

CANADA / JUDGMENT

Charan v. Charan

2018 BCSC 1537

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Supreme Court of British Columbia

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2018 BCSC 1537 Charan v. Charan

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Charan v. Charan,

2018 BCSC 1537

Date: 20180907

Docket: E49737

Registry: New Westminster

Between:

Richard Yasveen Kumar Charan

Claimant

And

Juliet Charan also known as Juliet James Powell

also known as Juliet Joseph Landge

Respondent

Before: The Honourable Madam Justice Shergill

Reasons for Judgment

The Claimant, appearing in person:

R. Charan

Counsel for Respondent:

C.K. Sabharwal

Place and Date of Trial:

New Westminster, B.C.

July 17-21, 2017

October 2, 5, 6, 2017

February 21-23, 2018

Place and Date of Judgment:

New Westminster, B.C.

September 7, 2018

Table of Contents

A. OVERVIEW.. 3

B. ISSUES. 3

C. BACKGROUND FACTS. 3

D. DATE OF MARRIAGE. 7

Statutory Framework. 7

Analysis. 8

E. DATE OF SEPARATION. 11

Statutory Framework. 11

Analysis. 12

F. CHILD SUPPORT AND SECTION 7 EXPENSES. 15

G. SPOUSAL SUPPORT. 19

Statutory Framework. 19

Contractual Spousal Support 21

Compensatory Support 26

Non-Compensatory Support 30

Duration and Amount 31

H. DIVISION OF FAMILY PROPERTY AND DEBT. 35

Statutory Framework. 36

Family Home. 38

Claimant's Pension. 41

Investment Accounts. 42

I. DIVORCE. 45

J. COSTS. 45

A. OVERVIEW

[1] Central to this case is a determination of the parties' date of marriage and their date of separation. According to the claimant, the relationship lasted less than six months. The respondent asserts that the relationship lasted just over three years. Flowing from this determination are issues related to child support, spousal support, and division of family property.

B. ISSUES

[2] The following issues were raised in this proceeding:

1. the date of marriage;
2. the date of separation;
3. child support and section 7 expenses;
4. spousal support;
5. division of family property; and
6. divorce.

[3] Relief is sought pursuant to both the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.) and the Family Law Act, S.B.C. 2011, c. 25 [FLA].

C. BACKGROUND FACTS

[4] The claimant, Richard Charan, is a 53 year old Network Analyst with TransLink, where has been employed since 1997. He was born in Fiji, and immigrated with his first wife to Canada in 1989. He has lived in the Metro Vancouver area since that time. Mr. Charan and his first wife separated in July 2010 and were divorced in October 2011. He has three children from his first marriage who, at the time of trial, ranged in ages from 16 to 24. Mr. Charan and his first wife have an equal shared parenting arrangement whereby the youngest child splits her time equally between both parents. Koushal (age 21) and J.C. (age 16) both testified in this trial.

- [5] The respondent, Juliet Charan, is a 45 year old Purchasing and Inventory Assistant with Punjab Milk Foods. She was born and raised in India. She is fluent in English and has a Bachelors Degree in Commerce from the University of Mumbai. In 2009 she completed a one year post graduate diploma in hospital administration. Ms. Charan was married to her first husband in 1995, and has one son from that marriage, Ashley (born March 1996), who also testified in this trial. Ms. Charan's first husband passed away in 2005.
- [6] The parties met online in late 2010. They communicated initially by email and eventually by phone and email. The relationship progressed quickly, and by January 2011, the parties professed their love for each other. Over the course of the months, there were some discussions of marriage. However, the claimant was reluctant to move too quickly with this new relationship, as he was still embroiled in the family law proceedings related to the breakup of his first marriage.
- [7] On March 6, 2012, the claimant travelled to South Korea and northern India for a one month hiking trip. He was scheduled to return to Canada on April 7, 2012. The parties made arrangements to meet on a stopover in Mumbai. Prior to Mr. Charan's trip, the parties discussed marriage and the possibility of the respondent settling down in Canada with the claimant. However, no arrangements for marriage were made at that time.
- [8] After hiking in South Korea, Mr. Charan arrived in Mumbai on March 10, 2012. This was his first visit to India. Ms. Charan met Mr. Charan at his hotel room on the same day. This was their first meeting, and it appears both parties kept it a secret from their families. The parties met several times during the next few days.
- [9] Mr. Charan last saw Ms. Charan on March 12, 2012, before leaving for his trip to the Himalayas.
- [10] The parties met again in Mumbai on March 24, 2012. According to Mr. Charan, the respondent convinced the claimant that they should get married as this was the only way that she could legally come to Canada and be with him. Though Mr. Charan did not wish to do so, he reluctantly agreed to enter into a civil marriage with the respondent on March 29, 2012. Mr. Charan says that he made it clear to the respondent that they would need to get married "for real" and in accordance with Hindu traditions when they arrived in Canada.
- [11] Ms. Charan denies that she talked Mr. Charan into the marriage, and says that the decision to get married on March 29, 2012 was one in which Mr. Charan was a full and willing participant.
- [12] On March 29, 2012, Mr. Charan met the respondent and her parents, brother, and son Ashley outside the building where they were scheduled to get married. As only Ms. Charan's parents were allowed in as witnesses, Ashley and his uncle waited outside while the parties attended at a government building. Some vows were exchanged and Mr. Charan and Ms. Charan signed a marriage register (the "Indian Marriage"). Mr. Charan challenges the validity of that marriage.

- [13] After a brief vacation together in Goa, Mr. Charan returned to Canada on April 7, 2012. Following Mr. Charan's return to Canada, the parties communicated through telephone calls and email.
- [14] Mr. Charan did not tell his family or close friends that he and Ms. Charan had participated in an Indian marriage ceremony.
- [15] The parties planned that upon Ms. Charan's arrival in Canada, they would participate in a Hindu marriage ceremony at which all of Mr. Charan's family and friends would be in attendance.
- [16] With Mr. Charan's knowledge and support, Ms. Charan applied for permanent residence in Canada under the spousal sponsorship category. Initially she applied only for herself. However, in February 2014 the application was amended to include Ashley. Mr. Charan signed a sponsorship agreement in which he undertook to Citizenship and Immigration Canada to provide for Ms. Charan for a total of three years from her arrival in Canada. Ms. Charan and Ashley arrived in Vancouver on June 10, 2014, as landed immigrants.
- [17] The parties went through a Hindu marriage ceremony on June 14, 2014, at which Mr. Charan's friends and family attended. The marriage was registered with the vital statistics agency in Victoria (the "Canadian Marriage").
- [18] Though she and Ashley stayed in Mr. Charan's home upon their arrival in Canada, and the parties had already consummated their relationship in India, the parties did not start sharing the same bedroom until June 14, 2014, after the ceremony.
- [19] Problems in the relationship surfaced very shortly thereafter. According to Mr. Charan, Ms. Charan was jealous of Mr. Charan's platonic relationships with other women, and was upset at his refusal to allow Ashley to assume Mr. Charan's last name. Ms. Charan admitted to feeling confused by Mr. Charan's friendships with other women, saying she felt neglected by Mr. Charan. She denied that the problems between them were significant.
- [20] Around mid-July 2014, over a relatively minor issue, Ms. Charan became angry and left the family home with Ashley. Her sudden departure and failure to tell Mr. Charan where they were going, added to the widening rift in their relationship. Though Ms. Charan and her son returned to the family home a day or two later, the parties' relationship continued to deteriorate.
- [21] On November 15, 2014, Mr. Charan was driving with Ms. Charan as a passenger. While in a heated argument with Ms. Charan, he almost had an accident with a bypassing vehicle. The incident shook Mr. Charan significantly, and became the tipping point whereby Mr. Charan decided to end the relationship. He told Ms. Charan that their relationship was over. However, the parties continued to reside in the same home.
- [22] On January 4, 2015, Mr. Charan asked Ms. Charan to move out. Ms. Charan refused.

- [23] On February 16, 2015, unbeknownst to Mr. Charan, Ms. Charan opened bank accounts for herself and Ashley. On May 16, 2015, Ms. Charan opened mobile telephone accounts for herself and Ashley.
- [24] On June 8, 2015, Ms. Charan called the police due to what she says was an altercation between herself and Mr. Charan.
- [25] On June 11, 2015, Mr. Charan and his son Koushal, moved the respondent's and Ashley's belongings into the basement of the family home. As there was no kitchen or washroom in the basement, the parties continued to share a washroom and common cooking facilities until March 29, 2016, when Ms. Charan and Ashley moved out of the family home into a rental accommodation.

D. DATE OF MARRIAGE

- [26] The respondent says that the Indian Marriage is valid and consequently, their date of marriage is March 29, 2012. It is the claimant's position that the Indian Marriage is not valid, and as such, the parties' date of marriage is in accordance with the Canadian Marriage, ie. June 14, 2014.
- [27] There is no dispute that in the event that the Indian Marriage is deemed invalid, the Canadian Marriage would become the effective date of marriage of the parties.

