
CANADA / JUDGMENT

Chang v. Chang

2020 BCSC 1783

COURT

Supreme Court of British Columbia

DECIDED

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2020 BCSC 1783 Chang v. Chang

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Chang v. Chang,

2020 BCSC 1783

Date: 20201120

Docket: E180250

Registry: Vancouver

Between:

Cindy Debbie Chang

Claimant

And

Raymond Chang

Respondent

Before: The Honourable Madam Justice E. McDonald

Reasons for Judgment

Counsel for the Claimant:

P. Verrier

Counsel for the Respondent:

P. Grayer

Place and Date of Trial:

Vancouver, B.C.

March 9-13, 2020,

June 18-19, 2020

July 16-17, 2020

Place and Date of Judgment:

Vancouver, B.C.

November 20, 2020

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INTRODUCTION

- [1] Debbie Chang and Raymond Chang were married for 27 years prior to separating in late 2017. Over the course of their relationship, Ms. Chang undertook the majority of the childcare, household and financial responsibilities for the family.
- [2] The primary issues raised at the trial of this family law litigation were as follows: (1) how to divide family property and family debt; and (2) whether Mr. Chang is entitled to spousal support.
- [3] Ms. Chang says that significant disparities in contribution make it significantly unfair to equally divide the family property and family debt. Ms. Chang also says that Mr. Chang is not entitled to spousal support because, among other things, he is capable of working and contributing to his own support.
- [4] Mr. Chang did not dispute that Ms. Chang's contributions overshadowed his own and that he sometimes behaved badly during the parties' relationship. However, he says these circumstances are insufficient to overcome the presumption of equal division of family property and family debt. Mr. Chang also says that he has a strong entitlement to non-compensatory spousal support because of the length of the parties' marriage and because he is unable to work for medical reasons.
- [5] For the reasons that follow, I have determined that:

1. Certain family property and family debt should be divided unequally in favour of Ms. Chang; and
2. Mr. Chang is entitled to receive spousal support.

CREDIBILITY

- [6] Three individuals testified at the trial: the claimant, Debbie Chang; the respondent, Raymond Chang; and, Willy Tran, an occupational therapist. In addition to witness testimony, the record included Mr. Tran's functional capacity evaluation of Mr. Chang, property appraisals and a variety of documents tendered by the parties.
- [7] The credibility of the claimant and respondent are at issue.
- [8] In *Bradshaw v. Stenner*, 2010 BCSC 1398 at para. 186, aff'd 2012 BCCA 296, Justice Dillon set out the factors to consider in assessing the credibility of a witness:

Credibility involves an assessment of the trustworthiness of a witness' testimony based upon the veracity or sincerity of a witness and the accuracy of the evidence that the witness provides (*Raymond v. Bosanquet (Township)* (1919), 59 S.C.R. 452, 50 D.L.R. 560 (S.C.C.)). The art of assessment involves examination of various factors such as the ability and opportunity to observe events, the firmness of his memory, the ability to resist the influence of interest to modify his recollection, whether the witness' evidence harmonizes with independent evidence that has been accepted, whether the witness changes his testimony during direct and cross-examination, whether the witness' testimony seems unreasonable, impossible, or unlikely, whether a witness has a motive to lie, and the demeanour of a witness generally (*Wallace v. Davis*, [1926] 31 O.W.N. 202 (Ont.H.C.); *Farnya v. Chorny*, [1952] 2 D.L.R. 152 (B.C.C.A.) [*Farnya*]; *R. v. S.(R.D.)*, [1997] 3 S.C.R. 484 at para.128 (S.C.C.)). Ultimately, the validity of the evidence depends on whether the evidence is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time (*Farnya* at para. 356).

- [9] Counsel for Mr. Chang urged me to find that Ms. Chang was not credible. Mr. Chang's counsel suggested that Ms. Chang was not truthful and that she was attempting to gain a strategic advantage in this proceeding by alleging that Mr. Chang bullied and threatened her during the relationship. He also submitted that Ms. Chang was overly cautious in cross-examination and reluctant to give credit to Mr. Chang for contributions that he made during the relationship.
- [10] I agree that Ms. Chang was sometimes reluctant to acknowledge Mr. Chang's contributions. However, overall, I found her to be a credible and honest witness. Mr. Chang confirmed many aspects of Ms. Chang's evidence and her evidence was largely consistent with the documentary evidence.

- [11] When Ms. Chang testified about Mr. Chang's conduct during the parties' relationship, I detected no exaggeration or ulterior motive on her part. I believed Ms. Chang when she testified that Mr. Chang engaged in intimidating and belittling behaviour towards her and the parties' sons. The fact that the parties' marriage lasted 27 years does not show that Ms. Chang acquiesced, nor does it make Ms. Chang's evidence less cogent overall.
- [12] Mr. Chang agreed with many of the central examples that Ms. Chang gave concerning his behaviour and his role during the relationship. In that respect, Mr. Chang was a forthright witness.
- [13] Mr. Chang sometimes claimed to have a limited memory of events and he was not credible in all respects. For example, when Mr. Chang was asked in cross-examination about his current ability to work and drive, he answered questions in an evasive and defensive manner.

BACKGROUND

- [14] The parties were married on August 25, 1990 and they had two sons together. The parties' eldest son, M.C., was born in 1996 followed by their youngest son, R.C., who was born in 1999.
- [15] After 27 years of marriage, the parties separated on December 25, 2017 following an altercation involving Mr. Chang, Ms. Chang and M.C. As a result of that altercation, Mr. Chang entered into a recognizance that included a provision that he have no contact with Ms. Chang or the parties' sons.

The Claimant's Personal History

- [16] Ms. Chang is presently 55 years old. She grew up in a home located at 8010 17th Avenue, Burnaby, British Columbia (the "Family Home").
- [17] After finishing high school, Ms. Chang completed a two-year college programme related to managing recreational facilities. Ms. Chang then worked continuously and by 1989, she began working for the City of Burnaby (the "City"). Ms. Chang was promoted at the City to eventually become the Manager of Recreation Services and the Manager of the Edmonds Community Centre.
- [18] Ms. Chang earned a steady salary as a City employee throughout the parties' marriage. In 2016, 2017 and 2018, respectively, she earned total income of \$101,753, \$124,222 and \$120,267.

The Respondent's Personal History

- [19] Mr. Chang is presently 57 years old.

- [20] Mr. Chang did not complete high school. However, in the early 1980s, he attended a college course in auto mechanics, although he never worked in that field because he did not complete the apprenticeship.
- [21] In the early years of Mr. Chang's working life, he held a variety of service industry jobs. From 1988 to approximately 2004, Mr. Chang worked as a delivery driver at Greyhound Courier. Mr. Chang supplied his own truck and he paid his own expenses. This appears to be the best paying job that Mr. Chang ever held and he said that he earned \$60,000 a year at this job, before expenses.
- [22] Early in his career at Greyhound, Mr. Chang incurred an income tax debt. He said that he stopped filing income tax returns. When the Canada Revenue Agency garnished his earnings, Mr. Chang instructed the accountant at Greyhound to stop remitting his taxes directly.
- [23] In approximately 1999, Mr. Chang decided to deal with his income tax debt by declaring bankruptcy, although he described never actually completing that process. Mr. Chang asked Ms. Chang to help him with the bankruptcy by completing forms to track household income and expenses.
- [24] Mr. Chang's bankruptcy, led Ms. Chang to begin a long-standing practice of recording Mr. Chang's spending, as best she could, in notebooks. I find that Ms. Chang recorded Mr. Chang's spending because she believed that information was required for, and could be requested at any time, by the trustee in bankruptcy.
- [25] In 2004, after Mr. Chang left his employment at Greyhound, he began experiencing gaps in his employment. He undertook some seasonal, part-time, work until approximately 2006. From 2006 to 2007, he worked full-time at Summit Logistics performing warehouse work.
- [26] From approximately 2008 to 2009, Mr. Chang worked at Iron Mountain performing mobile shredding services. However, Mr. Chang decided to leave his employment at Iron Mountain sometime in 2009. After this, he was unemployed until sometime in 2010, when he began seasonal, on-call work setting up venues for an event-planning company.
- [27] In addition to earning employment income, Mr. Chang generated cash through various part-time activities. For example, he refereed minor hockey and he received a small cash gratuity after each game. By 2017, he was working as a referee seven to 12 times per week.
- [28] In 2007 or 2008, Mr. Chang began making and selling "pirated" DVDs for cash. He estimated that he made an extra \$100 each week from this activity.
- [29] Mr. Chang also collected and sold sports memorabilia. However, Mr. Chang said this was really a hobby, rather than a business.

[30] Mr. Chang did not operate a bank account for long periods during the relationship. He cashed cheques at businesses such as Money Mart. I find that Mr. Chang avoided operating a bank account because he was concerned about garnishment by his creditors and not because he wanted to avoid bank fees.

[31] For the 10 years leading up to the parties' separation, Mr. Chang reported total annual incomes as follows:

2017 - \$13,456 2011 - \$3,600

2016 - \$9,686 2010 - \$3,039

2015 - \$13,342 2009 - \$18,327

2014 - \$9,026 2008 - \$30,089

2013 - \$2,831 2007 - \$39,141

2012 - \$9,337

[32] Mr. Chang has not worked since the parties' separation on December 25, 2017.

