, I find that periodic spousal support from the SSAG at midpoint for an additional period of four years will achieve the purposes governing awards of spousal support.

[129] I accept the claimant's imputation of income to be \$20,000 for years one and two and \$80,000 for years three and four. With the financial evidence available and using the respondent's three-year average of income of \$194,000, I find this to be reasonable and consistent with the respondent's own evidence wherein he stated that he expected his 2024 income to be approximately \$195,000. Accordingly, the respondent's gross income will be imputed to \$194,303 per year over four years.

[130] With respect to the respondent's deductions, parties have a duty to provide full disclosure including proving reasonableness of any expenses deducted. Section 213 (2)(b) of the FLA which permits the court to "draw an inference that is adverse to the person, including attributing income to that person in an amount that the court considers appropriate, and make an order based on the inference": AKK at paras. 476-482.

[131] As well, a valid deduction under the Income Tax Act, R.S.C., 1985, c. 1 (5th Supp.) is not necessarily a reasonable deduction for the purposes of income determination as contemplated by s. 19(2) of the FCSG; D.M.B. v. D.W.A.L., 2018 BCSC 1254 at paras. 147 and 168; D.M.B. v. D.W.A.L., 2019 BCSC 4.

[132] In M.T. v. J.S., 2023 BCCA 64 our Court of Appeal said that the spouse claiming the deductions will bear the burden of establishing they are reasonable business deductions under s. 19 at para. 8. In my view, some of the respondent's deductions are unreasonable and not supported by documentary evidence. The respondent's expenses for the three-year average are:

2021 \$55,063.23

2022 \$55,426.09

2023 \$47,088.15

[133] The claimant argues that due to the lack of disclosure, the respondent's allowable expenses ought to be capped at \$25,000 each year. I am unable to agree with the claimant in this regard. In my view, despite the limited disclosure, the respondent does appear to have legitimate business expenses that would be over and above the cap that the claimants asks for.

[134] Doing the best I can with the available evidence, I am of the view, for the purposes of calculating spousal support, \$14,000 should be allocated in the DivorceMate calculations as unreasonably claimed expenses (s.19 of the FCSG) for the three-year average.

[135] This imputation will ensure that the award of spousal support is fair and equitable in all the circumstances. There will also be a review of spousal support, the first one in two years.

SUMMARY OF ORDERS

[136] In conclusion, I made the following orders:

1. I grant the parties a divorce. Pursuant to s. 12(1) of the Divorce Act, the divorce will take effect on the thirty-first day after the issuance of this order;
2. There will be an equal division of:
 - a. Drumsnab from the mid-point valuation of \$73,500;
 - b. the parties' bank accounts as at separation: respondent's bank account balance of \$15,169.01 and the claimant's bank account balance of \$3,112.33; and
 - c. CPP and RRSP.
3. Proceeds from the sale of the former family home will be equally divided. The claimant will receive \$259,085.65 minus \$70,000 advanced at the conclusion of trial. The respondent will receive \$214,085.65.
4. The parties will retain their own debts since separation.
5. The claimant will receive spousal support for four additional years based on the respondent's imputed net income of \$170,000 per annum. The claimant's income is imputed at \$20,000 for years one and two and \$80,000 for years three and four. There will be an allocation of \$14,000 as unreasonably claimed expenses (s.19 of the FCSG). The monthly spousal support will be on the mid range of the SSAG.
6. A spousal support review will occur after two years.

[137] If the parties are unable to agree on the monthly amount under the DivorceMate calculations, they have leave to appear before me to resolve this issue.

COSTS

[138] I did not hear submissions from the parties on costs. It is my preliminary view that success was divided, and the parties should each bear their own costs. However, if there are matters relating to costs about which I am unaware, the parties are to exchange written submissions of no more than seven pages, double spaced, in 12-point Arial font, within 45 days of these reasons being released, and may then schedule a brief hearing at 9:00 a.m. before me to speak to the same.

"Girn J."

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