Statutory Framework

- [28] The relevant statutory provision is s. 52 of the Evidence Act, R.S.B.C. 1996, c. 124:

52 (1) If it is alleged in a civil proceeding that a ceremony of marriage took place in British Columbia or another jurisdiction, either of the following is evidence that the ceremony took place:

- (a) the evidence of a person present at the ceremony;
 - (b) a document purporting to be the original or certified copy of the certificate of marriage.
- (2) If evidence of a ceremony of marriage is put forward for consideration under subsection (1), the marriage is deemed formally valid unless
- (a) decisive evidence to the contrary is put forward for consideration, or
 - (b) because of the nature of the ceremony, or of the document, the court requires further evidence that the marriage is formally valid.
- (3) In the absence of decisive evidence to the contrary, a marriage deemed formally valid under subsection (2) is deemed to be essentially valid.

Analysis

- [29] Mr. Charan admits that he agreed to marry the respondent while he was in India, albeit reluctantly. He testified that the parties attended on March 29, 2012, at a pre-scheduled time at a government office for the purposes of entering into a civil marriage. He further admits that in the presence of the respondent's parents, he and the respondent participated in the civil ceremony, and signed a marriage registration document.
- [30] However, Mr. Charan argues that the Indian Marriage is invalid because it does not conform with the Indian Christian Marriage Act, 1872, under which it was purportedly performed. He points to some discrepancies with respect to the marriage registration document. He also alleges that the marriage was involuntary on his part. Mr. Charan is Hindu and Ms. Charan is Christian. As such, if they were to get married he says he advised Ms. Charan it would have to be according to the Hindu marriage traditions. Without a Hindu marriage, he stated that he and his family would not accept Ms. Charan as his wife. Consequently, he says that the parties agreed that they would get married in Canada after Ms. Charan had immigrated.
- [31] Section 52 of the Evidence Act addresses both the evidentiary requirements to prove a marriage, as well as its validity. Pursuant to s. 52(1), a marriage is proven upon (a) receipt of the evidence of a person present at the ceremony, or (b) a document purporting to be the original or certified copy of the certificate of marriage. In the case at bar, neither party provided the original or certified copy of the certificate of marriage. However, both Mr. Charan and Ms. Charan testified that a civil ceremony did occur on March 29, 2012 in India.
- [32] I do not find that Mr. Charan was coerced into the Indian Marriage. Rather, the evidence establishes that Mr. Charan acceded to Ms. Charan's desires for the parties to be married in India in order to effect her immigration to Canada. While Mr. Charan may not have considered himself properly married to Ms. Charan until the parties had participated in a Hindu marriage ceremony, he entered into the Indian marriage knowingly and voluntarily.
- [33] I accept Mr. Charan's evidence and that of his various witnesses, that he did not tell any of his close family or friends about the marriage ceremony that had occurred on March 29, 2012, in India. However, this does not mean that the marriage ceremony did not occur or is not valid. It simply reinforces Mr. Charan's evidence that he believed his family would not consider him married until he and Ms. Charan participated in a Hindu marriage ceremony. Similarly, the absence of photographs of the Indian Marriage ceremony, and the lack of celebration immediately following the ceremony, is not proof that the ceremony did not occur. It verifies that for the parties, the Indian Marriage did not have any more significance other than being a means by which Ms. Charan could immigrate to Canada.
- [34] In accordance with s. 52(2) of the Evidence Act, the March 29, 2012, marriage is deemed formally valid, unless (a) decisive evidence to the contrary is put forward for consideration, or (b) because of the nature of the ceremony, or of the document, the court requires further evidence that the marriage is formally valid.

- [35] Mr. Charan's viva voce evidence with respect to discrepancies in the marriage registration document falls far short of being decisive. His concern that his father's name was not correctly identified on the document, or concerns flowing from the lack of original documentation, are not enough. Without more, such as evidence from an expert that the requirements of Indian law for a marriage to be valid had not been met, there is insufficient evidence to meet the high threshold required to rebut the presumption under s. 52(2)(a) of the Evidence Act.
- [36] However, in accordance with s. 52(2)(b), because the marriage ceremony occurred in India and due to the lack of any original documentation attesting to the registration of marriage, this Court requires further evidence that the marriage is formally valid.
- [37] In *Cao v Le*, 2007 BCSC 499, the wife brought an action for divorce and property division. Madam Justice Holmes noted that while the parties had always considered their marriage to be valid and did not raise it as an issue, the evidence required her to consider the matter as a threshold requirement to the orders sought. The question then became whether the marriage as registered in Vietnam (and without any solemnization ceremony) amounted to a valid marriage for legal purposes in Canada. Holmes J. noted that the validity of a marriage, and thus its formal requirements, are determined according to the law where the marriage took place: *Cao* at para. 63.
- [38] In addressing the question of the validity of the marriage, Holmes J. stated that s. 52 of the Evidence Act is of limited assistance, as "[t]he issue here is not proof of the events said to constitute the marriage. It is proof that those events, as proven, constitute a valid marriage." [At para. 69.]
- [39] In *Cao*, Madam Justice Holmes was satisfied that, while the evidence did not directly address the legal requirements of the parties' marriage, it did establish that numerous people in Vietnam were satisfied that the parties were validly married under Vietnamese law.
- [40] In the case at bar, we have clear evidence that the Canadian immigration authorities were satisfied that the Indian Marriage was valid. On the strength of the Indian Marriage, they permitted Ms. Charan and her son to immigrate to Canada under the spousal sponsorship category.
- [41] As such, I find that the Indian Marriage is valid, and that the parties were married on March 29, 2012.

E. DATE OF SEPARATION

[42] Mr. Charan submits that the parties separated on November 15, 2014, when he unilaterally ended the relationship after an argument with Ms. Charan. This was followed by what he characterized as an unsuccessful attempt at reconciliation between November 15, 2014 and January 4, 2015. Counsel for Ms. Charan submits that the parties' were still functioning as a couple until June 11, 2015, when Mr. Charan moved Ms. Charan's belongings into the basement of the matrimonial home.

Statutory Framework

[43] Pursuant to s. 8(1) of the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.), the Court may grant a divorce on the ground that there has been a breakdown of the marriage. Section 8(2) sets out the criteria required to establish a marriage breakdown; relevant for these reasons, it is living separate and apart for at least one year immediately preceding the determination of the divorce proceeding, and living separate and apart at the commencement of the proceeding.

[44] Section 8(3) stipulates the criteria for calculating the period of separation:

8 (3) For the purposes of paragraph (2)(a),

- (a) spouses shall be deemed to have lived separate and apart for any period during which they lived apart and either of them had the intention to live separate and apart from the other; and
- (b) a period during which spouses have lived separate and apart shall not be considered to have been interrupted or terminated

(ii) by reason only that the spouses have resumed cohabitation during a period of, or periods totalling, not more than ninety days with reconciliation as its primary purpose.

[45] In *S.A.H. v. I.B.L.*, 2018 BCSC 544 at paras. 49-54, I reviewed the various authorities respecting the determination of the date of separation. Based on my reading of the authorities, I concluded at para. 55 that this was a fact driven exercise which could be aided by answering the following questions:

1. Did at least one spouse have the intention to separate?
2. Was the intention to separate communicated to the other spouse?
3. Was the intention to separate acted upon? In other words, using generally accepted characteristics of marriage, did one or both spouses take action that is consistent with the separation, such as:
 - a. changing how they behaved with each other in public; and
 - b. changing how they behaved with each other in private.

Analysis

- [46] It is clear from the evidence that Mr. Charan had the intention to separate by November 15, 2014, and that this intention was communicated to Ms. Charan the same day. However, Mr. Charan did not fully act upon the intention to separate until January 4, 2015. Between November 15, 2014 and January 4, 2015, the parties continued to behave in public and private much as they had before. For example, they shared the same bedroom, cooked their meals together, and continued to share finances.
- [47] According to Mr. Charan, all sexual intimacy between the parties ceased as of November 2014, and virtually all in person communication ceased between them after January 4, 2015.
- [48] Ms. Charan denies that Mr. Charan broke up with her on November 15, 2014, though she agrees that Mr. Charan was upset with her. However, she says that things returned to normal a few days later, with the parties' resuming intimacy and sharing the same bedroom. She says the parties separated on June 11, 2015, when the respondent moved her and Ashley's belongings into the basement of the family home.
- [49] Mr. Charan's friend, Sanjit Prasad, testified that Mr. Charan texted him on November 15, 2014, telling him that his marriage was over. However, Mr. Charan asked him to keep their separation quiet as Mr. Charan's sister from San Francisco was coming to visit and he did not want her to find out. This was corroborated by text messages that were tendered into evidence.
- [50] Mr. Charan testified that as the Christmas holidays were approaching, he did not wish to upset his family with news of his and the respondent's separation. Thus, after sleeping on the sofa for a few days, he returned to sharing a bedroom with Ms. Charan. Prior to doing so, he says he told the respondent that sharing a bedroom with her was a temporary arrangement, and that permanent arrangements for their separation would be made after his sister had returned to San Francisco.
- [51] Mr. Charan's sister, Sangeeta Charan, testified that she visited the parties during the Christmas holidays in 2014. She had a sense that there were problems in the marriage, but it was not until January 3, 2015, en route to drop her off at the airport, that the claimant told her that the parties had separated. He asked her to break the news to his mother.
- [52] Mr. Charan stated that the next day (January 4, 2015), he had a conversation with the respondent and gave her the option of moving out of the family home, or returning to India with her son. He offered to purchase airline tickets in the event she wanted to return to India, or to purchase household furnishings so that she and Ashley could move out into their own rental accommodation. However, Ms. Charan refused to leave, and Mr. Charan began to sleep on the sofa. A few days later, Ms. Charan offered to sleep in Ashley's room. Consequently, Mr. Charan resumed sleeping in the parties' bedroom, alone.