The Parties' Relationship

[33] Ms. Chang was always the primary caregiver to the parties' sons. Mr. Chang does not dispute this. He also agreed that Ms. Chang was responsible for most of the housekeeping duties, although he would sometimes cook, clean and accompany Ms. Chang grocery shopping. Mr. Chang said that he worked long hours at Greyhound, which made it difficult for him to contribute equally to childcare and housekeeping responsibilities.

[34] Mr. Chang provided some assistance caring for the parties' sons and for Ms. Chang's elderly parents. For example, Mr. Chang volunteered coaching hockey for the parties' sons and he attended all of their games and practices.

[35] However, Ms. Chang testified that she feared leaving their sons solely in Mr. Chang's care. As a result, she kept them in daycare or after-school care even while Mr. Chang was unemployed and she avoided attending work conferences that took her away overnight.

[36] According to Ms. Chang, Mr. Chang lacked patience and he angered easily. When angry, he would yell and call their sons names. Mr. Chang would also raise his hand threateningly as if to hit them. Ms. Chang gave many examples of Mr. Chang's questionable behaviour and angry outbursts towards their sons. Mr. Chang often agreed that he had done the things that Ms. Chang testified to.

[37] Overall, Ms. Chang described the relationship between Mr. Chang and their sons as tense, even after their sons became adults. Mr. Chang agreed that he has had challenges in his relationship with his sons. He presently has no contact with them.

- [38] Mr. Chang's history of inappropriate behaviour also extended to his relationship with Ms. Chang. According to Ms. Chang, he taunted and belittled her, especially about her work. Mr. Chang told her that City workers were lazy and he implied that she had it easy working for the City.
- [39] On more than one occasion, Mr. Chang threatened Ms. Chang with divorce, telling her that he would "take her" for half of everything she owned. Ms. Chang described believing that if they separated, their sons would be required to live with both parents and the prospect of their sons living alone with their father, even part-time, greatly upset and frightened her.
- [40] Again, Mr. Chang did not deny many of the examples of his inappropriate behaviour provided by Ms. Chang. He agreed that he contributed far less to the relationship in terms of childcare, housekeeping and financial contributions.
- [41] Mr. Chang testified that he had difficulty showing emotion and affection to his wife and children, something he attributed to his own upbringing. This was consistent with my observations of Mr. Chang during his testimony. He appeared emotional only when testifying about his health or his lack of funds. He showed little or no emotion when asked about his relationship with his sons or Ms. Chang, except when he recalled the altercation on December 25, 2017.
- [42] Mr. Chang became noticeably angry as he described that altercation and the resulting recognizance. Mr. Chang denied intentionally striking Ms. Chang during the altercation. He appeared to blame his son for instigating the fight. It was not clear that Mr. Chang regretted his actions during the events on December 25, 2017.
- [43] Mr. Chang's tendency to resort to threats and bullying was evident from his testimony. For example, during cross-examination Mr. Chang stated that if he did not receive the outcome in the family law litigation that he wanted, he was considering bringing an action against Ms. Chang for wrongful arrest and damages arising from the events on December 25, 2017.
- [44] Mr. Chang agreed that he was unemployed during significant periods during the marriage and he was not always motivated to search for work. He often left jobs voluntarily. He acknowledged that Ms. Chang pushed him to apply for jobs and that she prepared his resume, researched potential jobs for him and helped him to submit job applications.
- [45] Ms. Chang sometimes arranged work for Mr. Chang through her personal contacts. For example, Ms. Chang arranged through an acquaintance for Mr. Chang to work part-time at City Air Duct Cleaners performing air duct cleaning services.
- [46] In cross-examination, Mr. Chang had no answer for why he was unemployed or underemployed for extended periods during the marriage. He conceded that Ms. Chang would sometimes speak to him about how she wanted him to find steadier and better paying employment.

- [47] When asked whether Ms. Chang appeared distraught or under stress about the state of the family finances, Mr. Chang's responses were often vague and unconvincing. However, he did agree that Ms. Chang sometimes raised the poor state of their finances with him.
- [48] In approximately 2012, Mr. Chang purchased a dog for the family. Ms. Chang alleged that Mr. Chang mistreated the dog. In response to Ms. Chang's examples of his mistreatment of the dog, Mr. Chang would quibble about insignificant details or flippantly suggest that he was merely playing with the dog despite the obvious danger of the conduct. Ms. Chang was so concerned for the dog's safety, that she put it in day-care to avoid leaving it alone with Mr. Chang.
- [49] Another relevant aspect of the parties' relationship relates to Mr. Chang's shopping and collecting activities. Ms. Chang alleged that Mr. Chang was a hoarder. Mr. Chang denied hoarding, but he agreed that he collected and stored a large number of items in the Family Home.
- [50] Based on the evidence, including the photographs of the Family Home, I find that Mr. Chang filled all of the main rooms, hallways, garage and exterior storage sheds at the Family Home with his purchases, collections and possessions. Many areas inside the Family Home appeared virtually impassable due to massive piles of Mr. Chang's possessions. For example, in the basement recreation room, there were stacks of boxes and possessions nearly filling the room, except for a narrow pathway. To call the Family Home cluttered would be a significant understatement.
- [51] Ms. Chang testified, and I believe her, that the state of the Family Home saddened her and made it nearly impossible to entertain. There was no adequate space for their sons to play, except in their bedrooms. Ms. Chang and their sons felt so embarrassed by the state of the Family Home that they avoided having people over.
- [52] Ms. Chang tried to clear space by removing some of Mr. Chang's possessions. However, when Mr. Chang saw that items had been removed, he would react angrily and it would lead to conflicts. I find that Mr. Chang's hoarding behaviour significantly diminished Ms. Chang's enjoyment of the Family Home during their relationship.
- [53] In addition to the emotional impacts, Mr. Chang's hoarding behaviour created other consequences for the parties. At one point, Ms. Chang hired an electrician to replace the electrical panel in the Family Home. This work required a final inspection; however, due to the massive quantities of Mr. Chang's possessions impeding the inspector's access, that inspection was not done. Ms. Chang testified that the inspector advised her insurance company of the reason why he could not conduct a final inspection. Ms. Chang believes this has negatively impacted the insurance coverage.
- [54] After the parties' separation, Ms. Chang spent a great deal of time organizing and cataloging Mr. Chang's purchases and possessions. She counted nearly 100,000 items that he had stored in the Family Home and she packed up over 400 boxes with those items.

FAMILY PROPERTY

[55] The parties agree that each spouse is entitled to a half interest in certain family property (the "Agreed Property"). The Agreed Property is set out in Schedule "A" to this judgment.

[56] The parties also agree that each spouse is entitled to certain excluded property.

[57] In 2012, Ms. Chang received an inheritance from her father. She used part of the inheritance to increase the RESPs for the parties' sons and to contribute to her RRSP.

[58] The parties agree that Ms. Chang is entitled to the following excluded property:

1. the value of the Family Home at the time of the inter vivos gift from her father, in the amount of \$121,250;
2. the value of her RRSP investments made prior to the relationship and using inherited monies, in the amount of \$50,151.
3. the Mitsubishi vehicle she purchased with funds inherited from her father and traded with R.C. for a Volkswagen vehicle, valued at \$15,678;
4. the tent trailer that she purchased with funds inherited from her father, valued at \$10,000; and
5. jewelry, valued at approximately \$14,000.

[59] In 2017, Mr. Chang received an inheritance from his mother of approximately \$323,000. He used his inheritance, amongst other things, to take his family on two trips to Las Vegas, and to purchase a sports car in California. Some of the things that Mr. Chang purchased with his inheritance form part of his excluded property claim.

[60] The parties agree that Mr. Chang is entitled to the following excluded property:

1. the Mustang vehicle purchased in California, valued at \$40,500;
2. the Nova vehicle, which was not valued by the parties; and
3. Chattels, valued at \$15,190.

The Family Home

[61] The Family Home is the parties' main asset with an agreed current market value of \$920,000. The parties agree that the mortgage has a current balance of \$108,646.

[62] The parties began living in the Family Home in approximately 1993. At that time, Ms. Chang's parents owned and also lived in the Family Home.

- [63] In 1997, Ms. Chang's parents gifted the Family Home equally to her and her brother. At the time of the gift, the Family Home had a market value of \$242,500. Ms. Chang decided that she wanted to buy out her brother's share, so title to the Family Home was registered in her name subject to a mortgage in her brother's favour. After the transfer, Ms. Chang made monthly mortgage payments to her brother of \$800.
- [64] On March 17, 2011, Ms. Chang refinanced the Family Home with Vancouver City Savings Credit Union. She received \$100,000 in mortgage proceeds. From that, she used \$29,306.69 to pay off her brother's mortgage. She invested \$10,000 in RESPs for the parties' sons and she applied most of the remaining funds to pay off credit card debt.

