
CANADA / JUDGMENT

Dheenshaw v. Gill

2017 BCSC 319

COURT

Supreme Court of British Columbia

DECIDED

27 February 2017

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2017 BCSC 319 Dheenshaw v. Gill

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Dheenshaw v. Gill,

2017 BCSC 319

Date: 20170227

Docket: E150182

Registry: Vancouver

Between:

Kuldip Kaur Dheenshaw

Claimant

And

Sukhraj Singh Gill

Respondent

Before: The Honourable Mr. Justice Pearlman

Reasons for Judgment

The Claimant:

Appeared on her own behalf

The Respondent:

Appeared on his own behalf

Place and Date of Trial:

Vancouver, B.C.

June 27-30 and

July 25-29, 2016

Place and Date of Judgment:

Vancouver, B.C.

February 27, 2017

INTRODUCTION

- [1] The claimant, Kuldip Kaur Dheenshaw, and the respondent Sukharj Singh Gill, were married on October 9, 1999, separated on January 11, 2014, and were divorced on March 31, 2016.
- [2] The outstanding issues in this family law proceeding are the determination and division of family property and debt, and the respondent's counterclaim for non-compensatory spousal support.
- [3] Approximately two years before the trial of this action, on July 30, 2014, the claimant and the respondent sold their principal asset, the former matrimonial home located on 78th Avenue in Surrey, British Columbia (the "78th Avenue property"), for \$711,000. After payment of \$463,544 to discharge their mortgage, and payment of other adjustments on closing, the claimant and the respondent each received equal payments of \$113,272 from the net proceeds of sale.
- [4] During the marriage, the parties also purchased, as joint tenants, a one bedroom condominium located at 308 - 11803 22nd Avenue SW, in Edmonton, Alberta (the "Edmonton condominium"). In September 2016, the claimant and the respondent sold the Edmonton condominium. On October 17, 2016, this Court made an order for the interim distribution of the net proceeds of sale of the Edmonton condominium, which totalled \$146,227.25. The Court ordered payment from the net proceeds of the sums of \$10,000 to each of the claimant and the respondent, and that the remaining net proceeds of sale be held in trust by the parties' solicitor, Patrick A. Reid Professional Corporation, pending further order of this Court.
- [5] Ms. Dheenshaw seeks an order pursuant to s. 95(1) of the Family Law Act, S.B.C. 2011, c. 25 [FLA] for the unequal division, in her favour, of the remaining net proceeds of sale of the Edmonton condominium. She contends that throughout the marriage she bore a disproportionate share of the family expenses, and paid substantial personal debts of the respondent. Ms. Dheenshaw maintains that, in these circumstances, an equal division of the net proceeds of sale of the Edmonton condominium would be significantly unfair.

- [6] For his part, the respondent seeks an equal division of all family property. Mr. Gill argues that the claimant has undervalued his contributions to the payment of family expenses and says that he, rather than Ms. Dheenshaw, paid much of his student debt, tax debt and credit card expenses from his own resources. In these circumstances, the respondent submits that the remaining family property should be divided equally.

BACKGROUND FACTS

The Parties and their Circumstances

- [7] Although the claimant and the respondent each had the assistance of counsel earlier in these proceedings, they were self-represented at trial.
- [8] The claimant, who was 43 years old at the time of separation and 45 at the time of trial, is a public school teacher. Apart from a period of medical leave in 2010, the claimant was employed full-time as a teacher throughout the marriage. Her annual employment income at the time of trial was \$60,210.
- [9] The respondent was 44 years old at the time of separation and 46 at the time of trial. He holds a Bachelor of Education degree, and has taught extensively, in British Columbia and abroad, in both public and private schools.
- [10] Mr. Gill had a chequered history of employment throughout the marriage. During the parties' relationship of just over 14 years, the respondent held some 20 positions. In addition to teaching, Mr. Gill worked at various times as a marketing and management consultant, a parking by-law officer and a data entry processor. He also practised briefly as a realtor, but was not successful in that profession.
- [11] When the parties married in 1999, Mr. Gill was employed as an IT department head and English teacher by the Surrey School District. In 2001, he left that position to teach in private schools. During 2003 and 2004, Mr. Gill resided and taught at a school in the United Kingdom.
- [12] From August 2009 to July 1, 2010, the respondent taught at a high school in China, where he won an award as teacher of the year. From August 2010 to May 2011, Mr. Gill was Principal of a school in Valleyview, Alberta. From August 2011 through August 2012, he found employment as a Correctional Educator with Correction Services Canada in Edmonton, Alberta. He left that position at the end of his probationary period following a disagreement with his employer concerning the terms and conditions of his employment.
- [13] From August 2013 until October 15, 2015, Mr. Gill was employed in various teaching and managerial positions with First Nations in Saskatchewan, Northern British Columbia and Alberta. In most instances, his employment terminated at the end of his probationary period. Mr. Gill attributed his loss of these positions to corporate "politics" within the organizations that employed him.

