

CANADA / JUDGMENT

Dadwal v. Parmar

2024 BCSC 860

COURT

Supreme Court of British Columbia

DECIDED

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2024 BCSC 860 Dadwal v. Parmar

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Dadwal v. Parmar,

2024 BCSC 860

Date: 20240517

Docket: E55518

Registry: New Westminster

Between:

Rupinder Kaur Dadwal

Claimant

And

Ravinder Singh Parmar and Harmesh Kaur Parmar

Respondent

Boale Wood & Company Ltd., Trustee of the Estate of the Bankrupt, Ravinder Singh Parmar

Respondent

Before: The Honourable Justice Girn

Reasons for Judgment on Applications

For Interim Distribution

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Place and Dates of Hearing:

New Westminster, B.C.

August 18, 2023

March 6, 2024

Port Coquitlam, B.C.

July 10, 2023

Place and Date of Judgment:

New Westminster, B.C.

May 17, 2024

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Introduction

- [1] The claimant, Rupinder Kaur Dadwal ("Ms. Dadwal") and the respondent, Boale Wood & Company Ltd., trustee of the estate of the bankrupt, Ravinder Singh Parmar ("Trustee") each apply for an interim distribution of family property pursuant to s. 89 of the Family Law Act, S.B.C. 2011, c. 25 [FLA], to fund litigation. There is presently a 19-day trial date set to commence on October 7, 2024.
- [2] From the funds currently held in trust by counsel, Ms. Dadwal seeks \$300,000, while the Trustee seeks \$179,200 as an interim distribution. The funds consist of \$800,000, which are the proceeds of sale of a house built and sold during and after the parties separated. This property along with two others are the subject of dispute.
- [3] The respondent, Harmesh Kaur Parmar ("Harmesh"), is the mother of the respondent Ravinder Singh Parmar ("Ravinder"). For ease of reference and due to these two respondents and others having the same surnames, I will refer to these individuals by first name. I mean no disrespect in doing so.

- [4] Harmesh says the property was bought and the house was built by her for use as an investment property and she is therefore the only one entitled to the funds held in trust. Ravinder takes the position that he has no interest in this property. Ravinder and Harmesh oppose these applications.
- [5] The primary issue at trial will be in respect of the division of property with respect to three properties.
- [6] The applications were heard over two days on July 10 and August 18, 2023. While my decision was under reserve, on September 26, 2023, Ravinder sought to bring an application to re-open the hearing in order to permit him to adduce fresh and new evidence. He was given leave to bring this new application, which was heard on March 6, 2024. Ms. Dadwal and the Trustee opposed Ravinder's application to re-open. Harmesh supported Ravinder's application.
- [7] Accordingly, these reasons for judgment will address the applications for both interim distribution and for reopening.

Background

- [8] There are four parties on this application. They have each provided a great deal of evidence and material by way of affidavits. They also made detailed submissions, both oral and written, on the facts and the law they consider to be relevant. While I have considered all of the evidence, material, and the law, in these reasons I will focus on the facts and law that I consider to be most directly relevant.
- [9] I will also note that much of the evidence is contradictory and concerned with issues that will have to be resolved at trial. I will briefly comment on the use of evidence in interim applications. In *I.F. v. R.J.R.*, 2015 BCSC 793, Madam Justice Balance made comments that are instructive:
- [12] It is regrettably clear from the sheer volume and inflammatory tone of the affidavit evidence filed at this relatively early stage, that this proceeding has the very real potential to quickly develop into a protracted, scorched-earth type battle.
- [13] This would seem a logical place to make some general remarks about interim orders. By their very nature, they are stop-gap orders. It is routinely the situation that parties embroiled in matrimonial litigation will have conflicting versions of the material facts. In the vast majority of cases, the evidence required for a complete exploration of the controversial issues is underdeveloped or not available.
- [14] It is commonplace for the chambers judge on an interim application to make preliminary findings based on the evidence as it then stands. Due to the interlocutory nature of the proceeding, it is understood that those findings are almost invariably drawn from a limited record. They are not intended to fetter the trial judge who will decide the issues on a broader and more developed body of evidence and, for that reason, may arrive at different

conclusions. Appreciating that only when extensive evidence is adduced at trial can the disputed issues be fairly determined on their merits, does not mean that the court will necessarily be hamstrung on an interim application.

- [15] While the court is inclined to take a cautionary approach on most every interim application, it strives to ensure that it is not so overly cautious as to be timid.
- [10] By way of background, Ms. Dadwal and Ravinder were married on April 12, 2014. They were granted a divorce in October 2019. There are no children of the marriage.
- [11] The separation date is disputed. Ms. Dadwal's initial Notice of Family Claim stated that the parties separated on March 14, 2016. She subsequently filed an amended Notice of Family Claim stating that there was a typo and now claims the parties separated on March 14, 2018. Ravinder claims they separated sometime in December 2015. For the purposes of this application, I need not determine the separation date. That will be for another date, for another judge to determine.

History of Proceedings

- [12] This is a high conflict family dispute that has morphed into additional related proceedings which I will refer to as the "Family Action" and the "Fraud Action" and the "bankruptcy proceeding".
- [13] With regards to the Family Action:
- a) On July 3, 2018, Ms. Dadwal filed a Notice of Family Claim.
 - b) On October 25, 2018, Ravinder filed a Response to Notice of Family Claim and a Counterclaim.
 - c) On April 25, 2019, Ms. Dadwal filed an Amended Notice of Family Claim, adding Harmesh.
 - d) On July 17, 2019, Ravinder amended the Counterclaim.
 - e) On or about July 18, 2019, a Judicial Case Conference was held.
- [14] As for the Fraud Claim, Ms. Dadwal commenced an action alleging that Ravinder and Harmesh conspired to hide Ravinder's assets by placing them in Harmesh's name. There are other allegations of fraud against others as well in this action.
- [15] Examination for Discovery of Ravinder and Harmesh took place in June 2021.
- [16] As a result of a Certificate Pending Litigation placed on the property, on September 22, 2021, an order was granted wherein the sale proceeds of the property located at 4945 Marine Drive, Burnaby, BC, (the "4945 Property") were held in trust by Harmesh's counsel.
- [17] There are two other properties involved in the Family Action. One is located at 5369 Marine Drive, Burnaby, BC (the "5369 Property"). The other is comprised of a number of lots located in Saskatchewan (the "Saskatchewan Properties").