Pension/RRSPs

- [65] As a City employee, Ms. Chang contributed to the Municipal Pension Plan (the "Pension").
- [66] The parties retained an actuary to calculate the value of the benefits earned during the relationship. The actuary determined the following values:

Assumed Retirement Age

Total

Actuarial

Value

Actuarial Vales:

Pre-tax

Capitalized

Value

Cash

Settlement

Value

Earliest Reduced Retirement - age 55

\$1,148,400

\$574,200

\$442,100

Earliest Unreduced Retirement - age 60

\$1,052,500

\$526,300

\$405,200

Normal Retirement - age 65

\$ 855,100

\$427,600

\$329,200

[67] During the relationship, Ms. Chang contributed to RRSPs in her name. The parties agree the total current value of her RRSPs is \$112,972, before accounting for any claimed exclusions.

Chattels

[68] During the parties' relationship, Mr. Chang purchased and collected significant quantities of personal property, such as tools, sports memorabilia and clothing (the "Chattels"). The parties arranged for an appraisal of the Chattels.

[69] As I understand it, the parties agree that the Chattels have an appraised value of \$76,465 even though, due to their sheer quantity, the appraiser limited her valuation to 743 of the higher value items. Mr. Chang has already received Chattels valued at \$56,575. After deduction for Mr. Chang's excluded property claim of \$15,190, the parties consent to an equal division of the value of the Chattels.

[70] The family property also includes a Nova vehicle. Neither party provided evidence regarding the value of the Nova; however, the parties agree that Mr. Chang should receive the Nova in effecting the division of family property.

FAMILY DEBT

[71] The parties agree that the \$108,646 mortgage presently secured against the Family Home is a family debt. The parties agree that they are equally responsible for the mortgage debt.

[72] Ms. Chang also claims that \$3,081 and \$4,067 that she paid after the parties' separation for a line of credit and credit card payments, respectively, are family debt (the "Post-Separation Debt"). As I understand it, Mr. Chang agrees that the parties shall be equally responsible for the Post-Separation Debt, which totals \$7,148.

[73] There are other debts that are in dispute. Specifically, Mr. Chang claims that two debts he incurred are family debts. The first disputed debt is a \$146,655 personal income tax debt. The second disputed debt is a \$16,436 credit card debt owing to HSBC Bank. Ms. Chang denies that these are family debts.

ISSUES

[74] To determine this family law proceeding, I must decide the following:

1. What constitutes family property and family debt?
 2. Should family property and family debt be reappportioned and if yes, how?
 3. Should Ms. Chang be required to pay Mr. Chang spousal support?
- [75] The parties agree that at present their sons are not children of the marriage. While child support was requested by Ms. Chang in the claim, it was not advanced at trial.

Issue 1: What constitutes family property and family debt?

The Legislative Framework - Property Division

- [76] The framework applicable to the division of family property and family debt is set out in Part 5 of the Family Law Act, S.B.C. 2011, c. 25 [FLA]. Section 81 provides that upon separation, the spouses are both entitled to an undivided half interest in all family property and the spouses are responsible for half of all family debt.
- [77] Family property includes, amongst other things, a spouse's entitlement under a pension plan: s. 84(2)(e).
- [78] Section 84 of the FLA defines family property to include property owned by at least one spouse on the date of separation and property acquired after separation if it is derived from property owned by a spouse at the date of separation.
- [79] Section 86 defines family debt as all financial obligations incurred by a spouse during the relationship or "after the date of separation, if incurred for the purpose of maintaining family property".
- [80] Section 85 describes categories of excluded property which, if proved, remain the sole property of the spouse who claims the exclusion. Relevant to this proceeding are the categories of excluded property in s. 85(1)(a) and (b), respectively, i.e. property acquired by a spouse before the relationship began and inheritances to a spouse.
- [81] Pursuant to s. 95 of the FLA, the court may reappportion family property and family debt, or both, if it finds that equal division would be significantly unfair, having regard to the considerations set out in subsections (2) and (3). The following considerations set out in s. 95(2) are relevant to this proceeding:
- (a) the duration of the relationship between the spouses;
 - (d) whether family debt was incurred in the normal course of the relationship between the spouses;
 - (i) any other factor, other than the consideration referred to in subsection (3), that may lead to significant unfairness.

The Parties' Positions

- [82] The parties agree that the Family Home, Pension, RRSPs and Chattels, exclusive of the parties' excluded property claims, are family property.
- [83] The parties also agree that the Post-Separation Debt and the mortgage are family debt. However, as mentioned earlier, Ms. Chang disputes whether the income tax debt and the HSBC MasterCard debt are family debt.

The Law

- [84] For a debt to be treated as family debt, it must have been incurred during the relationship or following the date of separation if incurred to preserve family property: FLA s. 86.
- [85] The party who alleges that a debt is a family debt carries the onus to demonstrate that it was incurred during the parties' relationship or that it was incurred to preserve or maintain the family property: *Visser v. Visser*, 2019 BCSC 1856 at para. 138, citing *Chatha v. Uppal*, 2018 BCSC 6 at para. 309.

Analysis

- [86] I begin with an analysis of whether the \$145,655.35 income tax debt is a family debt.
- [87] From my review of Mr. Chang's tax return details, it appears that some of the income tax debt was incurred prior to the parties' relationship. For example, according to the form for 1989, the balance owing for the 1989 taxation year was \$12,397.67, inclusive of penalties and interest.
- [88] After the parties married in August of 1990, it appears that Mr. Chang's income tax debt carried forward and that he added to the balance owing in subsequent taxation years. For example, by 1993, Mr. Chang's total balance owing, including interest and penalties, had climbed to \$47,055.04.
- [89] There is authority for the proposition that it is improper to treat fines or penalties arising from a tax debt as family debt: *Gaita v. Gaita*, 2008 BCSC 1111 at para. 165. Concerning the division of family debt under the FLA, penalties payable in relation to a party's tax debt may go to the issue of fairness: *T.T. v. J.M.H.*, 2014 BCSC 451 at para. 106, citing *Gaita* at paras. 155, 158 and 160.
- [90] I find that part of the income tax debt was incurred prior to the parties' relationship and that part is not family debt. I also find that part of the income tax debt consists of penalties assessed against Mr. Chang and the penalties are not family debt.

- [91] I also find that part of the income tax debt was incurred during the parties' relationship and as such, that part is a family debt. Unfortunately, I was provided no detailed accounting information to assist me in identifying what part of the current \$146,655.35 balance was incurred after the parties' relationship began.
- [92] As best I can tell, after having reviewed the tax forms, it appears that by 1993, approximately 50% of the balance outstanding is attributable to principal tax debt accrued after the parties' relationship began. It further appears that in years following 1993, Mr. Chang accrued no additional principal tax debt and sometimes he even received refunds.
- [93] After considering the evidence, I find that it is reasonable to infer that 50% of the present income tax balance is a family debt. For further clarity, I have concluded that \$73,328 of the \$146,655 income tax debt is family debt. The remaining portion of the income tax debt is not a family debt since it was either incurred prior to the parties' relationship, or it consists of penalties assessed against Mr. Chang.
- [94] Turning now to the issue of Mr. Chang's \$16,436 HSBC MasterCard debt, Ms. Chang denies that this is a family debt. She testified that she was unaware of this credit card until after the parties' separation.
- [95] Mr. Chang said that he used the HSBC credit card back in 2009 and 2010. I note that Ms. Chang also accumulated credit card debt during the relationship. However, she was able to pay off credit card debt in the past by drawing on equity in the Family Home.
- [96] After considering the evidence, I have concluded that the HSBC credit card debt is family debt within the meaning of s. 86 of the FLA.

Issue 2: Should family property and family debt be reapportioned?

The Parties' Positions

- [97] The parties agree the usual starting point for the division of family property and family debt is the presumption that each party is entitled to a half interest in family property and responsible for half of family debt, regardless of their respective use or contribution.
- [98] Mr. Chang's counsel submits that Mr. Chang is entitled to his half interest notwithstanding that Mr. Chang failed to "pull his weight" during the relationship. Counsel for Mr. Chang also submitted that while "most reasonable people" would likely view Mr. Chang's lesser contributions as "unfair", this is insufficient to meet the high threshold of being significantly unfair.
- [99] Ms. Chang seeks reapportionment of the Family Home, RRSPs and Pension in her favour. She also submitted that the parties should retain their own contributions to the Canada Pension Plan. Ms. Chang also seeks to reapportion the entirety of the income tax and HSBC MasterCard debt to Mr. Chang.

- [100] The crux of Ms. Chang's position is that Mr. Chang's persistent underemployment or unemployment, and his deliberate non-contribution or under-contribution to child rearing and family finances, justifies reapportionment. In short, Ms. Chang submits that on the facts of this case, equal division would be significantly unfair.