- [53] The evidence does not support a finding that the parties separated on November 15, 2014, nor that the period between November 15, 2014 and January 4, 2015, was a reconciliation period. I find that the claimant did not act on the intention to separate until January 4, 2015, when he changed how he behaved with the respondent in public and in private.
- [54] Ms. Sabharwal points to the following examples in support of her position that Mr. Charan did not act on his intentions to separate until June 2015: Mr. Charan celebrated Christmas with Ms. Charan and attended at church with her and Ashley for Christmas mass; Mr. Charan was involved in the celebration of Ashley's birthday in March 2015; the parties were sexually intimate until May 2015; and the parties continued sharing finances until at least June 2015.
- [55] In light of my finding that the parties did not separate until January 2015, Mr. Charan's celebration of Christmas with the respondent and her son is not momentous, though I accept Mr. Charan's explanation that he celebrated Christmas and exchanged gifts with Ashley and Ms. Charan out of courtesy, and in order to try to maintain some normalcy while his sister was visiting.
- [56] Ms. Charan's evidence that the parties continued to sleep in the same room and were sexually intimate until May 2015, is not credible. Part of her evidence was contradicted by all three children, Ashley, Koushal, and J.C., who testified that the parties did not share the same bedroom in 2015. In addition, Ms. Charan's own evidence was internally inconsistent. Despite testifying that she and the claimant slept together in the same room, Ms. Charan later said under cross-examination that in 2015 she was working late hours and would often arrive home after everyone was asleep, only to find that the door to the parties' bedroom was locked. As such, she said she would sleep in Ashley's room and would not wake up until Mr. Charan had already left for work.
- [57] In addition, while I accept that Ashley's birthday celebration did occur at the Charan home, I do not agree that this is indicative of the parties carrying on like a married couple. I accept Mr. Prasad's testimony that it was he that bought the birthday cake for Ashley, and not Mr. Charan. Mr. Prasad testified that Mr. Charan told him that he did not feel comfortable celebrating Ashley's birthday as the parties were separated. However, Mr. Prasad's children insisted, and Mr. Prasad convinced Mr. Charan to allow the birthday celebration to occur in his home.
- [58] I also note that in February 2015, Ms. Charan secretly opened up separate bank accounts for herself and Ashley. She used these accounts to put away money for herself and Ashley and to pay for their own cell phones and other expenditures. Her act of doing so is consistent with the parties having separated on January 4, 2015.

- [59] Between April 2015 and the date of trial, Ms. Charan had her employer deposit \$450 on a bi-weekly basis into a jointly held account to the benefit of herself, J.C., and Mr. Charan. However, for reasons explained elsewhere, I find that this was done for litigation purposes and is not evidence that the parties continued to co-mingle their finances after January 2015.
- [60] Thus, applying the factors set out at para. 45 above, I conclude that the parties separated on January 4, 2015.

F. CHILD SUPPORT AND SECTION 7 EXPENSES

- [61] Ms. Charan seeks child support from Mr. Charan on two grounds. First, that Mr. Charan stood in the place of a parent for Ashley as contemplated by s. 2(2) of the Divorce Act. Second, that Mr. Charan contributed to the support of Ashley from the date of marriage until June 11, 2015, in accordance with s. 147 of the FLA. Mr. Charan denies both these assertions.
- [62] Both the Divorce Act and the FLA address obligations of step-parents to provide support for children. Under section 2(1) and (2) of the Divorce Act, a "child of the marriage" is defined as follows:
2. (1)
- child of the marriage means a child of two spouses or former spouses who, at the material time,
- (a) is under the age of majority and who has not withdrawn from their charge, or
 - (b) is the age of majority or over and under their charge but unable, by reason of illness, disability or other cause, to withdraw from their charge or to obtain the necessities of life;
- (2) For the purposes of the definition child of the marriage in subsection (1), a child of two spouses or former spouses includes
- (a) any child for whom they both stand in the place of parents; and
 - (b) any child of whom one is the parent and for whom the other stands in the place of a parent.

[63] The age of majority in British Columbia is 19.

[64] Section 146 of the FLA defines a "parent" and "stepparent" as follows:

"parent" includes a stepparent, if the stepparent has a duty to provide for the child under section 147 (4);

"stepparent" means a person who is a spouse of the child's parent and lived with the child's parent and the child during the child's life.

[65] Section 147(4) and (5) of the FLA sets out the duty of a step-parent to provide support for a child:

- (4) A child's stepparent does not have a duty to provide support for the child unless

- (a) the stepparent contributed to the support of the child for at least one year, and
 - (b) a proceeding for an order under this Part, against the stepparent, is started within one year after the date the stepparent last contributed to the support of the child.
- (5) If a stepparent has a duty to provide support for a child under subsection (4), the stepparent's duty
- (a) is secondary to that of the child's parents and guardians, and
 - (b) extends only as appropriate on consideration of
 - (i) the standard of living experienced by the child during the relationship between the stepparent and his or her spouse, and
 - (ii) the length of time during which the child lived with the stepparent.

[66] In *Chartier v. Chartier*, [1999] 1 S.C.R. 242 at para. 39, the Court addressed the factors to consider in determining whether or not a person "stands in the place of a parent". These factors are viewed objectively, to determine the nature of the relationship, including the intention as expressed formally and as inferred from the actions of the parties. They include: whether the child participates in the extended family in the same way as would a biological child; whether the person provides financially for the child; whether the person disciplines the child as a parent; whether the person represents to the child, the family, the world, either explicitly or implicitly that he or she is responsible as a parent to the child; and, the nature or existence of the child's relationship with the absent biological parent.

[67] I find that none of the *Chartier* factors existed between the date of marriage and Ashley's arrival in Canada two years later. Following the death of Ms. Charan's first husband, she and Ashley lived with Ms. Charan's parents in India, who also played a parenting role in Ashley's life. The first time Mr. Charan met Ashley was on the day that the parties were to be married. At the time, Ashley was 16 years old and Ms. Charan admits that they talked for less than 15 minutes. Between March 29, 2012, and June 10, 2014, when Mr. Charan met Ashley for the second time, Mr. Charan had virtually nothing to do with Ashley. Aside from some queries in his emails about how Ashley was doing, occasional phone contact, and sending a gift or card to Ashley, there was very little contact between the two.

[68] I accept Mr. Charan's evidence, which was corroborated by the email communications between the parties at the time that the relationship was being formed between Mr. Charan and Ms. Charan that he never intended to stand in the place of a parent to Ashley. Indeed, nor did Ms. Charan ask him to do so, as her stated plans were for Ashley to remain in India and finish his studies while she moved to Canada to be with her new husband.

- [69] Mr. Charan was not agreeable to Ashley coming to Canada with his mother, and only changed his mind when Ms. Charan told him (falsely) that the Canadian Immigration authorities required Ashley to be sponsored with his mother. At the time that Ashley arrived in Canada with his mother on June 10, 2014, Mr. Charan and Ashley barely knew each other.
- [70] After Ashley's arrival in Canada, Mr. Charan kept an emotional and social distance from Ashley. The evidence fails to establish that in the approximately seven months between June 10, 2014 to January 4, 2015, Mr. Charan and Ashley developed a strong enough bond such that Mr. Charan stood in the place of a parent to Ashley. While Ashley did refer to Mr. Charan as "Papa", the mere act of using that word is not sufficient to meet the evidentiary burden required to establish an in loco parentis relationship. Mr. Charan did not discipline Ashley as a parent, he did not represent to the world that he was responsible as a parent to Ashley, he did not pay for Ashley's education, and he did not agree to Ashley assuming his last name.
- [71] Mr. Charan's financial support of Ashley between June 10, 2014, and January 4, 2015, was limited to necessities of day to day living such as free room and board, a bus pass, and clothing. However, money from odd jobs that Ashley deposited into the joint account with Mr. Charan was used to off set some of these expenses paid for by Mr. Charan.
- [72] Ashley's education was funded through student loans for which Ashley was liable. Once Ashley had secured student loans, this student loan money was deposited into a joint account held with Mr. Charan. Those funds were then used to pay Ashley's tuition fees and other education related expenses.
- [73] For reasons discussed elsewhere, I do not agree with counsel for the respondent that the immigration undertaking signed by Mr. Charan when he sponsored Ms. Charan with her dependent child, is sufficient in itself, to establish an obligation to provide child support. While it may provide some evidence of an intention to act in loco parentis, the parties' evidence, email communications, and circumstances surrounding the manner in which Ashley was added onto the sponsorship application, make it clear that Mr. Charan never had the intention of standing in the place of a parent for Ashley, even after signing the immigration undertaking.
- [74] Having regard to the Chartier factors, and the whole of the evidence, I find that the criteria under s. 2(2)(b) of the Divorce Act has not been met to establish that Mr. Charan stood in the place of a parent to Ashley.
- [75] Turning to the considerations in the FLA, Mr. Charan's obligation to provide support for Ashley does not arise unless Ms. Charan can show that he contributed to the support of Ashley for at least one year.