- [18] On November 4, 2021, Ravinder declared bankruptcy. In the bankruptcy proceeding, Ravinder is not claiming an interest in the 5369 Property, nor is he claiming an interest in the sale proceeds from the 4945 Property. He asserts that the only property he owns is the Saskatchewan Properties. However, he claims for the first time, that Harmesh has a mortgage on the Saskatchewan Properties for \$1.6 million.
- [19] On January 27, 2022, Justice Groves lifted the stay of proceedings in the bankruptcy proceeding so the Fraud Action and the Family Action could proceed outside the bankruptcy.
- [20] The Trustee is a respondent in the Family Action and stands in the place of the bankrupt, Ravinder. The Trustee disputes the mortgage held by Harmesh on the Saskatchewan Properties. As well, the Trustee takes the position that the 4945 Property belongs to Ravinder.
- [21] On May 20, 2022, the parties appeared before Justice Crerar on the Trustee's application to obtain a lien on the various properties and to join the three actions. Justice Crerar granted the Trustee's application and the relevant parts of the order (the "Crerar Order") are as follows:
1. The Family Action, the conspiracy action and the Bankruptcy Proceeding will be heard together.
 2. The Trustee be added as a party defendant in both Civil Actions.
 3. The Trustee is not, and will not, be personally liable for costs in the Civil Actions,
 4. "the Trustee and its counsel shall have a lien and charge (the "Litigation Charge") on any family or other assets which are in dispute in the Civil Actions and any trust funds held for the benefit of any party in either Civil Actions and the Litigation Charge shall be payable in priority ahead of the interest of the parties provided that the Litigation Charge shall be paid first out any interest ordered to be payable or recoverable by or on behalf of the bankrupt:
 - a. the trustee and its legal counsel are granted a charge (the "Trustee's Charge") on all assets, funds and property which is in dispute in the Civil Actions and in particular on the Trust Funds at held by Joshi Lawyers Law Corporation which remain from the sale of the Proposed Residence located at 4945 Marine Drive Burnaby B.C. as security for the payment of their fees and disbursements, in each case at their standard rates, in respect of these proceedings, whether incurred before or after the making of this order. The Trustee's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise; and
 - b. the trustee and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the trustee and its legal counsel are referred to a judge of the Supreme Court of British Columbia and may be heard on a summary basis.

- c. The trustee is granted leave to apply to the court in the Civil Actions for an interim distribution under section 89 of the Family Law Act

[22] On March 31, 2022, Ms. Dadwal filed a proposal in bankruptcy. She cites the breakdown of her marriage as a reason for her financial difficulties. She discloses \$700 in assets. In her bankruptcy proceeding, she did not disclose any of the assets she now claims, nor this litigation. She disclosed \$187,000 in liabilities. In her family law claim, she seeks indemnity for \$654,170, which she says are Ravinder's debts.

The Properties

[23] As noted, there are three properties that are the subject of the Family Action.

The 5369 Property

[24] The 5369 Property is owned by Harmesh and is her primary residence. There is no dispute that after their marriage, Ravinder and Ms. Dadwal resided in the basement suite of the 5369 Property for approximately three months. Ms. Dadwal asserts that she has an interest in this home because she and Ravinder contributed towards the mortgage. She asserts that she withdrew money from her line of credit for Ravinder to pay the mortgage on this property.

[25] As well, Ms. Dadwal says she and Ravinder paid for the entire cost of the renovations for the basement at this property. Among other cheques, she points to a cheque she wrote for \$19,500 to Ravinder for the renovations. Ms. Dadwal says that she also contributed towards the household expenses relating to this property. In total, she asserts to having contributed \$128,462.56 towards the 5369 Property.

[26] Both Ravinder and Harmesh dispute all of Ms. Dadwal's assertions. Harmesh says that she and her spouse, Navtej Singh Parmar ("Navtej") purchased this property in 1988 and they have paid for all of the expenses and upkeep of this property. Ravinder says that he and Ms. Dadwal did not pay for the renovations and that they were done before he and Ms. Dadwal were married.

[27] As well, Ravinder asserts that he and Ms. Dadwal did not contribute to any household expenses or mortgage payments for this property, implying they lived rent free. I note that Ms. Dadwal and Ravinder resided in this property for a very brief period of time.

The 4945 Property

[28] The 4945 Property was purchased in November 2016 while the parties were allegedly still married. Sometime in April 2017, construction for a new house on this property commenced. Ms. Dadwal asserts a 50% interest in this property. She says that the property was purchased during the marriage with the intention of a house on the property being constructed as a home for Ms. Dadwal and Ravinder.

- [29] The property was registered in Harmesh's name. However, Ms. Dadwal asserts that because Ravinder was involved in litigation at the time it was purchased, they decided to register the 4945 Property in Harmesh's name to avoid any liens on this property. Two mortgages were taken out by Harmesh to purchase this property with Ravinder listed as the guarantor. However, Harmesh asserts that Ravinder did not give her any money for the purchase of the property nor the construction of the house. Not surprisingly, Ravinder agrees with Harmesh.
- [30] The construction of the house was also financed by a mortgage. Once again, Harmesh is the borrower and Ravinder the guarantor. Harmesh says that she also paid for the construction through her personal funds and from loans from family and friends. Harmesh states that she still owes over \$1 million to creditors. She asserts that she has been prevented from paying these creditors until the money is released from counsel's trust account. This includes about \$198,977.95 owing to friends and family members. I note there are material inconsistencies in her affidavit and her F8 financial statement in regards to these debts to family and friends. However, for the purposes of this application I do not need to determine the veracity of these loans.
- [31] Ms. Dadwal asserts that she and Ravinder were responsible for the design of the house and that Harmesh was not involved. She points to the house plans which state: "Proposed Residence for Mr. Rob Parmar on lot 4945 Marine Drive". She also points to a number of emails in July 2016 from Simplex Home Designs to Ravinder regarding the house plan.
- [32] As well, Ms. Dadwal points to many invoices from contractors addressed to Ravinder and emails to contractors that Ms. Dadwal argues support her position that the house was being built for her and Ravinder, and that Harmesh was not involved.
- [33] Ravinder says that he did not make any payments relating to the construction of the house and was simply helping his mother by hiring trades, dealing with the City and other consultants and ordering materials as required. He says he did this as it was his duty to help his aged parents. I note that the parties did not address whether Navtej was involved in the construction.
- [34] Ms. Dadwal asserts that both her and Ravinder contributed to the construction of this home. Specifically, in relation to her contribution, she points to invoices for building blocks and corresponding payments using her credit card. I note these invoices are dated April 24 and 26, 2017. Ms. Dadwal's corresponding Visa payments to the vendor were made on these same dates.
- [35] Ms. Dadwal also asserts that she wrote additional cheques to Ravinder to pay for construction costs from June to August 2017 and January 2018. She provided copies of cheques she wrote to Ravinder from her bank accounts and Visa cash advancements. In total, Ms. Dadwal asserts to having paid \$41,113.00 for construction costs.