The Law

- [101] The intent of s. 95 of the FLA is to constrain the exercise of judicial discretion in dividing family property: *Jaszczywska v. Kostanski*, 2016 BCCA 286 at paras. 36, 40-44.
- [102] Recently, in *Singh v. Singh*, 2020 BCCA 21, Justice Garson summarized both the high threshold established by, and the meaning of, the phrase "significantly unfair" that appears in s. 95 of the FLA:
- [129] First is the question of the meaning of the term "significant unfairness."
- [130] In *Jaszczywska v. Kostanski*, 2016 BCCA 286, Justice Harris, for the Court, engaged in an extensive analysis of s. 95. He first noted that the Legislature sought to increase certainty, fairness, and predictability in property division matters with the FLA by reducing the discretion of the courts to depart from equal division: at para. 36. The test in the previous legislation (Family Relations Act, R.S.B.C. 1996, c. 128) only required unfairness, whereas the FLA requires "significant unfairness." In addition, the legislature more precisely specified the factors to be considered in applying this threshold.
- [133] In *V.J.F. v. S.K.W.*, 2016 BCCA 186, Justice Newbury described s. 95 as requiring a high threshold of "significant unfairness" to depart from equal division: at para. 81. Other cases have reached similar conclusions about the high threshold necessary to reapportion assets under s. 95. In *Khan v. Gilbert*, 2019 BCCA 80, for example, Justice Fenlon noted that cases in which unequal contribution was found to reach the significantly unfair threshold have involved marked, prolonged, and intentional or unexplained disparities in contribution to family burdens: at para. 32.
- [134] In summary, it is clear that the Legislature intended the general rule of equal division to prevail unless persuasive reasons can be shown for a different result: *Jaszczywska* at para. 41. Reapportionment will require something objectively unjust, unreasonable, or unfair in some important or substantial sense. This is in contrast to the previous legislation where courts had discretion under s. 65 to reapportion property or debt where it would be simply "unfair" not to do so. The threshold for "significant unfairness" is high. There must be a real sense of injustice that would permeate the result if the court did not deviate from the presumptive equal division.
- [103] While there is no set definition of "significantly unfair", it clearly requires "something objectively unjust, unreasonable or unfair in some important or substantial sense": *Singh* at paras. 131, citing *Jaszczywska* at para. 42.

[104] The courts have cautioned against basing findings of significant unfairness on "dollar for dollar comparison of contribution" because differing financial contributions will often be insufficient to constitute significant unfairness: *Khan v. Gilbert*, 2019 BCCA 80 at paras. 28, 32 and 36; *Slavenova v. Ranguelov*, 2015 BCSC 79 at para. 60.

[105] To decide this matter, I "must notionally divide the family property, taking into account the exclusions, in accordance with the provisions of the FLA" first, before I consider whether equal division is significantly unfair: *Remmem v. Remmem*, 2014 BCSC 1552 at para. 47.

Analysis

[106] The first step is to notionally divide, accounting for exclusions, the interest in the Family Home equally, pursuant to s. 81 of the FLA. The notional division on an equal basis appears as follows:

Appraised Value:

Less mortgage:

Total Equity in Family Home:

Less Ms. Chang's exclusion (by consent):

Total amount available for division:

Each party's 50% share:

\$920,000

\$(108,646)

\$811,354

\$(121,250)

\$690,104

\$345,052

[107] Ms. Chang seeks reapportionment of the Family Home. She specifically requests reapportionment of up to 75% of the amount available for division on the basis that it would be significantly unfair to equally divide the Family Home. Such reapportionment would mean that Mr. Chang would not receive \$345,052 as his equal share of the amount available for division, but rather he would receive \$172,526.

[108] To clear the high hurdle of significant unfairness, Ms. Chang must show "marked, prolonged, and intentional or unexplained disparities in contribution to family burdens": *Singh* at para. 133, citing *Khan v. Gilbert*, 2019 BCCA 80 at para. 32. Reapportionment requires "something objectively unjust, unreasonable, or unfair in some important or substantial sense": *Singh* at para. 134.

- [109] In *Venables v. Venables*, 2019 BCCA 281, the Court upheld an award of unequal division based on one party's significant financial contributions. While Mr. Chang agrees that Ms. Chang made greater financial contributions to the relationship, that admission, on its own, is insufficient to meet the threshold set out in s. 95 of the FLA. Ms. Chang must establish meaningful and compelling circumstances that go well beyond differing financial contributions.
- [110] In the present case, I find there is evidence of significant disparities in contribution to family burdens, such as childrearing and household duties, which are intentional and unexplained. Again, Mr. Chang agreed that Ms. Chang was responsible for the majority of those duties during their relationship.
- [111] While Mr. Chang attempted to explain his lesser contribution in these areas by pointing to the long hours he worked at Greyhound, there was no explanation for the many years during the relationship when he was unemployed or working part time.
- [112] In finding that there are significant disparities in contribution to family burdens, I have taken into account that Mr. Chang did make some contributions to childrearing, elder care and maintenance of family property, some of which I described earlier in these reasons.
- [113] I also considered that Mr. Chang did some work on the Family Home, such as enlarging closets, adding a fireplace mantle, updating light switches and carrying out various other tasks. However, I agree with Ms. Chang that Mr. Chang's work on the Family Home was often of poor quality and sometimes it was downright detrimental.
- [114] For example, Mr. Chang undertook a renovation of the downstairs bathroom. He demolished the shower stall but never replaced it. Mr. Chang's bathroom renovation effectively reduced the total working showers from two to one. In addition, his work on the back deck and stairs did little, if anything, to improve their safety or usability.
- [115] There is also evidence of significant disparities in the parties' financial contributions, which are intentional and unexplained. As pointed out earlier in these reasons, Mr. Chang acknowledged that Ms. Chang contributed far more towards family property and family expenses than he did.
- [116] Mr. Chang testified that he gave Ms. Chang cash, or he contributed directly to family expenses, when he had money left over or when he felt that he could afford it. I find that in addition to choosing to earn very little income, Mr. Chang decided that his earnings should go firstly and principally to cover his own personal, discretionary expenses for items such as memorabilia and spare tools, before he contributed anything to family expenses. Mr. Chang provided no reasonable explanation for his behaviour. Throughout the relationship, Mr. Chang deliberately prioritized his own spending needs above the financial needs of his family.

- [117] Under cross-examination, Mr. Chang admitted that he never asked Ms. Chang about the details of purchasing or financing of the Family Home because he regarded it as her inheritance and her responsibility. He never contributed directly to the mortgage, something he tried to justify by pointing out that Ms. Chang never asked him to contribute.
- [118] However, he did agree that Ms. Chang would sometimes speak to him about the trouble she had keeping up with the bills. It was clear to me that throughout the relationship, Mr. Chang viewed the financial obligations associated with the Family Home as none of his concern.
- [119] In contrast to Ms. Chang's history of steady employment, Mr. Chang spent prolonged periods underemployed or unemployed. Mr. Chang provided no reasonable explanation for his lack of employment, his lack of motivation to work, or his failure to make a greater financial contributions to the relationship.
- [120] In addition to Mr. Chang's deliberate pattern of lesser contribution to financial, childrearing and household duties, I find meaningful and compelling circumstances that go well beyond the parties' differing financial contributions. These circumstances include:
1. Mr. Chang's history of inappropriate behaviour such as bullying, threatening and denigrating talk directed at Ms. Chang and the parties' sons, which I find made Ms. Chang fearful of ending their relationship earlier; and
 2. Mr. Chang's long use of the Family Home as a place to hoard massive quantities of his possessions, which I find deprived his family of the full use and enjoyment of the Family Home.
- [121] After reviewing all of the circumstances, I have decided to exercise my discretion pursuant to s. 95(1) of the FLA, to reapportion the parties' entitlement to the Family Home on the basis that equal division would be significantly unfair. I have reached that conclusion after taking the following considerations into account:
1. That the parties' relationship lasted 27 years.
 2. That there are factors that may lead to significant unfairness, including:
 - i. significantly unequal contribution by the parties during the marriage, both in financial and other terms;
 - ii. unexplained and prolonged periods of significant under-contribution by Mr. Chang, both in financial and other terms;
 - iii. intentional, significant, under-contribution to family burdens by Mr. Chang; and
 - iv. other meaningful and compelling circumstances that I described earlier in these reasons involving Mr. Chang's hoarding and his threatening and bullying behaviour.

[122] I conclude, based on the evidence presented and the factual findings I have made, that there are sufficiently unusual and weighty factors to find that it would be significantly unfair to divide the parties' interest in the Family Home equally. I therefore find that Ms. Chang is entitled to 75% of the equity in the Family Home (i.e. \$517,578) and Mr. Chang is entitled to 25% of the equity (i.e. \$172,526).

[123] I will now consider the division of Mr. Chang's RRSPs and the Pension. Assuming that the RRSPs were divided equally pursuant to s. 81, the division would be as follows:

RRSPs

Total value:

Less Ms. Chang's exclusion (by consent)

Total available for division:

50% share:

\$112,972

\$(50,151)

\$62,821

\$31,411

[124] Ms. Chang seeks to reapportion 75% of the value of the RRSPs in her favour. Such reapportionment would mean that Mr. Chang would receive \$15,705 instead of \$31,411, which would be his equal share.

[125] With respect to the Pension, Ms. Chang also seeks reapportionment in her favour of 75% of the benefits available under the Pension and she seeks to retain all of her own contributions to the Canada Pension Plan ("CPP"). According to the actuarial valuation, the earliest unreduced retirement total actuarial value of the Pension is \$1,052,500.

[126] Section 87 of the FLA provides that "except in relation to a division of family property under Part 6" the value of family property must be based on its fair market value and determined as of the date of trial. While the Pension, which is to be divided pursuant to Part 6, is not an item of family property that requires valuation pursuant to s. 87, I will proceed to consider its value for the purposes of the reapportionment analysis.