- [76] In calculating the one year period, I discount the time between the date of marriage and Ashley's arrival in Canada. Mr. Charan's limited financial interaction with Ashley prior to June 10, 2014, is insufficient to meet the requisite criteria under s. 147(4) of the FLA. While I accept that Mr. Charan occasionally provided birthday money or some money for tuition or books for Ashley when he and his mother lived in India, this was sporadic and gratuitous.
- [77] The evidence indicates that Mr. Charan's financial contribution towards Ashley did not start until after Ashley had arrived in Canada. It spanned a period of approximately seven months, falling short of the 12 month requirement under the FLA.
- [78] Based on the whole of the evidence and applicable law, Mr. Charan's obligation to pay child support for Ashley, and share in s. 7 expenses, has not been established. These claims are therefore dismissed.

G. SPOUSAL SUPPORT

- [79] Ms. Charan seeks spousal support on a contractual, compensatory, and non-compensatory basis. The claim for contractual entitlement is based on the sponsorship undertaking signed by Mr. Charan so that Ms. Charan could immigrate to Canada. Compensatory support is claimed on the grounds that Ms. Charan left stable employment in India, in order to join Mr. Charan in Canada. Non-compensatory support is sought on a needs basis on the grounds that Ms. Charan was involved in a motor vehicle accident in November 2017 which caused her injuries such that she has been unable to work.

Statutory Framework

- [80] Section 161 of the FLA sets out the objectives of spousal support, which are essentially the same as those found in s. 15.2(6) of the Divorce Act. They are:
- (a) to recognize any economic advantages or disadvantages to the spouses arising from the relationship between the spouses or the breakdown of that relationship;
 - (b) to apportion between the spouses any financial consequences arising from the care of their child, beyond the duty to provide support for the child;
 - (c) to relieve any economic hardship of the spouses arising from the breakdown of the relationship between the spouses;
 - (d) as far as practicable, to promote the economic self-sufficiency of each spouse within a reasonable period of time.
- [81] As the court noted in *Bracklow v. Bracklow*, [1999] 1 S.C.R. 420 at para. 35, "[t]he objectives reflect the diverse dynamics of the many unique marital relationships." No objective is paramount. All four objectives must be considered and balanced in the context of the circumstances of each case: *Fisher v. Fisher*, 2008 ONCA 11 at para. 34.
- [82] Section 162 of the FLA, stipulates the factors to consider in ordering spousal support:

162 The amount and duration of spousal support, if any, must be determined on consideration of the conditions, means, needs and other circumstances of each spouse, including the following:

- (a) the length of time the spouses lived together;
- (b) the functions performed by each spouse during the period they lived together;
- (c) an agreement between the spouses, or an order, relating to the support of either spouse.

[83] The factors the Court needs to consider as found in the Divorce Act at s. 15.2(4) are virtually identical to those set out in s. 162 of the FLA with one notable exception in para. (c) referred to later under the contractual support considerations:

- (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.

[84] The factors set out in s.15.2(4) require the trial judge to balance the circumstances of each spouse, bearing in mind the objectives of spousal support stipulated in s. 15.2(6) of the Divorce Act, to achieve an equitable alleviation of the adverse consequences of the breakdown of the marriage: Bracklow at para. 36.

[85] In making a spousal support order, the Court must first establish entitlement to receive spousal support, with the attendant liability to pay on the part of the payor spouse. Once entitlement has been established, issues of quantum and duration arise.

[86] The three grounds for entitlement to spousal support as recognized by our courts, are as follows: compensatory, non-compensatory, and contractual: Chutter v. Chutter, 2008 BCCA 507 at para. 47; Bracklow at para. 25.

[87] The primary marker for entitlement to compensatory spousal support is income disparity at separation. At the time of separation, Mr. Charan's income was \$103,689. In contrast, Ms. Charan had an income of \$20,896. As such, there is evidence of an income disparity between the parties. However, income disparity is not enough. The court must inquire as to the cause of the income disparity between the spouses in order to establish entitlement.

Contractual Spousal Support

[88] Contractual spousal support can arise from formal contracts, as well as implied or informal agreements: Bracklow, para. 38.

[89] As noted above, the factors to be considered when making an order for spousal support under the Divorce Act include "any order, agreement or arrangement relating to support of either spouse." (D.A. at s. 15.2(4)(c)) [emphasis added]. This provision does not seem to require both spouses to be a party to the agreement. The language in the Family Law Act is not so broad; it states at s. 162(c):

162 The amount and duration of spousal support, if any, must be determined on consideration of the conditions, means, needs and other circumstances of each spouse, including the following:

c) an agreement between the spouses, or an order, relating to the support of either spouse.

[Emphasis added]

[90] Counsel for the respondent argues that in the case of immigrating spouses, a sponsor's undertaking to Citizenship and Immigration Canada ("sponsorship undertaking") creates a contractual obligation on the sponsoring spouse, such that the claimant is contractually bound in this family law proceeding to fulfill the undertaking he provided for the sponsorship process.

[91] A sponsorship undertaking is a contractual arrangement between the sponsoring spouse, and the Government of Canada. It requires the sponsoring spouse to undertake to provide for the food, care, lodging, transportation and health needs of the sponsored spouse, for a specified period of time. The purpose of the sponsorship undertaking is to ensure that the sponsored party has the means to become established in Canada without relying on social assistance.

[92] There is a divergence in the case authorities with respect to the impact of spousal sponsorship undertakings on a claim for contractual spousal support. While many Ontario authorities support the argument that a sponsorship undertaking can form the basis for a stand alone claim of contractual support, B.C. authorities do not. Our courts have held that although sponsorship undertakings are relevant in determining entitlement, they cannot impose obligations greater than those imposed by the family law and general principles applicable to spousal maintenance.

[93] The most oft-cited B.C. case on this matter is *Samy v. Samy*, 2000 BCSC 1211 (also referred to as *Achari v. Samy*). *Achari* dealt with the extent to which an undertaking to Citizenship and Immigration Canada affected the obligation of the husband to provide support for the wife. In that case, the husband had signed a 10 year undertaking. Counsel for the husband argued that the undertaking should have little or no effect on spousal obligations to pay maintenance as it was a matter between the husband and the government. In finding the sponsorship undertaking, a relevant consideration in assessing entitlement to spousal support, Oppal J. stated at para. 13 as follows:

[13] There is no doubt that the sponsorship agreement is a contractual arrangement between the husband and the Government of Canada. It imposes an obligation on the husband to provide for and maintain his wife for a maximum period of ten years. The husband has agreed by

way of an undertaking to provide for the "essential needs ... including shelter, food, clothing and other goods or services necessary for day to day living" for his wife. I have no doubt that the wife relied on that agreement in that she left Fiji for Canada knowing that her husband would provide for her. In determining entitlement the undertaking cannot be ignored. To do so would render it meaningless. Moreover it would be contrary to public policy to permit a person who has given an undertaking to provide support for a spouse to simply ignore the legal obligation to do so. Obviously the Government of Canada in requiring such stringent undertakings from prospective sponsors has taken into consideration the inherent difficulties that some persons experience in making the necessary adjustments in coming to a new country and becoming self-sufficient. It should also be noted that the agreement specifically states that separation or divorce from a sponsored spouse does not cancel sponsorship obligations. Therefore the agreement is very much relevant in determining entitlement. However, the agreement that would otherwise bind the husband for ten years cannot supersede the specific laws that deal with maintenance. In other words, sponsorship agreements cannot impose obligations greater than those imposed by the family law. The sponsorship agreement must be considered together with the general principles applicable to spousal maintenance. In the circumstances the provisions of both the Divorce Act and the Family Relations Act are nevertheless applicable.

[Emphasis added]

- [94] In *S.K.A. v. A.S.A.*, 2004 BCSC 1566 (also known as *Aujla v. Aujla*), after briefly reviewing *Achari* and the various Ontario authorities, Prowse J. held at para. 57 that the three year sponsorship agreement entered into by the husband had little impact in her determination of spousal support obligations.
- [57] The application in this case is pursuant to the Divorce Act. In this case, I find that the sponsorship agreement does not make a great difference. Mr. A.S.A. may find that he has obligations to Canada or a province of Canada if Ms. S.K.A. is unable to support herself and receives social assistance. However, in this case, I am satisfied that the principles of the Divorce Act adequately deal with the issues of maintenance. The real purpose of the sponsorship agreement is not to determine the rights between Mr. and Ms. S.K.A., but to determine the rights as it relates to each of them and the governments which may be called upon to support Ms. S.K.A.
- [95] The issue of sponsorship agreements was also considered in *E.P. v. L.D.*, 2005 BCSC 137 (also known as *Paulina v. Davis*). In that case, the parties separated one year after the husband sponsored the wife's and her daughter's applications for landed immigrant status. Madam Justice Ross wrote at para. 61:

- [61] In addressing a claim for spousal support, the existence of a sponsorship agreement is a factor to be considered together with the general principles applicable to spousal maintenance, see *Achari v. Samy* (2000), 80 B.C.L.R. (3d) 378, 2000 BCSC 1211. The fact that the party seeking an order for support acted in bad faith in entering into a marriage of convenience to facilitate immigration is another factor to be considered, see *OM v. NEM* (2003), 40 F.R.L. (5th) 189, 2003 BCPC 99.
- [96] In *Volik v. Lisovska*, 2011 BCSC 22, at para. 115, McCaulay J. held that while the sponsorship agreement does not directly affect entitlement to spousal support or its quantum, neither the agreement nor the financial consequences of its termination, can be ignored:
- [115] An immigration sponsorship agreement is between the government and the sponsor and does not directly affect entitlement to or quantum of spousal support. Rather, entitlement and quantum are addressed by applying the provisions of the Divorce Act. Nonetheless, the court must not ignore the agreement when it exists (see *Sarai v. Sarai*, [1999] B.C.J. No. 2786 (B.C.S.C.) at para. 21) nor, in my view, can the court ignore the financial consequences to the other spouse of the sponsor terminating the agreement, regardless whether or not he is entitled to do so.
- [97] In contrast, the Ontario decisions of *Singh v. Singh*, 2013 ONSC 6476, and *Niranchan v. Nadarajah*, 2015 ONCJ 149, relied on by the respondent, stand for the proposition that the sponsorship undertaking can operate as an "agreement or arrangement relating to support of either spouse" per s. 15.2(4)(c) of the Divorce Act, and thus can ground contractual entitlement. However, it is the existence of such an undertaking, and not its precise terms, which is relevant to the determination of support obligations. (see *Singh* at paras. 71-72, and *Niranchan* at para. 33).
- [98] A footnote at the end of para. 33 in *Niranchan*, cites four cases: *Pourian v. Zaghian* (2007), 158 A.C.W.S. (3d) 631 (Ont. S.C.J.); *Nathoo v. Nathoo*, 2005 ABQB 175; *Niranchan*, is *Ferron v. Ferron* (1997), 31 R.F.L. (4th) 26 (Ont. C.J. (Prov. Div.)); and *Johnson v. Johnson*, 2005 ONCJ 325.
- [99] The court in *Pourian* stated that the sponsorship undertaking "may amount to a contractual basis for support" (at para. 34). When considered with all of the circumstances of that case at para. 58, Czutrin J. found support owing. No other analysis on contractual support is provided.
- [100] In *Nathoo* the husband undertook to support his new wife for a period of three years. After considering the factors in making a spousal support award under the Divorce Act, Martin J. found entitlement at paras. 8-10:

8 With the breakdown of the marriage, Ms. Nathoo is apparently without the means or income to enable her to set up a residence of her own. It further appears that she has not yet been able to become self-sufficient, although notwithstanding her husband's sponsorship pledge, that remains her obligation. *Thind v. Thind* (1988), 14 R.F.L. (3d) 165 (B.C. S.C.); and *Anilevska v. Meheriuk*, *supra*.

9 These two factors are considerations upon which to order spousal support pursuant to s. 15.2(6) of the Divorce Act. The sponsorship pledge further supports that obligation. Indeed, in my opinion, where as here, the sponsored spouse is destitute and at risk of going on social assistance, that pledge, by itself and without reference to the Divorce Act, fixes the pledger with the obligation to honour his undertaking.

10 Therefore, in view of Ms. Nathoo's current predicament and her husband's promise to support her and keep her off social assistance, I find that she is entitled to spousal support.

[101] In the case at bar, at the time of separation up until the date of trial, the sponsored spouse was not destitute or at risk of going on social assistance. Similarly, both *Ferron* and *Johnson* are distinguishable.

[102] *Ferron* involved a five year undertaking. Of significance to the court's determination was that at the time of separation, the wife was in the midst of her schooling and had not yet entered the work force:

19 It would be unreasonable to expect that public welfare should be paid to the applicant when the respondent undertook to Immigration Canada to sponsor and financially to support the applicant for a period of five years. Further, the applicant's economic disadvantage can be remedied by the respondent's contributing to her support so that she may complete her data entry course and be given a reasonable period of time in which to obtain suitable employment and to establish an appropriate lifestyle.

[103] In *Johnson*, the fact that the applicant who was deemed incapable of attending to her own needs had bearing on the determination of the court:

34 In considering all the circumstances of the present case, the signature of a sponsorship agreement is a circumstance that looms extremely large. The provision of this agreement was an essential requirement in support of the admission of the applicant and her children into this country. Connected to this agreement was the promise of marriage, a marriage that had to take place within three months. For these reasons alone, given that the applicant has not been and is now clearly not capable of attending to her own needs, the court recognizes an ongoing entitlement to spousal support -- and this despite the marriage contract and its provisions in relation to spousal support and property obligations.

[104] In the more recent Ontario decision in *Carty-Pusey v. Pusey*, 2015 ONCJ 382, O'Connell J. found at para. 55 that the sponsorship undertaking constituted a prima facie basis for contractual support and non-compensatory support based on need. In doing so, he referenced the various Ontario authorities noted above:

48 Furthermore, the law is clear that the existence of an immigration sponsorship agreement is a relevant factor, although not necessarily determinative, when considering entitlement to spousal support. See *Pourian v. Zaghian* [2007 CarswellOnt 4116 (Ont. S.C.J.)], CanLII 235964; *Nathoo v. Nathoo*, [2005] A.J. No. 255 (Alta. Q.B.); *Ferron v. Ferron*, [1997] O.J. No. 3706 (Ont. Prov. Div.); *Niranchan v. Nadarajah*, 2015 ONCJ 149 (Ont. C.J.).

[105] After considering the various authorities, and the facts of this case, I am of the view that the sponsorship undertaking between Mr. Charan and Citizenship and Immigration Canada, does not form an independent basis for contractual spousal support.

[106] However, as noted in *Achari*, the sponsorship undertaking is a factor for consideration together with the general principles applicable to spousal maintenance in both the Divorce Act and the Family Law Act, and as such, forms part of my analysis of entitlement to compensatory and non-compensatory support.

Compensatory Support

[107] In *Chutter* at para. 50, Madam Justice Rowles discussed the purpose of compensatory support, saying that it "is intended to provide redress to the recipient spouse for economic disadvantage arising from the marriage or the conferral of an economic advantage upon the other spouse". She noted the economic consequences of one spouse assuming the primary childcare duties.

[108] Counsel for the respondent contends that the respondent left her career in India in order to join the claimant in Canada. Upon her arrival in Canada, she assumed the primary childcare responsibilities associated with caring for her own son as well as Mr. Charan's children. In addition, it is argued that she relied on the sponsorship undertaking signed by Mr. Charan, which was terminated early after the parties separated. As such, she is alleged to have suffered an economic disadvantage from the marriage or its breakdown for which she ought to be compensated. Mr. Charan disputes these contentions.

[109] Ms. Charan's desire to immigrate to Canada was a longstanding one, formed either before or in the very early stages of her relationship with Mr. Charan. This was evidenced by the fact that sometime in 2010 or 2011, Ms. Charan applied for a student visa, which was rejected in August 2011. The application and its denial only came to light after Ms. Charan had completed the marriage sponsorship application.

[110] Ms. Charan's rash decision to leave the relationship after an argument only weeks after her arrival, her lack of honesty with Mr. Charan in telling him about her application for a student visa in 2011, and her lack of forthrightness in not telling Mr. Charan that she

intended on having Ashley immigrate to Canada with her, all suggest that in part, her marriage to Mr. Charan was motivated less by her love for Mr. Charan, and more by her desire to immigrate to Canada to fulfill her own career and family goals. I find that Ms. Charan's marriage to Mr. Charan gave Ms. Charan the opportunity to fulfill her objective to come to Canada and establish herself here. This is supported by Ms. Charan's decision to remain in Canada following her separation from Mr. Charan, though she had been in Canada for only seven months.

- [111] Ms. Sabharwal's argument that as a divorcee, Ms. Charan was unable to return to India due to social taboos, is unsupported by the evidence. Ms. Charan came from a progressive family who supported her desires to become educated, embark on a career working in a hospital, and get remarried to a man of her choosing. The evidence does not indicate that Ms. Charan's social or family background was such that her divorced status would be an impediment for her to be reintegrated back into Indian society had she chosen to return following the breakdown of her brief marriage.
- [112] The evidence also does not support the respondent's contention that she left a lucrative career in India in order to join the claimant in Canada. Her signed Statement of Income provided to the Canada Revenue Agency on August 27, 2014, indicates that she earned the equivalent of \$5,056 from her job in India in the year prior to her immigration, which based on her evidence, afforded her a lower middle class lifestyle.
- [113] The evidence also does not support a finding that Mr. Charan required Ms. Charan to remain at home to take care of the children or fulfill housekeeping duties. Rather, I find on the evidence that Mr. Charan encouraged Ms. Charan to work, and tried to help facilitate this endeavour by providing her with guidance, direction and opportunities to upgrade her education.
- [114] In June 2014, Mr. Charan's children were 13, 19, and 22 years old, and Ashley was 18 years old. Mr. Charan and his ex-wife had a shared parenting arrangement such that his children were spending equal amounts of time between their mother's and their father's homes. The evidence establishes that J.C.'s needs were met by her biological mother and Mr. Charan. There were thus no child care responsibilities which required Ms. Charan to remain at home to take care of the children. Further, by the time Ms. Charan arrived in Canada, Mr. Charan had already been separated from his first wife for four years. The family unit was self sufficient, and the children took care of their own laundry and shared in the making of household meals.
- [115] While things did change after Ms. Charan's arrival, with Ms. Charan preparing many household meals, cleaning and doing some laundry, I find that she did not usurp the role previously fulfilled by Mr. Charan and his children. Rather, she and Ashley shared in the household responsibilities much as one would do when living in a blended family.