[36] Ravinder disputes that Ms. Dadwal made any contributions. Ravinder says that many of the amounts that Ms. Dadwal claims to have made towards construction of the house were in fact for other purposes, including paying for margin calls relating to his online investing, payment for wedding expenses and for construction costs relating to the Saskatchewan Properties.

The Saskatchewan Properties

[37] The Saskatchewan Properties consists of some 40 lots in Saskatchewan. It is not disputed that the Saskatchewan Properties were purchased prior to the marriage. Homes have been constructed on some of the properties but most of the lots remain vacant. These properties are only in Ravinder's name. It appears the value of the properties is far less than the alleged mortgage by Harmesh. Ms. Dadwal claims that she would be entitled to half of the value of the properties.

[38] As I have noted above, Ravinder says that he borrowed \$1.6 million from Harmesh to buy these properties which are now secured by a mortgage. Ms. Dadwal says no such debt exists. She says that she only became aware of this mortgage through Ravinder's bankruptcy. As well, neither Harmesh nor Ravinder included this mortgage in their financial statements in the family law proceedings.

Legal Framework

Interim Distribution of Property to Fund Litigation

[39] Under s. 89 of the FLA, the Court may order an interim distribution of family property in a proceeding to fund family dispute resolution, a proceeding under the FLA, or to obtain information or evidence for family dispute resolution or a court proceeding. In full, s. 89 reads as follows:

Orders for interim distribution of property

89 If satisfied that it would not be harmful to the interests of a spouse and is necessary for a purpose listed below, the Supreme Court may make an order for an interim distribution of family property that is at issue under this Part to provide money to fund

- (a) family dispute resolution,
- (b) all or part of a proceeding under this Act, or
- (c) the obtaining of information or evidence in support of family dispute resolution or an application to a court.

[40] An application for a s. 89 order may be made "at any time before a final agreement or final order is made in relation to a family law dispute respecting property division": FLA, s. 88; Etemadi v. Maali, 2021 BCCA 298 at para. 43.

- [41] The leading case from our Court of Appeal on the application of s. 89 is *Etemadi*. Justice Dickson, writing for the majority, reviewed previous cases at the Court of Appeal and this Court in order to "summarize the principles applicable to s. 89 interim distribution orders": at para. 50. More recently, Justice McDonald of this Court summarized the applicable principles from *Etemadi* in *Karrington v. Morrisonn*, 2023 BCSC 577, as follows:
- [15] Recently in *Etemadi v. Maali*, 2021 BCCA 298 [*Etemadi*], at paras. 50-53, our Court of Appeal summarized the principles applicable to applications under s. 89 seeking an interim distribution:
- a) the chambers judge must first determine if the applicant is economically disadvantaged in advancing the family law proceeding and if so, an order that "levels the playing field" may be appropriate because it attempts to achieve balance between the parties;
 - b) the chambers judge must then embark on a preliminary assessment of whether the applicant can demonstrate that it would not be harmful to distribute property and whether it is necessary to do so for a purpose stated in s. 89;
 - c) in recognizing the extraordinary nature of the order, the chambers judge must carefully consider the amount of the interim distribution to ensure that it does not exceed what is necessary under s. 89; and
 - d) the chambers judge must always consider whether it is in the interests of justice to make the order.
- [16] The court must examine each issue raised by the applicant regarding necessity and potential harm, contextually, and with a view to upholding the statutory objectives: *Etemadi* at para. 51.
- [42] To rephrase, there are four key principles to consider. First, whether the applicant, in pursuing the litigation or dispute resolution, is economically disadvantaged such that an order would "level the playing field" or otherwise balance participation in the proceeding: *Etemadi* at para. 50. This principle emphasized the need to consider "equality between the parties" and "should seek to achieve balance between the spouses (as opposed to parties by counterclaim), as they are the parties contemplated 'within the parameters of s. 89'": *Etemadi* at para. 50.
- [43] Second, the judge must consider, on a preliminary basis, whether: (a) the applicant can show that it would not be harmful to distribute the property on an interim basis; and (b) whether it is necessary for a listed purpose in s. 89: *Etemadi* at para. 51. This preliminary assessment requires the applicant to "establish a 'prima facie case of sufficient merit to warrant pursuit'": *Etemadi* at para. 51. Necessity can be established where the applicant demonstrates "that an advance is required to mount a challenge to the other spouse's position at trial that will not jeopardize the other spouse's position at trial": *R.D. v. R.S.D.*, 2023 BCSC 6 at para. 94.

- [44] Third, in considering the necessity of an interim distribution for an enumerated purpose, the judge should carefully consider the amount required, given the extraordinary nature of s. 89 orders: Etemadi at paras. 45, 52.
- [45] Fourth, the "judge must always exercise their discretion by deciding whether, in the particular circumstances of the case, it is in the interests of justice to grant the order sought": Etemadi at para. 53. This will include any potential harm to the interests of a non-spouse: Etemadi at para. 60; R.D. at para. 16.
- [46] Case law has repeatedly emphasized that "a purposive interpretation of s. 89 is required within the context of the objectives endorsed by the FLA": Etemadi at para. 44. In I.F. at para. 192, cited in Etemadi at para. 44, Justice Ballance explained the purpose of s. 89 as follows:
- [192] The blunt purpose of s. 89 is to assist economically disadvantaged spouses to access justice in matrimonial disputes; it is meant to help level the litigation playing field that is so often skewed when one spouse controls all or the majority of the wealth and assets.
- [47] In *Lit v. Lit*, 2019 BCCA 158 at para. 39 (Chambers), Justice Fisher cited the above paragraph from I.F. and noted that "[i]t is true that s. 89 requires the court to consider whether an interim distribution would be harmful to the interests of a spouse, not a third party". Although, as noted above, while the court is to balance the interests of spouses as those contemplated by s. 89, the interests of a non-spouse may be considered under the fourth Etemadi principle, the interests of justice: R.D. at para. 16.