[127] The first step is to notionally equally divide, accounting for any exclusions, the interest in the Pension as follows:

Pension

Actuarial value (Earliest Unreduced Retirement - Age 60)

Less any claimed exclusion:

Total value available for division:

Each party's 50% share:

\$1,052,500

\$0

\$1,052,500

\$526,250

[128] If Ms. Chang were to succeed in reapportioning 75% of the value of the Pension in her favour, it would mean that Mr. Chang would receive \$263,125 from the total value of the Pension instead of \$526,250, which would be his equal share.

[129] I turn now to consider whether equal division of the RRSPs, Pension and CPP would be significantly unfair. To clear the high hurdle of significant unfairness, I must find circumstances such as marked, prolonged, and intentional or unexplained disparities in contribution to family burdens and something objectively unjust in an important or substantial sense: Singh, at paras. 133 and 134.

[130] While I found meaningful and compelling circumstances to establish significant unfairness with respect to equal division of the Family Home, I unable to reach the same conclusion with respect to equal division of the RRSPs, CPP and Pension. In my view, the impact of disparities in contribution and the other significant circumstances apply differently to the reapportionment analysis of the RRSPs, CPP and Pension. For example, Mr. Chang's hoarding behaviour at the Family Home and his decision to treat the financial burdens associated with the Family Home as none of his business, were especially relevant to assessing whether an equal division of the Family Home would be significantly unfair.

[131] Based on the evidence, I am unable to find something objectively unjust in any substantial sense about equally dividing the RRSPs, CPP entitlements and Pension. In reaching this conclusion, I have taken into account that during the parties' long marriage, Mr. Chang accumulated no pension, no retirement savings, and that his years of unemployment are likely to have negatively impacted the contributions that he made to CPP.

[132] In my view, it is reasonable to infer that the parties more likely than not, viewed Ms. Chang's retirement-focussed savings as integral to Mr. Chang's own retirement plan. While this may, on some level seem unfair, I am unable to find that it is significantly unfair in any substantial sense.

[133] I turn now to consider whether the disputed family debt, i.e. the income tax debt and the HSBC MasterCard debt, should be reapportioned pursuant to s. 95(1) of the FLA. I will begin by considering the income tax debt.

- [134] I have already determined that 50% of the \$146,655 income tax debt, i.e. \$73,328, is a family debt. Mr. Chang submits that it is not significantly unfair to hold each party equally responsible for the family portion of the income tax debt.
- [135] Counsel for Mr. Chang referred me to the decisions in *J.S.R. v. P.K.R.*, 2017 BCSC 928 and *Sebok v. Babits*, 2018 BCSC 585. These cases demonstrate the court's reluctance to reapportion family debts even in situations where a spouse has dissipated family assets or failed to work regularly.
- [136] In *J.S.R.*, at para. 296, the court explained the dangers of engaging in a review of every financial transaction:
- [296] Similarly, with regard to any amounts sent to Jagdev Johal or the Claimant's brother, these are amounts that were paid early on in the parties' marriage according to the wishes or obligations of the Claimant. These matters are not outstanding to a third party at the time of separation. These types of transactions are the regular fare of marriage. The concept of family debt to be addressed upon separation is not an invitation to the parties to review every financial transaction that occurred during a marriage, to which one of the parties upon separation takes objection. Indeed, this issue was dealt with in a case under the former legislation, the FRA, namely the Court of Appeal decision in *Newson v. Newson* (1986), 1986 CanLII 166 (BCCA), 3 B.C.L.R. (2d) 1 at 16 per Anderson J.A., who referred to the predecessor provision (s. 52) to s. 66 of the FRA, and stated:

Sections 51 and 52 do not provide a trial judge with a roving commission to inquire into the spending habits of the spouses during the marriage. Moreover, ss. 51 and 52 do not provide a basis for re-apportionment based on reckless, wasteful or improvident expenditures made by either of the spouses during the marriage. If the legislature had so intended, it would have made provision for such reapportionment in clear and explicit language.

- [137] In my view, Mr. Chang's tax debt is clearly distinguishable from the circumstances considered by the courts in *J.S.R.* and *Sebok*. On the particular facts of the present case, I would not characterize the tax debt accumulated during the relationship as a debt incurred in the normal course of the relationship.
- [138] Mr. Chang's counsel submitted that I should infer that Mr. Chang used the taxes owing for family purposes. However, Mr. Chang's persistent low levels of contribution to family finances and his prioritization of his own spending needs militate against an inference that he used the unremitted taxes for family purposes.
- [139] After considering all of the circumstances, I find it would be significantly unfair to hold the parties equally responsible for the tax debt because:
1. Mr. Chang engaged in deliberate conduct that included not filing tax returns or remitting taxes owing;

2. Mr. Chang did not cooperate with efforts that Ms. Chang made on his behalf to assist him to resolve his tax debt, including by hiring him an accountant; and
3. Mr. Chang refused to pay off the tax debt even when he had the funds to do so, despite Ms. Chang's request to pay the tax debt using his part of his inheritance.

[140] Therefore, in the unusual circumstances of this case, I find that it is appropriate to reapportion 100% of the responsibility for the tax debt to Mr. Chang.

[141] With respect to the HSBC MasterCard debt, I conclude that Ms. Chang has failed to meet the high threshold of establishing that it would be significantly unfair to equally share responsibility for that debt.

[142] Like Mr. Chang, Ms. Chang accumulated credit card debt during the relationship. I have concluded that the HSBC MasterCard debt is the type of transaction that the court in J.S.R. described as "the regular fare of marriage".

[143] I find that the \$16,436 HSBC MasterCard debt is a debt incurred by a spouse in the normal course of the relationship and I detect nothing significantly unfair in requiring the parties to share equal responsibility for it as a family debt.

Issue 3: Should the claimant pay spousal support?

The Parties' Positions

[144] In his counterclaim, Mr. Chang seeks spousal support on non-compensatory grounds at the low-end of the Guidelines range of support. At trial, counsel for Mr. Chang submitted that the spousal support should be payable until Ms. Chang turns 65 years old.

[145] Ms. Chang takes the position that Mr. Chang is not entitled to spousal support on non-compensatory or any grounds. If Mr. Chang is found to be entitled to spousal support, Ms. Chang submits that he is entitled to no more than \$500 per month.

[146] Ms. Chang also submits that Mr. Chang is eligible to begin drawing benefits from the Pension immediately. Therefore, his income for support purposes should include any Pension benefits that he is eligible to receive.

[147] Finally, Ms. Chang submits that Mr. Chang is deliberately unemployed and for that reason I should impute an annual income to him between \$40,000 and \$63,000.

The Legislative Framework

[148] Mr. Chang relies on both the provisions of the Divorce Act, R.S.C. 1985 c. 3 (2nd Supp.) [Divorce Act] (s. 15.2) and the FLA (ss. 160-162) in respect of his claim for spousal support.

[149] The factors and objectives to be considered for spousal support mirror each other in both pieces of legislation: *Li v. Liu*, 2014 BCSC 1110 at para. 35. I will therefore focus my analysis on the Divorce Act provisions.

[150] The principal sections of the Divorce Act relevant to the issue of spousal support raised in this family law proceeding are as follows:

Spousal support order

15.2 (1) A court of competent jurisdiction may, on application by either or both spouses, make an order requiring a spouse to secure or pay, or to secure and pay, such lump sum or periodic sums, or such lump sum and periodic sums, as the court thinks reasonable for the support of the other spouse.

Factors

- (4) In making an order under subsection (1) or an interim order under subsection (2), the court shall take into consideration the condition, means, needs and other circumstances of each spouse, including
- (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.

Objectives of spousal support order

- (6) An order made under subsection (1) or an interim order under subsection (2) that provides for the support of a spouse should
- (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.

Analysis

[151] Long relationships involving close economic unions or economic integration will bolster presumptive claims to an equal standard of living: *Moge v. Moge*, [1992] 3 S.C.R. 813 at para. 85.

[152] Misconduct by a spouse in relation to the marriage is not generally a relevant consideration for determining spousal support: Divorce Act s. 15.2(5).

- [153] In *Chutter v. Chutter*, 2008 BCCA 507, at para. 54, Justice Rowles pointed out the overarching principle that "[n]on-compensatory support is grounded in the 'social obligation model' of marriage, in which marriage is seen as an interdependent union." Justice Rowles further explained that upon the dissolution of a relationship, the primary burden of meeting the needs of the disadvantaged spouse falls on his or her former spouse (para. 54).
- [154] To decide whether Mr. Chang is entitled to spousal support on a non-compensatory basis, I must take into consideration the condition, means, needs and other circumstances of each spouse, including the length of the marriage, the functions each spouse performed and the existence of any agreement, order or arrangement related to support: Divorce Act s. 15.2(4).
- [155] Regarding the condition, means, needs and circumstances of the spouses, there are a number of issues that I must consider. Those include, for example, Mr. Chang's medical issues and his needs, as well as the financial means and circumstances of the parties.
- [156] Mr. Chang developed health problems during the relationship. He suffered a retinal detachment leading to blindness in his right eye. In approximately 2009, Mr. Chang was diagnosed with type 2 diabetes. He has since developed neuropathy with symptoms that include tingling in his hands and overall loss of sensation.
- [157] In early 2018, following the parties' separation, Mr. Chang suffered a heart attack. He underwent quadruple bypass heart surgery. Mr. Chang's recovery from that surgery was complicated by ongoing infections and swelling in his leg where veins were removed.
- [158] In the fall of 2018, Mr. Chang underwent carpal tunnel surgeries on both of his hands. According to Mr. Chang, the carpal tunnel surgeries have not resolved the numbness in his hands. He says he is unable to hold tools, such as a screwdriver, or carry ladders.
- [159] In January 2020, Mr. Chang applied for provincial disability benefits. Mr. Chang's application was denied because no severe impairment could be identified that significantly restricted Mr. Chang's daily living activities.
- [160] While the parties' post-separation lifestyles or incomes do not need to be equalized, "disparity in lifestyle" will need to be addressed in determining spousal support: *Nearing v. Sauer*, 2015 BCSC 58 at para. 185, citing *Elias v. Elias*, 2006 BCSC 124 at para. 65.
- [161] According to Mr. Chang's July 31, 2018 financial statement, his total monthly expenses are \$2,696. Mr. Chang's expenses include things like monthly rental costs of \$900 and household expenses, including food, of \$625.
- [162] Ms. Chang's February 20, 2020 financial statement lists her total monthly expenses as \$10,094. Ms. Chang's monthly housing costs, not including utilities and insurance, are \$1,605 per month.