- [116] Ms. Charan's unemployment for the months immediately following her arrival in Canada was due to several factors, none of which are related to her having to fulfill domestic and child care duties. As a new immigrant, she wanted some time to establish herself and upgrade her skills and qualifications. To that end, Ms. Charan took on voluntary work, performed various small jobs, and took a food safe course before finally obtaining permanent employment.
- [117] The move from India to Canada thus resulted in a small delay in Ms. Charan entering the work force while she acquired the skills and job experience necessary to attain her previous standard of living.
- [118] While there is no direct evidence that Ms. Charan relied on the sponsorship undertaking, it is reasonable to assume that she would not have immigrated to Canada unless she had put into place some means for establishing herself in Canada. To that end, the sponsorship undertaking provided her with the comfort of knowing that she would have financial support from Mr. Charan until she could establish herself in her new country. However, I note that Mr. Charan continued to provide support consistent with the sponsorship agreement for a further 15 months following the parties' separation, until Ms. Charan moved out of the family home.
- [119] Having considered the sponsorship agreement, and the general principles under the Divorce Act and the Family Law Act that apply to spousal support, I find that Ms. Charan did suffer an economic disadvantage from the breakdown of the marriage. However, this economic disadvantage was minimal and of short duration, and moderated by the fact that even prior to having a solidified relationship with Mr. Charan, Ms. Charan had decided to explore avenues so that she could move to Canada with her son.

Non-Compensatory Support

- [120] Non-compensatory spousal support is "grounded in the 'social obligation model' of marriage, in which marriage is seen as an interdependent union" (Chutter at para. 54) or a "joint endeavour" where the "default presumption of this socio-economic partnership is mutuality and interdependence" (Bracklow at para. 20).
- [121] Upon marriage dissolution, it falls on the former partner to meet the needs of a disadvantaged spouse, not the state: Chutter at para. 54. "Need" alone may be sufficient to ground a claim for spousal support: Bracklow at para. 43.
- [122] "Needs" are something more than basic necessities and may vary according the circumstances of the parties and the family unit: Chutter at para. 55. Importantly, "need" does not end when the spouse seeking support achieves a subsistence level of income or any level of income above subsistence. Rather, it is a flexible concept and is one of several considerations which a trial judge must take into account in deciding whether any order for spousal support is warranted.

- [123] The evidence indicates that the respondent was able to achieve economic self-sufficiency before moving out of the family home. She had resumed her pre-marital standard of living until she was involved in a motor vehicle accident on November 29, 2017, which caused her significant injuries and time off work. It is alleged that these injuries may result in some impairment of her ability to work.
- [124] Ms. Sabharwal argues that Mr. Charan is obligated to provide spousal support to Ms. Charan following her motor vehicle accident, until such time as she is able to return to work. Mr. Charan says that the motor vehicle accident is a post separation and post trial event which is unconnected to the marriage or its dissolution. It occurred after the trial had commenced and would have occurred after the trial had been completed, if the parties had not exceeded their original trial estimate.
- [125] This trial was originally set for five days, commencing July 17, 2017. However, the time estimate was grossly insufficient, and the trial was continued for a further three days in October 2017. This too proved to be inadequate, and the matter was set for a final three days commencing February 21, 2018.
- [126] On February 22, 2018, Ms. Charan testified that she was involved in a motor vehicle accident in November 2017 while walking on a pedestrian cross-walk. She suffered various injuries, including broken teeth and nose, abrasions, injuries to her head, knee and shoulder. Ms. Charan stated that she had not been able to return to work since the accident and was still undergoing treatment such as physiotherapy and ongoing care for her teeth.
- [127] Very minimal evidence was provided as to Ms. Charan's needs. No documentary evidence was provided to corroborate the extent of the injuries or their impact on Ms. Charan's health and ability to work. There was no evidence as to whether she was being paid any wage indemnity from the Insurance Corporation of British Columbia, or whether she had advanced a claim for her injuries, though she did say her application for employment insurance (EI) benefits was still pending.
- [128] Even if there was sufficient evidence to establish that Ms. Charan is in financial need, I am unable to find that Ms. Charan's financial challenges flowing from the November 2017 motor vehicle accident, should result in an award for spousal support on non-compensatory grounds. The accident occurred almost three years after the parties had already separated; six months after the sponsorship undertaking had expired; four months after the trial had commenced; and but for the poor time estimates resulting in a third continuation of the trial, would have occurred after the trial had concluded.
- [129] On the whole of the evidence, and bearing in mind the applicable legal principles, Ms. Charan has failed to establish entitlement to spousal support on non-compensatory grounds.

Duration and Amount

- [130] Having found entitlement to spousal support on compensatory grounds, I turn to the question of duration and amount.
- [131] Counsel for the respondent seeks a retroactive lump sum award of \$73,558, based on a three year marriage and one dependent child. However, as noted elsewhere, the evidence does not support a finding that Ashley was a child of the marriage.
- [132] Spousal support is generally calculated from the date the parties started co-habiting, rather than their date of marriage. Given that Ms. Charan and Mr. Charan did not live in a marriage like relationship between their date of marriage and Ms. Charan's arrival in Canada on June 10, 2014, the date the parties' commenced cohabitation is the appropriate date for calculation of spousal support.
- [133] While not binding, the Spousal Support Advisory Guidelines (SSAG) do provide a "useful tool" for determining amount and duration of spousal support: *Yemchuk v. Yemchuk*, 2005 BCCA 406, para. 64. The court in *McEachern*, noted as follows (at para. 64):
- As has been stated by this Court on prior occasions, the Advisory Guidelines are simply guidelines; they are not law. The formulas need not be slavishly adhered to by judges, who must always have regard to the particular facts before them. Those facts may disclose valid reasons why the Advisory Guidelines are not of particular assistance in a given case, or why an award may justifiably be greater or less than that set out in the applicable formula.
- [134] The duration of the compensatory award is determined not by when the spouse achieves economic self sufficiency, but rather when compensation is achieved: *Chutter* at para. 79; *Tedham v. Tedham*, 2005 BCCA 502 at para. 60; *Morigeau v. Moorey*, 2015 BCCA 160 at para. 37.
- [135] Following the parties separation, in the 2015 year, Ms. Charan earned \$20,896. In 2016, her income rose to \$26,858. No evidence was provided as to Ms. Charan's final earnings for the 2017 year. Based on her income earned by May 14, 2017, Ms. Charan was earning the equivalent of \$2,433/month, extrapolated to \$29,195 for the year (absent accident).
- [136] Mr. Charan earned \$103,689 in 2015 and \$103,338 in 2016. His earnings for 2017 were anticipated to be in a similar range.
- [137] Based on these figures, the length of co-habitation, and the ages of the parties, the without child SSAG suggest a low-range figure of \$62/month, a mid-range of \$72/month, and a high-range of \$83/month, for a duration of 0.3 to 0.6 years from the date of separation. The nominal nature of this award (compared to the respondent's figures averaging about \$2,000/month) is due to the very short length of the period of co-habitation, as well as the lack of any dependent children. The SSAG indicate a net present value lump sum award ranging from \$212 on the low end to \$284 on the high end, for a period of five months.

- [138] Counsel for the respondent argues that the delay in Ms. Charan being able to establish herself in Canada, coupled with the early termination of the sponsorship agreement, should result in an award that exceeds the SSAG recommended amounts and duration. I disagree. As noted earlier, Mr. Charan was on a sponsorship undertaking to Citizenship and Immigration Canada to provide for Ms. Charan's living expenses for three years after she obtained landed immigrant status, ie. June 2017. While he did not have any direct contractual obligation to Ms. Charan, he nevertheless fulfilled the requirements of the undertaking until March 2016, far exceeding even the high end \$284 retroactive award recommended by the SSAG.
- [139] Having regard to factors such as the ages of the parties, the length of time that they cohabited, their incomes and prospective incomes, the stages they are at in their careers, contributions made to the marital standard of living, participation in childcare and household responsibilities, ages of their children, the respondent's immigration to Canada, the sponsorship undertaking, financial arrangements post separation, and their reasonable expectations, I see no reason to veer from the SSAG recommendations.
- [140] Therefore, based on the SSAG recommendations, and all of the evidence in this case, I find that a retroactive lump sum award of \$250 is appropriate.
- [141] Mr. Charan asks that the contribution that he made towards Ms. Charan's living expenses until she and her son moved out of the family home in March 2016, should be set-off from any spousal support award, such that no further support should be payable. Mr. Charan has provided evidence that in lieu of spousal support, he provided economic support to Ms. Charan and Ashley until March 2016, quantified as follows: accommodation estimated at \$700/month; meals estimated at \$200-550/month; and a transit pass estimated at \$170/month. In addition, Mr. Charan continued to provide transit passes to Ms. Charan until the date of trial.
- [142] Ms. Sabharwal argues that this Court should not accept Mr. Charan's estimates as they were not corroborated by any documentary or other evidence. She provides no alternative value of the free room and board and transportation.
- [143] However, in her sworn Form F8 Property and Financial Statement (PFS) filed March 3, 2016, Ms. Charan notes under Part 2 Expenses that while she is currently living rent free, her anticipated monthly expenses for housing are \$800. She further notes that in the event that she is no longer able to get free access to public transit, her transportation costs will be \$150/month. Though the kitchen and food was available to her in the family home, Ms. Charan testified that she did not use the kitchen as Mr. Charan made it uncomfortable. As such, she claims \$150 for eating in costs, and another \$550 for dining out.