Availability of a Section 89 Order

- [48] Both Ms. Dadwal and the Trustee apply for an order under s. 89 for an interim distribution of family property to fund the litigation. As set out in s. 88 of the FLA:

88 A spouse may make an application to the Supreme Court under this Division at any time before a final agreement or final order is made in relation to a family law dispute respecting property division.

[Emphasis added.]

- [49] "Spouse" is defined in s. 1 of the FLA as "a person who is a spouse within the meaning of section 3". In turn, s. 3(1) defines a spouse as a person who:

- (a) is married to another person, or
- (b) has lived with another person in a marriage-like relationship, and
- (i) has done so for a continuous period of at least 2 years, or
- (ii) except in Parts 5 [Property Division] and 6 [Pension Division], has a child with the other person.

- [50] Section 3(2) explicitly includes "a former spouse" as a "spouse" under the FLA.
- [51] Ms. Dadwal and Ravinder were married and are accordingly "spouses" under the FLA. Ms. Dadwal is therefore clearly permitted to bring an application under s. 89.
- [52] However, I must also address whether the Trustee is permitted to bring its application in his place as a "spouse".
- [53] Ravinder is currently subject to a bankruptcy order. Accordingly, pursuant to s. 71 of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3 [BIA], he has ceased to have the capacity to deal with his property, and the property and its associated rights have passed to and vested in his trustee in bankruptcy. Section 71, in full, is as follows:

71 On a bankruptcy order being made or an assignment being filed with an official receiver, a bankrupt ceases to have any capacity to dispose of or otherwise deal with their property, which shall, subject to this Act and to the rights of secured creditors, immediately pass to and vest in the trustee named in the bankruptcy order or assignment, and in any case of change of trustee the property shall pass from trustee to trustee without any assignment or transfer.

- [54] As is the phrase often used with respect to the relationship between a trustee and bankrupt, upon bankruptcy, "the trustee steps into the bankrupt's shoes": Young (Re), 2022 BCCA 434 at para. 34; Telecom Leasing Canada (TLC) Ltd. v. Giffen (Trustee) (1996), 16 B.C.L.R. (3d) 29 at 42, 1996 CanLII 1429 (C.A.).
- [55] So, while it may seem strange to consider the trustee in bankruptcy to be the "former spouse" of Ms. Dadwal, the Trustee sits within Ravinder's shoes in advancing claims to property in the proceeding. As a result, Boale Wood & Company Ltd. can apply for an interim distribution under s. 89.
- [56] This is supported by the decision of this Court in Kirschner v. Moore, 2022 BCSC 1226. In Kirschner, the claimant was an undischarged bankrupt at the time she commenced the family proceeding in issue. The respondent applied for an order dismissing her claim on the basis that the claimant's property claims had vested in the trustee in bankruptcy such that the claimant could not bring the claim. While the Court declined to find the claim to be a nullity, it agreed that, "[b]ecause the claimant remains an undischarged bankrupt, the trustee is the only party entitled to advance the property claims identified in the notice of family claim": at para. 48. The Court then gave the trustee 60 days to decide whether it intended to apply to be made a party in the proceeding. If the trustee did not do so, the claimant's property claims in her notice of family claim were to be dismissed.
- [57] Ultimately, just as a trustee in bankruptcy sits in the shoes of the bankrupt in being permitted to pursue a division of property as a "spouse" under s. 94, a trustee in bankruptcy is likewise permitted to apply for an interim distribution of property as a "spouse" under ss. 88 and 89.

Reopening Application on Account of New and Fresh Evidence

- [58] Ravinder, supported by Harmesh, seeks to reopen this application on account of new and fresh evidence. New evidence involves matters that occurred subsequent to the hearing, whereas fresh evidence is that which existed at the time of the hearing, but for some reason could not be put before the court at that point: *Jens v. Jens*, 2008 BCCA 392 at para. 27; *Sandhu v. British Columbia (Provincial Court)*, 2013 BCCA 88 at para. 17.
- [59] The court has a broad discretion to re-consider or re-open a case at any stage before a final order is entered to prevent fundamental miscarriages of justice: *Cox v. Swartz Estate*, 2022 BCSC 1494. The discretion, though, is not "unfettered": *Hansra v. Hansra*, 2017 BCCA 199 at para. 44. As Justice Riley described in *Rawlins v. Rawlins*, 2023 BCSC 2225 at para. 20, the judge has "a wide discretion in the sense that it can be exercised in a variety of circumstances, but it must be exercised sparingly and judicially in accordance with recognized principles".
- [60] The standard to re-open is more relaxed where both the final order is yet to be entered and the judgment itself is not yet pronounced: *O'Shea/Oceanmount Community Association v. Town of Gibsons*, 2020 BCSC 698 at para. 30; *Roop v. Hofmeyr*, 2015 BCSC 1739 at para. 7. In general, the more advanced a proceeding and the more evidence already presented, the higher the standard for the court to exercise its discretion in reopening: *Cox* at para. 52.
- [61] In family law cases, this Court has taken "a 'slightly more elastic approach' to the admissibility of fresh evidence, taking into account the interests of justice in not having a decision that is contrary to the known facts": *Jens* at para. 30.
- [62] Ultimately, the party seeking to re-open on account of either new or fresh evidence must demonstrate on a balance of probabilities that: (1) without reopening the trial, a miscarriage of justice would probably occur; and (2) the evidence would probably have changed the result of the proceeding: *Cox* at para. 51, citing *Grewal v. Grewal*, 2016 BCCA 237 at para. 71. Generally, a proceeding should not be re-opened if the applicant's purpose is merely to re-argue or re-cast its case: *Grewal* at para. 71.
- [63] A "miscarriage of justice" is "something far beyond the possibility that a different result might have been reached", and is "a result that would leave one party with such an unfair benefit or advantage at the expense of the other that a reasonable person would regard it as shocking and unconscionable": *Aquiline Resources Inc. et al. v. Wilson et al.*, 2005 BCSC 1461 at para. 12. Further, in considering the likelihood of a miscarriage of justice, it is important to consider whether the evidence could have been presented at the hearing if the party had been duly diligent: *AME Distribution Inc. v. Wang*, 2019 BCSC 95 at para. 12. Further, miscarriages of justice do not result from a party's mere perceived unfairness after failing to adduce evidence: *Cox* at para. 55.