- [163] Again, Mr. Chang's employment and earning history reflects gaps and low levels of income. For the last five years of the relationship, Mr. Chang earned very modest amounts of between \$3,000 and \$13,500 each year.
- [164] Ms. Chang's current annual income is \$120,507 per year. Unlike Mr. Chang, she has a long history of stable, well-paid, employment.
- [165] In determining entitlement to spousal support, Mr. Chang's need should not be viewed solely as a question of whether he could meet his stated expenses with the income available to him. The parties had a long marriage; therefore, need and the objective of self-sufficiency, should be measured and viewed in relation to the marital standard of living: Tedham, para. 60; Yemchuk v. Yemchuk, 2005 BCCA 406 at para. 41.
- [166] In Yemchuk, Justice Prowse examined the concept of "need" and provided the following guidance:
- [49] In considering the concept of "need" in the context of a long-term marriage involving a sharing of resources, I am satisfied that it should take into account the relative standards of living of the spouses following the marriage breakdown. In many cases, like this one, where the parties have relatively modest assets at their disposal and no realistic prospect of increasing those assets given their retirement (and pending retirement), it is often not possible to replicate the standard of living enjoyed by the parties when they were living together. The most a support order can do is to attempt to alleviate a significant disparity in their relative standards of living following marriage breakdown.
- [50] While equalization of the standards of living of the parties is not a stated objective of spousal support, in long-term marriages in which the parties have approached their roles as a partnership where each contributed their various resources, both economic and non-economic, to the relationship, equality of standard of living (which is not the same as equality of income) may well be the just result. (I leave aside those cases in which the parties, or one of them, are wealthy, since other considerations may apply.)
- [51] In the result, I am satisfied that, not only was there a compensatory aspect to Mr. Yemchuk's claim for support which was overlooked by the trial judge, but that Mr. Yemchuk also demonstrated a need for support, taking into account the economic consequences of the marriage breakdown, and the significant disparity in the relative standards of living of the parties following the breakdown.
- [167] In Lee v. Lee, 2014 BCCA 383, the Court dealt with an appeal from a trial judge's refusal to order spousal support to Mr. Lee. Mr. Lee had not worked full time for many years during the parties' 20-year marriage. Mr. Lee claimed to earn less than \$20,000 per year while his former spouse earned \$120,000 per year. By the time of trial, Mr. Lee had a new partner and he was living a comparable lifestyle to his former spouse.

- [168] In *Lee*, at paras. 65-66, Justice Newbury commented on situations where a spouse experiences a marked decline in standard of living upon the breakdown of the marriage:
- [65] If Mr. Lee had not formed this new relationship, the case law in British Columbia would have permitted an award of spousal support to him, given the length of the parties' marriage (which presumably creates interdependence) and the expansion of the meaning of 'need' in the family law context. But whether it would have been a 'material error' in law or a wrong exercise of discretion to refuse support in such circumstances is another matter. To rule as a matter of law that Mr. Lee should be compensated indefinitely for the 'loss' of the ability to share in Ms. Lee's income and lifestyle would, taken to its logical conclusion, mean that support must be ordered on one model or the other in virtually every case that comes before the court.
- [66] At the same time, the case law of this province referred to above does indicate that a party who experiences a marked decline in standard of living due to divorce should receive some financial assistance (either in the form of re-apportionment of assets or maintenance) in adjusting to his or her new situation -- hence the concept of a 'transitional' award, which is recognized by the SSAG. Such awards have regularly been made in favour of women, but rarely in favour of men, perhaps reflecting that, as Rogerson suggests, 'Non-compensatory support is significantly structured by social norms of what is fair and just. The economic dependency of husbands on wives is not reinforced and naturalized by strong cultural norms, as is the dependency of wives on husbands ...' (At 234-5.) It seems to me that, setting aside for the moment the support already paid by Ms. Lee from August 1, 2012 to June 1, 2013, Mr. Lee could have expected some transitional award, if only on the 'principle' that what is sauce for the goose is sauce for the gander. As it is, Ms. Lee did pay a total of \$17,500 to Mr. Lee, presumably assisting him in adjusting to his new circumstances.
- [169] Counsel for Ms. Chang referred me to the decisions in *Nearing* and *Lamothe v. Lamothe*, [2006] O.J. No. 5045 as support for the claimant's position that Mr. Chang is not entitled to spousal support.
- [170] In *Lamothe*, Justice Gauthier determined issues of spousal support pursuant to Ontario's Family Law Act, R.S.O. 1990, c. F. 3. In declining to award spousal support, Justice Gauthier stated as follows (at paras. 87-88):
- [87] I have considered the provisions of Subsections 33(8) and (9) of the Family Law Act in assessing the Applicant's claim for spousal support.
- [88] I have already discussed the fact that the Applicant did not, for a number of years contribute financially to the relationship. As stated earlier, the parties were constantly and continually in debt, and had no savings. It appears that the same situation exists for each of them now. I cannot conclude that Mr. Lamothe should be awarded spousal support to ensure a standard of living similar to the one he enjoyed before separation. There appears to me to be no significant change in his standard of living.

- [171] In my view, Lamothe is distinguishable from the present case. First, it was decided under Ontario's Family Law Act. Second, Justice Gauthier found the parties' post-separation situation remained relatively similar to their pre-separation lifestyle. I have reached the conclusion that Mr. Chang encountered a precipitous decline in his standard of living following separation for reasons that I explain in detail below.
- [172] In analysing Mr. Chang's claim for spousal support, I must also consider the objectives of spousal support contained in s. 15.2(6) of the Divorce Act, keeping in mind that no one objective is paramount over another: Moge at para. 53.
- [173] It is clear the parties had a long marriage lasting 27 years. However, there is no suggestion that Mr. Chang suffered any economic disadvantages arising from the marriage. He did not forego employment or educational opportunities to facilitate Ms. Chang's career or to provide primary care for the parties' sons. Even so, there may still be economic disadvantages to him arising from the breakdown of the marriage that I must consider.
- [174] Ms. Chang submits that following separation, Mr. Chang's standard of living has not declined. She points out that Mr. Chang's post-separation income has not changed a great deal when compared to his pre-separation income.
- [175] One consideration that stands out to me in the particular circumstances of this case is the need to recognize any economic disadvantages to the spouses arising from the marriage breakdown.
- [176] Although Mr. Chang's income has not changed a great deal, I find that his lifestyle and his standard of living has declined dramatically since the breakdown of the marriage. As counsel for Ms. Chang pointed out many times, Ms. Chang paid for virtually all of the family's expenses, including housing, utilities and food. Upon separation, Mr. Chang could no longer live a particular lifestyle that Ms. Chang had facilitated for decades.

Conclusion on Entitlement to Spousal Support

- [177] After taking into consideration the factors and objectives set out in s. 15.2 of the Divorce Act, as well as the evidence and submissions, I find that Mr. Chang has a strong entitlement to spousal support on a non-compensatory basis. I am satisfied for the reasons that follow that Mr. Chang is entitled to spousal support due to a variety of factors, including the long-standing disparity of income between the parties, the length of the marriage, as well as the parties' relative needs.
- [178] Other factors that I have considered in finding that Mr. Chang is entitled to spousal support on a non-compensatory basis include:
1. that Mr. Chang's overall state of health has declined following the separation;
 2. that Mr. Chang is experiencing ongoing adverse medical issues, for example, recurring infections in his leg;

3. that Mr. Chang has been required to rent accommodation in his sister's home following the separation;
4. that Mr. Chang quickly exhausted the remainder of his inheritance monies to pay for his post-separation expenses;
5. that Mr. Chang has incurred post-separation debt, borrowing money from family members to cover his basic needs, such as rent;
6. that Mr. Chang has resorted to visiting food banks to obtain food; and
7. that the family property and family debt have been reapportioned unfavourably to Mr. Chang.

[179] Another important factor that I have considered in determining entitlement to spousal support relates to the fact that Mr. Chang presently relies on social assistance as his only source of income. As the Court stated in Chutter at para. 54, the "primary burden" of meeting a party's needs should fall to his former spouse, not to the state.