- [144] In her PFS filed September 9, 2016, Ms. Charan provides differing numbers for these expenses. By this time she has moved into her own rental accommodation, with housing costs at \$700/month. In this PFS, she inexplicably reduces the value of the free transit pass from Mr. Charan to \$100/month, and claims her total food costs for dining in and out, at \$250/month.
- [145] In her PFS filed July 11, 2017, Ms. Charan values the free transit pass at \$250/month. Her food costs are now stated to be \$700/month.
- [146] Aside from the fact that the different versions of the PFS show inconsistencies which further negatively affect Ms. Charan's credibility, the various iterations of Ms. Charan's PFS confirm that Mr. Charan's estimates are reasonable.
- [147] I accept Mr. Charan's evidence and find that from the period January 2015 until March 2016, Mr. Charan provided Ms. Charan and Ashley with accommodation, food, and transportation, which had a value of approximately \$1,100/month for a total of \$16,500, during that period. As discussed elsewhere, between April 2015 and the date of trial, Ms. Charan deposited a net amount of \$2,253.85 into a jointly held account to the benefit of Mr. Charan. However, as this amount has been accounted for elsewhere, it is not included in my analysis here.
- [148] I agree that there should be a set-off of the retroactive lump sum \$250 spousal support payable, from support already provided by Mr. Charan. In receiving free room and board for herself and her son even after the marriage breakdown, Ms. Charan has been more than fairly compensated for any financial disadvantage that she had experienced as a result of the breakdown of the marriage. Indeed, she was able to save \$15,725.71 during the time that she lived rent free with Mr. Charan. Despite financial pressures faced by Mr. Charan, which caused him to ask Ms. Charan in January 2016 to vacate the basement so that he could move into it and rent out the upper floor, it was not until three months later that Ms. Charan finally left the family home. By this time she had saved enough money to adequately meet her financial needs, as evidenced by the fact that she did not require any social assistance after leaving the family home in March 2016.
- [149] I therefore find that Ms. Charan's entitlement to spousal support has been extinguished by the contributions that Mr. Charan made to Ms. Charan's and Ashley's post-separation living expenses. As such, no retroactive or prospective spousal support is owing.

H. DIVISION OF FAMILY PROPERTY AND DEBT

- [150] The respondents seeks equal division of the following assets which she asserts are family property:
- former family home
 - claimant's pension

· investment accounts

[151] In addition she seeks a compensation payment of \$5,000 for the claimant allegedly moving funds post marriage without clear explanation.

Statutory Framework

[152] Under the FLA, property owned by the spouses at the time of separation is categorized as either "family property" or "excluded property". All real or personal property owned by either spouse at the date of separation is broadly defined as family property (s. 84(1)).

[153] Section 83(4) defines "property", which "includes a beneficial interest in property unless a contrary intention appears".

[154] Pursuant to s. 81 of the FLA, each spouse is presumptively entitled to an undivided half interest in all family property as a tenant in common, and equally responsible for family debt. These rights and responsibilities accord to the parties regardless of their respective use or contribution. The date on which property rights vest is the date of separation: *Cole v. Cole*, 2016 BCSC 716 at para. 22.

[155] "Excluded property" is property which presumptively remains with the owning spouse, and is not subject to division. Section 85(1) of the FLA lists the categories of property that are excluded, which includes property acquired by a spouse before the relationship between the spouses began. Section 85(2) places the onus on the spouse claiming the exclusion, to prove that the property qualifies as excluded property.

[156] Pursuant to ss. 84(2)(g) and 87 of the FLA, the respondent is entitled to a one-half interest in the increase in the fair market value of the excluded property from the date of acquisition to the date of trial

[157] Family debts are defined under s. 86(a) of the FLA as all financial obligations incurred by a spouse during the period beginning when the relationship between the spouses began, and ending on their separation. Thus, any debt acquired during the relationship, regardless of whether it was for a family purpose, is a family debt: *Cole* at para. 25.

[158] Section 87 of the FLA stipulates that family property and family debt must be determined at fair market value, as of the date of an agreement, or the date of the hearing before the court respecting division of property and family debt (in this case, the date of trial).

[159] Section 95(1) of the FLA allows the Court to order an unequal division of family property or family debt if it would be significantly unfair to equally divide such property or debt. Section 95(2) enumerates factors the court may consider in weighing an unequal division. These factors are set out below:

95 (2) For the purposes of subsection (1), the Supreme Court may consider one or more of the following:

- (a) the duration of the relationship between the spouses;
- (b) the terms of any agreement between the spouses, other than an agreement described in section 93 (1);
- (c) a spouse's contribution to the career or career potential of the other spouse;
- (d) whether family debt was incurred in the normal course of the relationship between the spouses;
- (e) if the amount of family debt exceeds the value of family property, the ability of each spouse to pay a share of the family debt;
- (f) whether a spouse, after the date of separation, caused a significant decrease or increase in the value of family property or family debt beyond market trends;
- (g) the fact that a spouse, other than a spouse acting in good faith,
- (i) substantially reduced the value of family property, or
- (ii) disposed of, transferred or converted property that is or would have been family property, or exchanged property that is or would have been family property into another form, causing the other spouse's interest in the property or family property to be defeated or adversely affected;
- (h) a tax liability that may be incurred by a spouse as a result of a transfer or sale of property or as a result of an order;
- (i) any other factor, other than the consideration referred to in subsection (3), that may lead to significant unfairness.

[160] The implications of categorizing property as either family property or excluded property, and the impact of the significant unfairness test on such categorizations, was noted by our Court of Appeal in *V.J.F. v. S.K.W.*, 2016 BCCA 186 at para.10:

[10] The consequence of the categorization of property as either family property or excluded property is that on separation, each spouse is generally entitled under s. 81 to an undivided half interest in family property as a tenant in common. The court may divide it unequally only if equal division would be "significantly unfair" having regard to all the factors listed in ss. 95(2) and (3). Excluded property in contrast must not be divided unless it would be significantly unfair not to divide it having regard to only two factors - the duration of the parties' relationship and any direct contribution by a spouse to the preservation or maintenance of the property (s. 96(b)). Obviously, the phrase "significantly unfair" is intended to set a higher bar for the exercise of judicial discretion than the 'unfairness' test in the FRA: see *Family Law Explained*, supra, at s. 95; *L.G. v. R.G.* 2013 BCSC 983 at para. 71; *Jaszczewska v. Kostanski* 2015 BCSC 727 at para. 166-9. As observed by Mr. Justice Savage (as he then was) in *Slavenova v. Rangelov* 2015 BCSC 79:

The "significant unfairness" contemplated by s. 95 requires much more than differing financial contributions in a relationship. Exactly equal contribution is more likely exceptional than commonplace. The new regime under the FLA recognizes that partners will come to a relationship in differing circumstances and accounts for those in the concepts of "family property" and "excluded property". The starting point in the division of property analysis already applies significant exclusions. [At para. 60.]

[Emphasis in original.]

[161] I turn now to the matters in dispute.

Family Home

[162] The family home is located in Surrey, B.C. It was brought into the marriage by the claimant. The respondent concedes that the home constitutes excluded property, but seeks equal division of the increase in the value of the property from the date of marriage until the date of trial as per s. 87 of the FLA.

[163] The claimant argues that the date of valuation should be the date of separation, as it would be significantly unfair to do otherwise. In support of his position, the claimant points to the respondent's lack of contribution to the family home, along with the dramatic increase in the value of the family home which he says is due to post separation market forces.

[164] In *K.A.L. v. K.J.L.*, 2017 BCSC 651 at para. 286, the court noted that there should be "compelling evidence to depart from the standard valuation date as the date of trial thereby disentitling one property owner the benefit of the increase in value of property which is brought about by market forces and not as a result of direct effort of the other party". After referring to the court's decision in *Blair v. Johnson*, 2015 BCSC 762, Madam Justice Young in *K.A.L.* at para. 288, went on to say that a change in valuation date from the norm "should only be ordered if it would be significantly unfair to do otherwise".

[165] In *Slavenova* Mr. Justice Savage held that the parties' real property should be valued at the date of separation rather than at trial. He noted at para. 53 that:

In short, the FLA provides two alternate routes to address potential unfairness that may arise from a party's post-separation contributions, namely s. 87 and s. 95. Under s. 95 a court can order reapportionment to address any "significant unfairness" that may arise from an equal division of property and debt in light of the spouse's post-separation contribution. Alternatively, under s. 87 the Court may depart from the date of hearing or agreement as the valuation date.