- [64] Where the basis of an application to re-open is fresh or new evidence, in considering whether that evidence would likely change the result of the proceeding, the evidence's credibility is relevant: *AME Distribution Inc.* at para. 11.
- [65] In *Moradkhan v. Mofidi*, 2013 BCCA 132 at para. 31, Justice Garson set out the following summary of principles regarding re-opening, before noting that "the overarching consideration is whether it is in the interests of justice that the court reopen the case":
- it is generally speaking in the interests of justice to consider that a trial is complete when each side has closed their case and the judge has delivered his or her judgment;
 - a judge's unfettered discretion to reopen a trial should be exercised with restraint;
 - a party may not use the rule to re-argue, re-cast, or re-state his or her case, rather the rule is available to remedy what might otherwise be a substantial injustice;
 - it is not intended that a party should be able to lead substantial new evidence, nor does the rule generally permit the leading of new expert evidence;
 - the reasons that the evidence was not led or submissions not made in the first place may be relevant to the exercise of the judge's discretion, particularly where the failure to do so in the first place was a considered or pragmatic decision; and
 - the discretion should only be exercised if the reception of the new evidence would probably change the result of the trial.
- [66] In applying the test, it is necessary to consider, first, whether the fresh or new evidence would be admissible. In other words, a miscarriage of justice cannot be said to have occurred as a result of not considering fresh or new evidence, if that fresh or new evidence was inadmissible.
- [67] In *Mann v. Jagpal*, 2020 BCSC 1919, Justice Giaschi concisely articulated the difference between fresh and new evidence, and the correspondingly different tests for admission, as follows:
- [24] Fresh evidence, is evidence that existed at the time of the trial or hearing. Fresh evidence is only admissible if it is established: (1) the evidence was not discoverable by reasonable diligence at the time of the original trial or hearing; (2) the evidence is relevant; (3) the fresh evidence is credible; and (4) if believed, the evidence could have affected the final result or, in family cases, it is in the interest of justice to admit it: *Jens v. Jens*, 2008 BCCA 392, paras. 28 and 30; *Kane v. Proffitt*, 2018 BCCA 106, para. 49.
- [25] New evidence is evidence that only came into existence after the trial or hearing. The test for the admission of new evidence is more stringent. New evidence is only admissible if it disproves an assumption that was made by the trial or hearing judge as to a future event: *Jens*, para. 29; *Kane*, para. 50.

Discussion

[68] I will first address the two applications for the admission of new or fresh evidence. I will then address the main application under s. 89 of the FLA.

Fresh and New Evidence

- [69] Ravinder seeks to admit fresh and new evidence in the form of two affidavits: one from him and the second from Harmesh. Although a party to the family proceedings and having participated in the initial hearing, it is notable that Harmesh herself has not brought an application to adduce new or fresh evidence.
- [70] Ravinder wishes to introduce fresh evidence of consisting of bank statements and cheques, which he says he found in his garage after the initial hearing. He says these bank statements document how he used the money that was transferred to him by Ms. Dadwal from her line of credit. Ravinder says that these bank statements establish that the funds that Ms. Dadwal purports to have paid for mortgage payments and renovations to the basement suite of the 5369 Property were paid back by Ravinder 10 days later.
- [71] Ravinder also asks that an affidavit by Harmesh be admitted as fresh evidence. Harmesh's affidavit contains documentary evidence relating to the funds she borrowed from family and friends during the construction of the house on the 4549 Property. I note that Harmesh also included similar evidence during the initial hearing.
- [72] As well, Ravinder seeks to tender new evidence consisting of information he learned from a private investigator he hired after the initial hearing to look into Ms. Dadwal's financial affairs.
- [73] I will first address the fresh evidence Ravinder seeks to tender. There is no suggestion that this evidence was not available or discoverable before the initial hearing. In fact, it seems clear that it was readily available. Thus, the first part of the test for the admission of fresh evidence is not met.
- [74] In regards to the documentary evidence attached to Harmesh's affidavit, again, this evidence was readily available at the initial hearing. No reason was provided concerning why this evidence which was available at the time of the initial hearing was not put forward. In my view, Harmesh wishes to repair the deficiencies that I brought to her counsel's attention during the initial hearing. That is not the proper basis for the admission of fresh evidence.
- [75] As I had not rendered my judgment at the time of this application, I acknowledge there is a more relaxed standard. However, even in these situations, there is ample authority to suggest that due diligence cannot be ignored. Ravinder has not provided any evidence that due diligence was exercised in relation to both the banking statements and the documentary evidence put forward by Harmesh. No explanation has been tendered as to why the appropriate steps were not taken to put this evidence before me in the initial hearing.

- [76] Moreover, I am mindful that the need for certainty and finality generally leaves no room for the admission of fresh evidence on appeal: *Scott v. Scott*, 2006 BCCA 504 at para. 21. While I have the discretion to permit fresh evidence even if that evidence was available at the time of the initial hearing, the ultimate question is whether it is in the interests of justice to do so: *L.J.B. v. R.W.B.*, 2002 BCSC 1552 at para. 17. In all of the circumstances, I am not convinced I should permit fresh evidence in this case.
- [77] Finally, even if the fresh evidence was admitted, it would not change the result. Consequently, admitting this evidence would not be in the interests of justice: *4HD Construction Ltd. v. Dawson Wallace Construction Ltd.*, 2020 BCSC 1224 at para. 73.
- [78] Ravinder also seeks to tender evidence he obtained after the initial hearing and after the Trustee's application to adjourn the trial that was scheduled to commence in September 2023. As noted, this evidence relates to Ravinder's hiring of a private investigator to look into Ms. Dadwal's claims of financial difficulties and relates to her difficulties in obtaining childcare for her children.
- [79] Ravinder wishes to tender evidence that Ms. Dadwal's parents and her common law spouse jointly own a home in Surrey. He asserts that because Ms. Dadwal was observed staying at this home overnight, she must be the beneficial owner of the home and the equity in this home could be used to fund her litigation. As well, Ravinder learned from the investigator that Ms. Dadwal drives a luxury SUV and that she did not disclose this vehicle in her consumer proposal.
- [80] In my view, all of this information could have been obtained prior to the initial hearing. Ravinder does not explain why he did not pursue the services of the private investigator prior to the initial hearing. Parties must put their best case forward and Ravinder chose not to do so.
- [81] Moreover, I agree with Ms. Dadwal that the findings of the private investigator are irrelevant to the application for interim distribution and are temporal and do not fully and accurately disclose the financial situation of any individual.
- [82] I am not satisfied that this new evidence would change the result. Finally, there is no evidence that Ravinder exercised due diligence. Accordingly, the new evidence Ravinder seeks to tender will not be admitted on the application for interim distribution.