[180] I have also considered whether the annual income that I am prepared to impute to Mr. Chang (which I will explain later in these reasons) is sufficient to cover Mr. Chang's needs. I have concluded that even after imputing income to Mr. Chang, he remains strongly entitled to non-compensatory spousal support.

The Support Calculation

[181] Now that I have determined that Mr. Chang is entitled to receive spousal support from Ms. Chang, the next step is to take the Spousal Support Advisory Guidelines (the "Guidelines") into consideration and determine the appropriate amount of support.

[182] While the Guidelines are not binding, the courts in British Columbia have found the ranges established by the Guidelines are a useful tool in determining the amount and duration of claims for spousal support: *W. v. W.*, 2005 BCSC 1010 at para. 27.

[183] The length of the relationship will usually have an impact on the amount of the spousal support award: *Foster v. Foster*, 2007 BCCA 83 at para. 57.

[184] For the most recent three years available, the parties reported the following total income amounts:

Year	Mr. Chang	Ms. Chang
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2018	Unfiled[1]	\$120,267
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2017	\$13,456	\$124,222
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2016	\$ 9,686	\$101,751
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- [185] According to Mr. Chang, following the parties' separation, he collected EI benefits. Eventually, Mr. Chang began collecting social assistance benefits. He currently receives social assistance benefits of \$760 per month, or \$9,120 per year.
- [186] In spousal support calculations, social assistance benefits are not considered income: *Lawrence v. Lawrence*, 2006 BCSC 167 at para. 84.
- [187] Ms. Chang's income for support purposes is not in issue. However, Mr. Chang's income is in issue since he claims that he is unable to work due to disability.
- [188] Ms. Chang submits that Mr. Chang is capable of working and earning \$40,000 to \$63,000 per year. Ms. Chang requests that I impute income to Mr. Chang reflective of what she says he is capable of earning.
- [189] The Guidelines incorporate s. 19(1)(a) of the Federal Child Support Guidelines concerning imputing income for the purposes of the support calculation. Section 19(1)(a) of the Federal Child Support Guidelines states:
- 19 (1) The court may impute such amount of income to a spouse as it considers appropriate in the circumstances, which circumstances include the following:
- (a) the spouse is intentionally under-employed or unemployed, other than where the under-employment or unemployment is required by the needs of a child of the marriage or any child under the age of majority or by the reasonable educational or health needs of the spouse;
- [190] In *Marquez v. Zapiola*, 2013 BCCA 433 at para. 37, the Court explained the test for imputing income as follows:
- [37] The test for imputing income for intentional under-employment or unemployment is one of reasonableness, having regard to the parties' capacity to earn income in light of their age, education, health, work history and work availability. A spouse's capacity to earn income will include that person's ability to work or to be trained to work. See *Van Gool v. Van Gool* (1998), 113 B.C.A.C. 200, 44 R.F.L. (4th) 314 at paras. 28-31, *Barker v. Barker*, 2005 BCCA 177, 45 B.C.L.R. (4th) 43 at para. 19, and *McCaffrey v. Paleolog*, 2011 BCCA 378, 24 B.C.L.R. (5th) 62 at para. 46.
- [191] In *Shapiro v. Simpson*, 2016 BCSC 211, at para. 176, Justice Adair described the basic principles applicable to imputing income in relation to an underemployed spouse:
- [176] The basic principles concerning imputing income to a parent, where it appears that the parent is underemployed, are well-known, and include the following:
- (a) there is a duty to seek employment where a parent is healthy and there is no reason why the parent cannot work;

- (b) when imputing income on the basis of intentional unemployment, a court must consider what is reasonable under the circumstances. The age, education, experience, skills and health of the parent are factors to be considered in addition to such matters as availability of work and other obligations;
- (c) a desire simply to stay home with a child is not sufficient to invoke the exception in s. 19(1)(a) of the Guidelines. A parent who chooses to work less than full-time must justify that choice by evidence of the needs of the children;
- (d) bad faith is not required, and a parent is intentionally under-employed if the parent chooses to earn less than he or she is capable of earning.

[192] Mr. Chang claims that his health problems make it impossible for him to work and that no additional income should be imputed to him. He agreed that he has made no effort to look for work following the separation. Mr. Chang also agreed that no medical doctor has told him that he cannot work at all.

[193] Counsel for Ms. Chang submits that the denial of disability benefits, and statements in his application for disability benefits, support the claimant's position that Mr. Chang is capable of working.

[194] In *Kular v. Kular*, 2018 BCSC 1715, Justice Choi noted that qualifying for disability benefits is not by itself proof that a person is unable to work for purposes of child support. Similarly, I am of the view that denying a person disability benefits is not proof, by itself, that the person is capable of working.

[195] While the disability application contains information from Mr. Chang's doctor, there is no medical expert opinion in evidence. Mr. Chang tendered some medical records showing that he underwent surgical treatments in 2018 and that he suffers from medical conditions, such as diabetes.

[196] On May 14, 2019, an occupational therapist, Mr. Tran, assessed Mr. Chang's functional capacity. According to Mr. Tran's November 4, 2019 functional capacity report, Mr. Chang does not meet the job demands required to work as a refrigeration and air conditioning mechanic. However, Mr. Chang has never worked as a refrigeration and air conditioning mechanic. Rather, Mr. Chang worked cleaning air ducts.

[197] In my view, Mr. Tran's report is still useful. For example, Mr. Tran concluded Mr. Chang lacks capacity to meet job demands for dexterity and reaching, mobility, sustained standing and walking, and prolonged working on a ladder. The report is also useful in considering Mr. Chang's capacity to work with tools. I accept Mr. Chang's evidence that when he cleaned air ducts, he was required to carry and use tools and to work on ladders.

[198] I accept that Mr. Chang suffers from loss of sensation in his hands. I also accept that Mr. Chang has been dealing with recurring infections and swelling in his leg which cause him pain and discomfort.

- [199] I accept that Mr. Chang can no longer work on ladders and he can no longer carry or hold tools for sustained periods. I find that it more likely than not that Mr. Chang will be unable to continue cleaning air ducts, even on a part-time basis.
- [200] I turn now to consider Ms. Chang's submission that I ought to impute income to Mr. Chang. As guided by Shapiro, in deciding whether to impute income, I should keep in mind what is reasonable in the circumstances, including Mr. Chang's age, history, skills, health and educational level.
- [201] Mr. Chang is currently 57 years old. He did not complete high school. Mr. Chang's work history consists mainly of unskilled work as a delivery driver and other manual labour jobs. He has gaps in his employment history due to periods of unemployment and underemployment. His most recent work experience involved part-time and seasonal work setting up event venues and cleaning air ducts.
- [202] I have also considered that Mr. Chang possesses some marketable employment skills. For example, he is an experienced delivery truck driver. Mr. Chang enjoys driving and continues to do so, despite his vision problems. Mr. Chang agreed that his vision could improve if he obtained the eyeglasses that were prescribed to him. Mr. Chang also has basic computer and customer service skills.
- [203] Although he lacks the capacity to return to his last job cleaning air ducts, I find that Mr. Chang does have some ability to work. When Mr. Chang was questioned about a variety of job postings during his cross-examination, he agreed that he could probably perform some of those jobs.
- [204] In my view, it is appropriate to impute income to Mr. Chang effective January 1, 2019, because as of that date, he had recovered from his surgeries, he had capacity to work and he was intentionally underemployed. I find that Mr. Chang is capable of working and earning more than the \$760 per month that he presently receives on social assistance.
- [205] In my view, it is reasonable to impute \$15,000 per year of income to Mr. Chang, as of and after January 1, 2019, for the purposes of calculating support under the Guidelines. This amount assumes that Mr. Chang is capable of working approximately 20 hours per week at the current minimum wage in British Columbia. This amount is higher than his reported earnings in 2017 or 2016.
- [206] To be clear, I have concluded that it is not appropriate to impute income to Mr. Chang from February 2018, to December 2018, because during that period, he underwent and was recovering from multiple surgeries. During that period, I am satisfied that Mr. Chang was unable to work for medical reasons.