[166] The lack of contribution by one spouse to the maintenance or preservation of the real property, coupled with market forces leading to the rapid rise in value of the property between the separation date and trial, may result in the separation date being set as the date on which the real property should be valued: see *A.J.E. v. T.B.W.*, 2017 BCSC 1657 at paras. 165-168; and *Davie v. De Mark*, 2017 BCSC 872 paras. 143-148.

- [167] The claimant has owned the family home since 2001. His children were raised in this home and he put a significant amount of time, money, and effort improving this asset over the years, through renovations and extensive landscaping. In addition, from the time that the parties married, to the date of trial, Mr. Charan was the sole person that contributed financially towards maintaining and preserving the family home. He was solely liable for the mortgage, made all of the mortgage payments, paid for all the insurance, utilities, taxes, repairs and maintenance costs related to the home.
- [168] Between the parties' marriage in March 2012, and the respondent's arrival in Canada in June 2014, the parties lead separate financial and personal lives. After her arrival in Canada, and until the parties separated (approximately seven months), the respondent did not provide any contribution towards maintaining or preserving the family home. During those seven months, she participated in the family unit by helping with the cooking and cleaning. However, she made very minimal contribution towards the family's finances. Following separation, though a portion of her paycheque was deposited into a joint bank account, the respondent withdrew most of that money for her personal use while continuing to live in the family home without paying for room and board. Her contribution to the family unit was minimal, and her contribution towards the maintenance and preservation of the family home was non-existent.
- [169] Thus, I find that the circumstances of this case are such that it would be significantly unfair to value the family home at the date of trial. Rather, the valuation date for the family home should be the date of separation, ie. January 4, 2015.
- [170] By agreement of the parties, the appraisal company of Niemi, Laporte & Dowle Appraisals Ltd. was used to conduct the trial date appraisal of the property. They also provided appraisals of the property on the date of marriage and the date of separation. There is no dispute as to the appraised value of the property at these different points in time.
- [171] To arrive at the increase in the value of excluded property, the court is to deduct from the appraised values, debts registered against or encumbering the title to the property: *S.L.M.W. v. M.R.G.W.*, 2016 BCSC 272 at paras. 67, 69-71.
- [172] Though the respondent disputes the mortgage liability figures, no evidence was lead by the respondent to contradict the claimant's evidence as to amounts of the mortgage debts. The party seeking an interest in the increased value of excluded property, has the onus of establishing what the increase was: *J.S.F. v. W.W.F.*, 2015 BCSC 2375 at paras. 160-161.
- [173] I accept the claimant's evidence, which was corroborated by banking records, as to the mortgage liability at various points in the relationship.
- [174] Table 1 sets out the appraised value, mortgage liability, and equity in the family home on the date of marriage, date of separation, and date of trial:

Table 1

Date

Appraised Value

Mortgage Liability

Equity

March 29, 2012

\$610,000

\$443,234

\$166,766

January 4, 2015

\$635,000

\$483,996

\$151,004

July 17, 2017

\$930,000

\$483,717

\$446,283

[175] The figures in Table 1 show that while there has been a small increase in the appraised value of the home, due to the mortgage liability, there has been a net loss in the value of the property from the date of marriage to the date of separation. As such, there are no monies owing to the respondent from the equity in the family home.

[176] I note that even if I had found that the date of trial was the appropriate date to value the asset, based on the evidence before me, it would be significantly unfair to allocate any portion of the resultant increase in the family home to the respondent. In those circumstances, the fair result would be to apportion any increase in the value of this asset 100% in favour of the claimant.

Claimant's Pension

[177] The respondent seeks an increase in the value of the claimant's Public Service Pension Plan pension from March 29, 2012, to the date of trial, despite signing the "Spouse's Waiver of Preretirement Survivor Benefit" on July 14, 2014.

- [178] The claimant argues that the respondent is not entitled to the pension, as she signed a pension waiver which is binding. In the alternative, he says that it would be significantly unfair for any increased value in the pension to be divided between the parties as the respondent did not contribute to his career, education, or the pension itself.
- [179] Mr. Charan's pension contributions started on October 1, 1997. His pension contributions at the date of separation were in excess of \$100,000. Although both parties operated on the assumption that the pension did increase in value during the time that the parties were together, neither party provided any evidence as to what that increase was.
- [180] As in the case of *Bressette v. Henderson*, 2013 BCSC 1661, at paras. 182-185, Mr. Charan's pension was automatically deducted from his paycheque, with no contribution from Ms. Charan towards its accumulation. The respondent also made no contribution towards Mr. Charan's career with TransLink, which began 15 years before the parties were married. There was no evidence to suggest that Ms. Charan was detrimentally affected by the automatic contributions being made from the pension or that the parties even discussed the pension, or that she had any expectation that it would provide her with some financial security.
- [181] For these reasons, I find that it would be significantly unfair to apportion any part of the pension in Ms. Charan's favour. Thus, Mr. Charan is entitled to retain 100% of this asset without apportionment to Ms. Charan.
- [182] Given my finding of significant unfairness under s. 95 of the FLA, it is unnecessary for me to determine the validity of the waiver signed by Ms. Charan.

Investment Accounts

- [183] The respondent seeks an increase in the value of all of the claimant's investment accounts as at the date of trial, as follows:
- RRSP account with Questrade with an increased value of \$4,777
 - RBC Investment account with an increased value of \$2,958
- [184] In addition, she seeks a compensation payment of \$5,000 for what she says are unexplained withdrawals of approximately \$11,000, from two other Questrade accounts.
- [185] As with the other assets, the claimant says that the respondent made no contribution towards these investments and thus should not share in any increase in their value.
- [186] Despite accumulating \$15,725.71 in savings between her arrival in Canada and February 2016, Ms. Charan's contribution to the family's finances was modest. Aside from some occasional deposits from odd jobs that she performed, she did not deposit any substantial monies into the family's joint account until April 2015, after the parties had separated but the respondent was still living in the family home.

- [187] Commencing April 23, 2015, Ms. Charan had her employer deposit \$450 on a bi-weekly basis, into a joint account held in the name of Ms. Charan, Mr. Charan, and J.C. This represented approximately half her paycheque. Though Mr. Charan protested and told Ms. Charan not to do this, the deposits continued. According to Ms. Charan these payments were to compensate for any room and board owing to Mr. Charan. However, each deposit was followed by "investment withdrawals" of \$100. Ms. Charan also made other withdrawals from this account from time to time, such that by the date of trial her contributions totalled \$6,750 and her withdrawals totalled \$4,496.15, leaving a net amount of \$2,253.85 to her credit (absent other considerations).
- [188] Though Ms. Charan denies that she made these withdrawals, I do not find her evidence credible. Her evidence was internally inconsistent, and also inconsistent with the documentary evidence. I found her to be evasive, self-serving and vague when it suited her.
- [189] I found Mr. Charan's evidence to be credible. He was a forthright and diligent witness. His evidence was fair and balanced and corroborated by documentary evidence.
- [190] Thus, I do not accept Ms. Charan's evidence that the money being deposited into Mr. Charan's account was for payment of rent. Rather, I find that it was a calculated effort on the part of Ms. Charan to try to put herself in a stronger legal position at trial by showing an ongoing intermingling of finances.
- [191] I also find it troubling that while Ms. Charan seeks an equal share in all of the assets accumulated by Mr. Charan during the course of their marriage, she does not offer to share in the family debts, except for the mortgage in relation to any increased value of the family home. Nor does she offer to share in the \$15,725.71 in savings that she walked away with in March 2016.
- [192] The claimant, though entitled to, does not claim for any division of the \$15,725.71, or the respondents assets which she retained in India. Very little evidence was provided by the respondent on the value of these assets, and there was no disclosure of them in her Property and Financial Statement. These assets include bank accounts in unknown amounts, and possibly some real property.
- [193] Having regard to all of the evidence, I find that it would be significantly unfair to apportion any part of Mr. Charan's investment accounts in Ms. Charan's favour. There is no evidence that she was aware of the existence of these accounts during the parties short relationship, or that she was detrimentally affected by the contributions made to these accounts, or that she had an expectation that she could rely on them for financial security. Thus, Mr. Charan is entitled to retain 100% of these assets without apportionment to Ms. Charan.

[194] Though Ms. Charan has kept the entirety of the \$15,726 in savings that she accumulated while getting free room and board and transportation from Mr. Charan, along with the value of any bank accounts or real property held by her in India, Mr. Charan does not object to Ms. Charan receiving the \$2,253.85 left to her credit in the jointly held bank account. As such, this money is to be paid to Ms. Charan.

[195] Ms. Charan's claim for a \$5,000 compensation payment is without factual foundation and is dismissed.

I. DIVORCE

[196] I am satisfied on the evidence and record before me that a divorce order should be granted pursuant to s. 8(1) of the Divorce Act. The requisite criteria for granting a divorce have been satisfied; both parties want a divorce; there is no chance of reconciliation; and there has been no collusion. This divorce order will take effect 31 days from the date of this Order.

J. COSTS

[197] As Mr. Charan has had substantial success, he is entitled to his ordinary costs of the proceeding. However, if a party wishes to make submissions on this point, they may prepare written submissions up to a maximum of five pages in length, for the Court's consideration. These should be submitted through Supreme Court Scheduling within 30 days of this Order.

"Shergill J."

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