Interim Distribution under s. 89 of the FLA

Should the Court grant an interim distribution to Ms. Dadwal?

- [83] I will begin with my assessment of whether an interim distribution of family property ought to be made for Ms. Dadwal. I will then move onto my assessment of whether an interim distribution ought to be made for the Trustee.

Is Ms. Dadwal economically disadvantaged?

- [84] Ms. Dadwal submits that she is economically disadvantaged. She says that without the interim distribution she will not be able to continue to fund prosecuting the Family Action or the Fraud Action, which are now being heard together.
- [85] Ms. Dadwal is a registered nurse. She has worked full time at Surrey Memorial Hospital and private clinics. Her income in 2020 was \$116,112.98 and \$51,901.36 in 2021. She attributes her higher income in 2020 to not having children at the time and being able to increase her work due to the Covid-19 pandemic.
- [86] Since January 2023, she has been on maternity leave with her second child (with her current common law partner), and does not expect to return to work until June 2024. She receives employment insurance of \$650 every two weeks.
- [87] Ms. Dadwal asserts that she may be required to extend her maternity leave if she cannot obtain full-time childcare. She says that if she is unable to do so, she will need to work as a casual staff which means she works when shifts are offered to her. Ms. Dadwal does not provide any evidence of her seniority level.
- [88] Ms. Dadwal says that due to the loans and debts she incurred on Ravinder's instructions while they were married, she has been unable to qualify for loans or credit cards due to her poor credit rating. In March 2022, Ms. Dadwal began a consumer proposal related to the debts she says incurred at Ravinder's instructions. She currently pays \$500 per month to her creditors.
- [89] In regards to other sources, Ms. Dadwal deposes that she is unable to borrow the money from her parents or her common law spouse. She says that her parents have previously assisted her by providing \$96,000 from the sale proceeds of their home to pay her outstanding balance owed for legal fees. She says they do not have the ability to assist her any further.
- [90] Ravinder and Harmesh say that Ms. Dadwal has failed to provide details of why her common law spouse could not help. While it would have been helpful to know whether her common law spouse is unable or unwilling to assist, I do not think that her common law spouse should be required to fund the entirety of Ms. Dadwal's litigation. I will address this further in my analysis on whether the amount Ms. Dadwal seeks is appropriate.
- [91] As well, based on the evidence before me, it is apparent that Ms. Dadwal does not have assets that she could sell or use as collateral in order to fund the litigation.
- [92] At this stage of the analysis, I have not considered Harmesh's ability to fund the litigation because s. 89 requires me to consider the situation of the spouses and not third parties: Lit at para. 39.

[93] Based on my assessment of the parties' financial situation, I am satisfied that there is sufficient evidence of the need to level the playing field. Accordingly, I have no difficulty in finding that Ms. Dadwal is economically disadvantaged in relation to the prosecution of the litigation.

Has Ms. Dadwal demonstrated that it would not be harmful to distribute property?

[94] Ravinder and Harmesh raise two concerns at this stage of the analysis. First, they argue that Ms. Dadwal would not be able to pay back an advance if she is unsuccessful in her claim for a division of family property. Second, there is the issue of entitlement. Ravinder and Harmesh argue that at least two of the three properties are not family property.

[95] In considering this first concern, I find the comments in *MacFarlane v. Ponds*, 2019 BCSC 544, instructive. Master Elwood (as he then was) stated the following:

[17] A further factor that must be considered is whether the applicant will be able to repay the amount distributed in the event the family law claim is dismissed. This is not to say the court should be satisfied the applicant can repay the advance immediately. Requiring an ability to repay the advance immediately would effectively put s. 89 beyond the reach of most spouses in need of its assistance. An interim distribution will only result in the kind of "enduring" harm that s. 89 guards against if the applicant cannot repay the advance even over a reasonable period of time: *I.F.*, at para. 196-197.

[96] While Ms. Dadwal is not currently able to work full time, she certainly has the ability to work full time at some point once she is able to secure full-time childcare for her two children. Based on her past income, she has the capacity to earn an income in excess of \$100,000. If Ms. Dadwal does not succeed at trial, she will likely be in a position to repay the advance over time, although it may take a long time.

[97] The second concern is more challenging. Courts have concluded that "[a] reasonable way to 'attenuate that manifestation of harm' is to require the applicant to show there is a reasonable prospect of success on the threshold issue of entitlement": *MacFarlane* at para. 16, citing *I.F.* at para. 194.

[98] As I have noted earlier, there are three properties in question. There is much dispute in relation to the contributions by Ms. Dadwal as it relates to the 5369 Property and the 4945 Property.

[99] It must be remembered that Ms. Dadwal does not need to prove with certainty that her claim to an interest in the disputed assets is bound to succeed. She only needs to establish that she has a reasonable prospect of proving that the disputed assets, or some portion thereof, are family property to which she is entitled to a share under the FLA.

[100] At this stage I am required to only conduct a preliminary merits assessment. However, this does not require me to accept or reject evidence or make specific findings of fact: *Jadavji v. Khadjieva*, 2022 BCCA 116 at para. 28, citing *Etemadi* at para. 51.

- [101] While Ravinder does not dispute that Ms. Dadwal wrote a number of cheques, he says they were not related to the construction costs for the 4945 Property. Ms. Dadwal has provided some evidence of her making payments for certain construction costs, including the building blocks. She has also provided some evidence that the property was hers and Ravinder's and not Harmesh's.
- [102] I must also consider the position taken by Harmesh in regards to the 4945 Property wherein she asserts that she, and she alone, paid for the property and the construction of the house on the property.
- [103] Ms. Dadwal points to the implausibility of Harmesh's assertions. At the preliminary assessment stage, I am inclined to agree. Firstly, Harmesh deposes that she is a retired housewife having only worked for some five years. As well, in her financial statement in the family proceedings, Harmesh lists her income as \$17,317 and her annual expenses at \$211,367. In my view, there are questions as to why a retired housewife would purchase a lot and spend a number of years to build a "spec" house as an invest for resale. Evidence will be needed to assess Ravinder's explanations for why many construction invoices were addressed to him.
- [104] I will also note that Harmesh's assertion that she owes friends and family members almost \$200,000 for loans she took to pay for the construction costs is questionable, and may be scrutinized by the trial judge.
- [105] However, I am not required nor would it be appropriate for me to engage in a comprehensive analysis of the conflicting evidence or the strength of Ms. Dadwal's claim. That will be for the trial judge to decide on the evidence available at trial.
- [106] I will also briefly comment on the Saskatchewan Properties. Although the properties were acquired before the parties married, Ms. Dadwal says she contributed to some of it. Harmesh and Ravinder assert that Harmesh holds a substantial mortgage that is more than the value of the properties. However, that goes against the conflicting evidence that neither Ravinder nor Harmesh listed this mortgage on their financial statements and it was only disclosed when Ravinder declared bankruptcy.
- [107] Ultimately, in the circumstances, I am satisfied that Ms. Dadwal has a reasonable prospect of proving that at least some of the disputed assets are family property.