- [207] Counsel for Ms. Chang submitted that although Ms. Chang has not yet retired, Mr. Chang is eligible to draw payments from the Pension immediately. Counsel urged me to include this potential Pension income in the support calculation, although he cited no authority for doing so.
- [208] I disagree that the potential Pension income available to Mr. Chang should be included in his income for purposes of calculating spousal support. In my view, the present circumstances do not involve a "double recovery" problem: *Boston v. Boston*, 2001 SCC 43 at paras. 34 and 64-65. This is not a situation where I have divided the Pension as a capital asset and later, treated the Pension as a source of income to Ms. Chang, thereby allowing Mr. Chang to recover his share of the Pension from Ms. Chang twice.
- [209] As I mentioned earlier, Mr. Chang seeks spousal support at the low end of the range as of the date of his counterclaim, which is February 8, 2018. I conclude that Mr. Chang is entitled to spousal support effective as of February 8, 2018 to December 31, 2018 (the "2018 Support Period").
- [210] In calculating spousal support for the 2018 Support Period, I have not imputed any additional income to Mr. Chang. The Guidelines provide, in the without child support formula, that the low end of the range for monthly spousal support is \$3,671. Therefore, the total amount of spousal support payable for the 2018 Support Period is \$40,381.[2]
- [211] Unless the parties consent to a different arrangement, the spousal support payable for the 2018 Support Period shall be paid out of Ms. Chang's share of the divided family property, after the family debt is paid.
- [212] In 2019, I have concluded that additional income should be imputed to Mr. Chang. After imputing income to Mr. Chang and using the without child support formula, the Guidelines arrive at a calculation of monthly spousal support at the low end of the range of \$3,297.[3] Again, after considering the particular circumstances, I have granted Mr. Chang's request for spousal support at the low-end of the range effective as of January 1, 2019.
- [213] Ms. Chang submitted that in order to promote the goal of self-sufficiency, Mr. Chang ought to receive no more than \$500 per month of spousal support for a maximum duration of three years. However, the goal of self-sufficiency should not be considered without also considering the context of the marital standard of living: *Tedham v. Tedham*, 2005 BCCA 502 at para. 60; *Yemchuk*, para. 41. Ms. Chang's request to limit spousal support to three years also runs counter to the Guidelines suggestion that an indefinite duration of support is appropriate for marriages exceeding 20 years in duration.
- [214] The present case is not one in which family property and family debt has been reapportioned more favourably to the support-seeking spouse; rather, the reapportionment has worked against Mr. Chang, as the support-seeking spouse.

[215] Mr. Chang seeks spousal support from Ms. Chang up to her 65th birthday. Given the length of the marriage and my conclusion regarding reapportionment, I conclude that Mr. Chang is entitled to receive spousal support on an indefinite basis. However, such support will be subject to a review and possible variation by either party on or after Ms. Chang's retirement, whether at age 65 or earlier.

[216] Therefore, Ms. Chang shall pay spousal support to Mr. Chang \$3,297 each month as of January 1, 2019 and on the first day of each month thereafter, on an indefinite basis.

MISCELLANEOUS EXPENSES & OCCUPATION RENT

[217] Since separation, Ms. Chang has continued to pay all costs associated with the Family Home, including mortgage, insurance and property tax. She seeks reimbursement for some part of the following expenses:

1. \$3,926 for the Pirie appraisal of the Chattels;
2. \$840 for the appraisal of the Family Home;
3. \$7,892.84 for property tax and utilities;
4. \$7,148 for payments made towards family debt, i.e. a line of credit and credit cards;
5. \$4,026 for something she refers to as "re-advance" payments;
6. \$23,250 for mortgage payments;
7. \$5,198.12 for property insurance; and
8. \$927 for plumbing repairs.

[218] The parties have agreed to share equally the expense of \$7,148 for a line of credit and credit card payments. I conclude that the cost of the appraisals referred to above are to be shared equally by the parties.

[219] Regarding the balance of the expenses that Ms. Chang claims, Mr. Chang seeks to offset those against his claim for proprietary or occupational rent. He points out that he did not apply for retroactive spousal support even though he was forced to rent housing and storage space at a cost of approximately \$900 per month following the parties' separation.

[220] In these circumstances, Mr. Chang submits that I ought to set off Ms. Chang's claim for expenses against his claim for occupational rent. He submits that this would effectively cancel out, or result in a "wash" of, the parties' claims.

[221] I agree with counsel for Mr. Chang that proprietary rent is a discretionary tool to achieve fairness and that ouster is no longer required: *McFarlen v. McFarlen*, 2017 BCSC 1737 at para. 20.

- [222] After considering all of the factors, including whether occupational rent is reasonable in the circumstances, I have concluded that Mr. Chang's claim for occupational rent should be set off against Ms. Chang's claim for expenses. In my view, it is fair to utilize occupational rent in this way.
- [223] The parties separated suddenly on December 25, 2017. Mr. Chang had little time to make alternate living arrangements. He was unable to return to the Family Home due to the recognizance. Mr. Chang was required to find a place to live and to store his possessions. He relied heavily on financial support from his sisters and from social assistance.
- [224] I agree that the value of the parties' claims are similar. I also agree that when the claim for proprietary rent is set off against the expenses claimed by Ms. Chang, they effectively cancel each other out. In my view, that is a fair result in the circumstances of this case.

DIVORCE

- [225] The parties request a divorce. The parties have met the legislative requirements for a divorce and they are entitled to a divorce.
- [226] Subject to s. 12 of the Divorce Act, the claimant, Cindy Debbie Chang, and the respondent, Raymond Chang, who were married at Vancouver, British Columbia, on August 25, 1990, are divorced from each other. The divorce shall take effect on the 31st day after the date of this order.

SUMMARY

- [227] All benefits accrued to Ms. Chang under the Pension are family property and Mr. Chang is entitled to an equal share of the Pension, to be divided in accordance with Part 6 of the FLA based on entitlement dates from August 25, 1990 to December 25, 2017. The benefit split shall be administered by the plan.
- [228] Each party is entitled to an equal amount of the unadjusted pensionable earnings that the parties both acquired during their relationship to be split by the Canada Pension Plan administrator based on relationship commencement date of August 25, 1990 and a relationship end date of December 25, 2017.
- [229] The family property and family debt shall be divided as set out in Schedule A.
- [230] By consent, Mr. Chang is entitled to ownership of the Nova vehicle, currently located at the Family Home, which shall be removed from the Family Home within 30 days following the date of this order.
- [231] By consent, Mr. Chang is entitled to ownership of excluded property listed under his name in Schedule A.
- [232] By consent, Ms. Chang is entitled to ownership of excluded property listed under her name in Schedule A.

- [233] Income of \$15,000 per year is imputed to Mr. Chang, as of and after January 1, 2019, for the purposes of calculating his entitlement to support under the Guidelines.
- [234] Ms. Chang shall pay Mr. Chang spousal support of \$40,381 for the period February 8, 2018 to December 31, 2018.
- [235] Effective as of January 1, 2019, Ms. Chang shall pay Mr. Chang monthly spousal support of \$3,297 on the first day of each month for an indefinite duration. The amount and duration of spousal support payable shall be reviewed on application of either party upon Ms. Chang's retirement, whether at age 65 or earlier.
- [236] The parties shall equally share the cost of the appraisals prepared for this family law litigation.
- [237] Subject to s. 12 of the Divorce Act, the parties are divorced from each other. The divorce shall take effect on the 31st day after the date of this order.

COSTS

- [238] Unless there are circumstances of which I am unaware, given that the success of the parties was divided, each party shall bear his or her own costs.
- [239] If either party wishes to bring other matters to my attention that may affect the order of costs, or if there are calculation errors in my reasons, he or she must contact Scheduling within 45 days of the date of this judgment to request an opportunity to make further submissions.

"E. McDonald J."

Schedule "A"

Division of Family Property & Family Debt

Chang v. Chang

Agreed Property:

Fair market value of Chattels (per Pirie appraisal):

Value of vehicles:

Value of tent trailer:

Value of jewelry:

Total value:

Less Mr. Chang's excluded vehicle claim (by consent):

Less Ms. Chang's excluded purchases claim (by consent):

Less Ms. Chang's excluded vehicle claim (by consent):

Less Ms. Chang's excluded trailer claim (by consent):

Less Ms. Chang's excluded jewelry claim (by consent):

Total available for division:

Each party's 50% share (by consent):

\$76,465

\$56,178

\$10,000

\$14,000

\$156,643

\$(40,500)

\$(15,190)

\$(15,678)

\$(10,000)

\$(14,000)

\$61,275

\$30,887

Disputed Property:

Family Home

Appraised Value:

Less mortgage:

Total Equity in Family Home:

Less Ms. Chang's exclusion (by consent):

Total amount available for division:

Ms. Chang's 75% share:

Mr. Chang's 25% share:

\$920,000

\$(108,646)

\$811,354

\$(121,250)

\$690,104

\$517,578

\$172,526

RRSPs

Total value:

Less Ms. Chang's exclusion (by consent)

Total available for division:

Each party's 50% share:

\$112,972

\$(50,151)

\$62,821

\$31,411

Pension

Actuarial value (earliest unreduced retirement - age 60)

\$1,052,500

Less any claimed exclusion:

Total value available for division:

Each party's 50% share:

\$0

\$1,052,500

\$526,250*

*The Pension shall be divided in accordance with Part 6 of the FLA

Family Debt:

Post-separation Debt (by consent)

Mortgage (by consent)

Income tax debt (50% of \$146,655 is family debt)

HSBC MasterCard debt

Subtotal:

Less income tax debt reapportioned to Mr. Chang:

Total Family Debt:

Each party's 50% share:

\$7,148

\$108,646

\$73,328

\$16,436

\$205,558

\$(73,328)

\$132,230

\$66,115

- [1] There is no notice of assessment available for Mr. Chang's 2018 taxation year. However, according to Mr. Chang's July 31, 2018 Financial Statement, his 2018 annual income amount was \$3,045.00, comprising EI benefits.
- [2] The calculation for 11 months of spousal support in 2018 applies Ms. Chang's annual income of \$120,507 and Mr. Chang's annual income of \$3,045. Mr. Chang's annual income of \$3,045 is set out in the Form 8 Financial Statement made on July 31, 2018.
- [3] The calculation applies to Ms. Chang's annual income of \$120,507 and Mr. Chang's imputed annual income of \$15,000.

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