Is the interim distribution necessary for a purpose listed in s. 89?

- [108] At this stage, I must consider the legal expenses that Ms. Dadwal has incurred and expects to incur to proceed to the end of the trial.
- [109] Ms. Dadwal says she has an outstanding legal bill of \$78,000 in unbilled time and disbursements.

- [110] Prior to this outstanding balance, she had already incurred \$98,000 in legal bills. She says her parents paid approximately \$96,000 of that bill.
- [111] Ms. Dadwal has provided a detailed budget of her anticipated legal expenses for the upcoming trial. She has provided a budget for both pre-trial steps as well as preparation and conduct of the trial.
- [112] In terms of what she expects to incur for pre-trial steps, she says that examinations for discoveries will be required for herself and others. Her counsel has estimated a cost of \$9,100. She also says there are outstanding disclosure applications as a result of Harmesh and Ravinder not responding to document disclosure requests from 2021. She anticipates that this cost may be in the range of \$10,000. As well, her counsel has advised her that there will be costs of \$6,000 for disbursements and attendance at the trial management conference.
- [113] As for the costs of preparing for and attending the trial, Ms. Dadwal says that the costs of two counsel representing her will be \$50,000 for preparation of the trial and \$125,000 for the trial itself.
- [114] In total, Ms. Dadwal says she expects to incur \$300,000 inclusive of taxes.
- [115] I have already set out Ms. Dadwal's financial situation above, which I accept. I also accept that she has taken reasonable steps to do what she can to pay her legal expenses, including asking for her parents' assistance and borrowing options.
- [116] This is not a straightforward family law case. There are three actions being heard together, one involving allegations of fraud. To make the matter even more complicated, there are four parties involved including the Trustee, who has distinct interests.
- [117] I am satisfied that Ms. Dadwal has established that an advance is necessary to prosecute this litigation.

Is the amount sought appropriate?

- [118] As I have noted above, Ms. Dadwal seeks an interim distribution of \$300,000, which includes the \$78,000 that she has incurred prior to this application. In addition to the equity in the 5369 Property and the Saskatchewan Properties, \$800,000 is held in trust from the sale proceeds of the 4945 Property.
- [119] While Ms. Dadwal has provided a detailed budget of the anticipated litigation expenses, I am not satisfied that the estimates for pre-trial preparation and attendance of trial require two counsel. As well, while I have noted that Ms. Dadwal's common law partner should not be expected to pay the entirety of her legal bills, she has not provided any evidence that he cannot assist her at all.

[120] Accordingly, while I am not prepared to make an interim distribution for the amount sought, I am satisfied that a reduced amount is appropriate. Accordingly, I will approve an interim distribution of \$150,000 in order for Ms. Dadwal to fund the prosecution of her case.

Is the interim distribution in the interests of justice?

[121] Harmesh submits that it would not be in the interests of justice to grant an interim distribution to Ms. Dadwal or the Trustee.

[122] As I have noted above, Harmesh says that she alone purchased the 4945 Property and she alone funded the construction of the house on this property through financing by way of mortgages and personal loans from friends and family. She does not deny, though, that Ravinder guaranteed the mortgages. She further states that neither Ravinder nor Ms. Dadwal had any interest in the property or the house that was constructed on this property. She also says that Ms. Dadwal did not contribute to the property or the house.

[123] Harmesh argues that she would be disadvantaged if the funds are distributed to either of Ms. Dadwal or the Trustee. She points to the construction debt that she has not been able to pay back. This amount is in excess of \$1 million which includes debts owing to family and friends.

[124] While I do not need to make a final determination on the veracity of the various debts she purports to owe, on a preliminary assessment, I find that the evidence regarding some of the debts owed to family and friends is somewhat suspect.

[125] As well, I agree with the Trustee that there appears to be some aspects of her evidence that brings into question her interest and ownership of the 4945 Property. For example, despite Harmesh's limited income, the purchase of the property and construction costs were fully financed, with mortgages under which both Ravinder and Harmesh were obligated to pay the debt. Harmesh does not explain how she was able to qualify for the mortgages. Navtej is not on title nor is there evidence that he contributed in any way.

[126] On the other hand, Ravinder's past income tax returns reveal incomes of \$108,238 and \$140,685.

[127] As well, there is no explanation from Harmesh as to why, as a retired housewife, she would buy a lot and spend four years to build a "spec house" as an investment for resale. There is also a lack of evidence on how Harmesh has been able to pay the monthly installments, including the initial mortgage to purchase the property (\$3,173.20); mortgage for the 5369 Property (\$5,769.91) and the construction mortgage (\$4,725.00).

[128] In my view, taking into consideration all of the evidence, I am unable to agree with Harmesh that it would not be in the interests of justice to make an interim distribution to Ms. Dadwal.

- [129] It is readily apparent that this litigation will be difficult, hard fought and expensive. There are significant factual questions surrounding ownership and interest in the 4549 Property and whether or not Ms. Dadwal made contributions to paying the mortgage and household expenses for the 5369 Property. These issues can only be determined at a full trial. I also note that documents sought by Ms. Dadwal have not been produced to date despite repeated requests by Ms. Dadwal's counsel.
- [130] It must be remembered that one of the objectives endorsed by the FLA is the levelling of the playing field in terms of financial circumstances. It is clear that Ravinder and Harmesh are working together in opposition to Ms. Dadwal. In my view, \$150,000 is a reasonable and appropriate interim measure to at least partially level the litigation playing field.
- [131] In approving this amount, I have considered that a "substantial distribution" may jeopardize Harmesh's position. Given the value of the 5369 Property as against the amount purportedly contributed by Ms. Dadwal towards this property and the substantial amount held in trust, I am of the view, that an interim distribution in the amount of \$150,000, even if it comes out of property ultimately found to be owned beneficially by Harmesh, is not so substantial as to jeopardize her position. This is so even if Ms. Dadwal is ultimately unable to repay the distribution.

Should the Court grant an interim distribution to the Trustee?

- [132] The Trustee stands in the shoes of the bankrupt, Ravinder. The Trustee takes the position that, given that the Crerar Order granted the Trustee's lien, this application for an interim distribution is simply for an advance payment under the existing lien.
- [133] As I have noted, Ravinder and Harmesh opposed the Trustee's application for interim distribution of funds. However, the Trustee argues that neither Harmesh nor Ravinder objected at the hearing before Justice Crerar, nor did Harmesh provide the financial information in regards to the 4945 Property that Harmesh has provided on this hearing. The Trustee says that if there was an objection (including the interim distribution), it should have happened at the hearing before Justice Crerar.
- [134] Ms. Dadwal was in attendance and did not oppose the application. So effectively the granting of the Trustee's lien was unopposed.
- [135] I note at the hearing before Justice Crerar, the Trustee acknowledged that he was not certain the Trustee could bring an application under s.89 of the FLA.

Is the Trustee economically disadvantaged?

- [136] As I have noted above, the Trustee stands in the shoes of the bankrupt. However, no evidence was provided on whether the Trustee is economically disadvantaged.

Would an interim distribution be harmful to the interests of a spouse?

[137] Ms. Dadwal has not said that that it would be harmful to her for the court to distribute property. In fact, it appeared that Ms. Dadwal supported the Trustee's application. On this factor, I am only to consider whether it would be harmful to a spouse. Whether or not it would be harmful to Harmesh is not a consideration as she is not a "spouse" under s. 89 of the FLA.

Is the interim distribution necessary for a purpose listed in s. 89?

[138] Ravinder, who opposes the Trustee's application, argues that an interim distribution is not necessary. Harmesh appears to take the same position. Ravinder says that the Trustee has other assets at its disposal to liquidate and fund the litigation. Ravinder points to the Saskatchewan Properties as one option that the Trustee has not sought to liquidate.

[139] I appreciate that liquidating the Saskatchewan Properties would not be particularly easy, especially since Harmesh has a mortgage on the properties. The Trustee says that the value of the Saskatchewan Properties is less than the mortgage. However, I am inclined to agree with Ravinder on whether an interim distribution is necessary. The Trustee's evidence fails to disclose the value of the Saskatchewan Properties as well as what steps have been taken to liquidate these properties. Unlike any assets available to Ms. Dadwal, this property is readily available to the Trustee to liquidate.

[140] As well, there is no evidence of surplus income from Ravinder that could be made available for the Trustee to utilize for litigation purposes. Ravinder deposed that he works as a business relationship manager with a private lender and has plans to eventually work as a licenced mortgage broker. There are no children of the marriage and there is no evidence of Ravinder's expenses. I note that Ravinder has the ability to earn in excess of \$100,000 per year, as was evidenced in his 2016 and 2017 taxation years.

[141] Finally, even if the liquidation of the Saskatchewan Properties was not possible or no funds were available, and even if Ravinder did not have surplus income, I am unable to find that an interim distribution to the Trustee is necessary. This is because the Crerar Order allows for the Trustee's charge to be a priority charge on the properties that are the subject of the Crerar Order, including the \$800,000, ahead of all other interests and creditors.

[142] To reiterate, para. 4(a) of the Crerar Order states:

the trustee and its legal counsel are granted a charge (the "Trustee's Charge") on all assets, funds and property which is in dispute in the Civil Actions and in particular on the Trust Funds at held by Joshi Lawyers Law Corporation which remain from the sale of the Proposed Residence located at 4945 Marine Drive Burnaby B.C. as security for the payment of their fees and disbursements, in each case at their standard rates, in respect of these proceedings, whether incurred before or after the making of this order. The Trustee's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise;

[Emphasis added.]

[143] The Crerar Order provides for the Trustee's legal fees for all three cases to be paid in priority. It must be remembered that s. 89 of the FLA is restricted to funding litigation for family proceedings only, not civil and bankruptcy proceedings. The Fraud Action, Family Action along with the bankruptcy proceedings are all scheduled to be heard together.

[144] In *K.S.P. v. J.T.P.*, 2022 BCSC 1017, Justice MacNaughton dealt with a similar s. 89 application, in which the applicant sought a distribution of \$35,000 to fund the applicant's legal fees in an appeal of a civil award of damages and/or costs payable by the applicant respondent to the claimant.

[145] Justice MacNaughton, at para. 7, declined to make such an order on the basis that she "did not have jurisdiction under s. 89 of the FLA to award an interim property distribution for the purposes of funding the appeal of the civil case, a separate proceeding, based on tort". In my view, by way of analogy the same can be said in the matter before me. It was the Trustee who sought to have all three cases heard at the same time.

Is the amount sought appropriate?

[146] The Trustee says that it has unpaid fees and disbursements estimated at \$75,000.

[147] The Trustee has provided a budget of the anticipated litigation expenses. While it is not as detailed as Ms. Dadwal's, it nonetheless sets out in a general way the various expenses the Trustee expects to incur in the litigation.

Is the interim distribution in the interests of justice?

[148] In my view, it is not in the interests of justice to order the interim distribution, in part, based on my comments regarding necessity and given the fact that the Trustee has priority for its legal fees and disbursements under the Crerar Order. It must be remembered that an interim property distribution under s. 89 of the FLA is an extraordinary order that is meant to level the playing field between spouses.

[149] Ultimately, in exercising my discretion, I decline to make an interim distribution of family property to the Trustee.

Disposition

[150] Ms. Dadwal will receive an interim distribution from the funds held in the trust account of Mr. Joshi's law firm pursuant to s. 89 of the FLA, in the amount of \$150,000. The funds are to be paid to Ms. Dadwal's counsel "in trust" to be used solely for the purposes set out in s. 89. This interim distribution is to be taken into account in the division of family property and family debt at trial.

Costs

[151] Ms. Dadwal is entitled to her costs of this application from Ravinder and Harmesh.

[152] Given the unique circumstances of the Trustee standing in the shoes of the bankrupt and the existence of the Crerar Order, I will leave it to the parties to determine costs with respect to the Trustee's application. If the parties cannot agree, they have leave to make written submissions within two weeks of the date of my reasons for judgment. Any such submissions must be limited to five pages.

"Girn J."

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