- [14] During the marriage, Mr. Gill's income fluctuated with the duration and nature of his employment.
- [15] Over his 12 months' employment with Corrections Canada, the respondent earned approximately \$71,300.
- [16] For 2012, Mr. Gill's Line 150 income totalled \$64,598. That amount included employment income, earned largely through Corrections Canada, totalling \$50,085, unemployment insurance payments of \$3,880, rental income of \$4,442 and other income of \$6,192.
- [17] For the three most recent years for which the respondent's income tax returns were available at the time of trial, Mr. Gill's line 150 income was as follows:
- 2013 \$35,065
- 2014 \$13,909
- 2015 \$24,377
- [18] The respondent possesses considerable skills and experience as an English, math and business teacher and IT department head. However, throughout his career, he has struggled to maintain steady employment.
- [19] The respondent was unemployed from October 15, 2015 to the time of trial. Mr. Gill testified that he was seeking employment and applying for jobs in Canada and abroad.
- [20] The expense of maintaining two households during the periods the respondent worked outside British Columbia, Mr. Gill's intermittent unemployment, and the tendency of both parties to live beyond their means were all sources of conflict between the parties, which continued through the marriage, and at trial.
- [21] The expenses incurred by the parties when they attempted, unsuccessfully, to conceive a child by in vitro fertilization, became an additional source of conflict.

The Properties

- [22] On December 14, 2001, the claimant completed the purchase of the parties' first home, a townhouse located on Prince Charles Blvd in Surrey, British Columbia. The respondent's poor credit rating precluded him from obtaining mortgage financing. Accordingly, the claimant purchased the townhouse in her name only for the price of \$165,078.
- [23] The claimant's mother, Mrs. Gurmej Kaur Dheenshaw, provided funds for the \$10,000 down payment on the townhouse. The claimant financed the balance of the purchase price by a mortgage guaranteed by her father.
- [24] The claimant, her mother and the claimant's sister, Ms. Subjit Dheenshaw, each signed a note dated October 27, 2001, which provided as follows:

RE: \$10,000 Down Payment for Kip Dheenshaw

I, Gurmej Kaur Dheenshaw, gave my daughter Kip (Kuldip) Dheenshaw a gift of \$10,000 to help her with the down payment of a townhome on #201 9580 Prince Charles Blvd, in Surrey, BC that she wanted to purchase. Her dad, Harbhajan Dheenshaw, co-signed for her and a co-signer was required to buy the townhome and could not be purchased without one.

[25] On May 1, 2004, the claimant sold the Prince Charles Blvd townhouse for \$210,000.

[26] On May 31, 2004, the claimant completed the purchase of the parties' second home, a house on 145A Street, in Surrey, British Columbia for \$368,358.53.

[27] Again, the claimant's mother advanced \$10,000 for the down payment and an additional \$40,000 for the balance of the purchase price.

[28] The claimant's mother, the claimant and her sister each signed a document, dated April 26, 2004, regarding this advance:

RE: \$50,000 Down Payment for Kip Dheenshaw

I, Gurmej Kaur Dheenshaw, gave my daughter Kip (Kuldip) Dheenshaw another gift of \$50,000 to help her with the down payment of a house on 6739 145A Street, Surrey, BC that she wanted to purchase upon selling her townhome as she did not qualify for the new home under one income. I gave my daughter \$10,000 cash as the down payment to give to Sutton Realty and another \$40,000 in the form of a certified cheque made out to Kuldip Dheenshaw. The certified cheque was drafted on April 24, 2004.

I live in Victoria, BC and I am confined to a wheel chair since 1994 due to a tragic accident that left broke my spinal cord T12 bone and left my legs paralyzed. On April 26, my daughter, Subjit Dheenshaw, drove me to the Coast Capital Savings on 72nd Ave in Surrey to help Kip with the down payment she needed.

[29] The claimant financed the balance of the purchase price by mortgage.

[30] In August 2005, the parties sold 145A Street for \$426,000. The claimant and the respondent applied the proceeds of sale of 145A Street toward the purchase of the 78th Avenue property.

[31] On September 5, 2011, the claimant and the respondent entered into a contract with a developer, Heritage Landing GP Inc., to purchase the Edmonton condominium. Ms. Dheenshaw and Mr. Gill completed the purchase of the Edmonton condominium on December 11, 2013 for the total price of \$150,644.24. The claimant and the respondent each contributed \$3,500 for the deposit. They financed the balance of the purchase price, in the amount of \$147,888.65 by re-refinancing the mortgage charging the 78th Avenue property.

[32] While the claimant and the respondent held joint title to the Edmonton condominium, they each contributed, in roughly equal amounts, to the strata fees, costs of maintenance and property taxes and shared equally in the net revenues earned from the rental of the

property.

ISSUES

[33] This proceeding raises the following issues:

- (a) the determination and division of family property;
- (b) whether the \$10,000 payment made by the claimant's mother for the down payment on the Prince Charles Blvd townhouse was a gift, and is excluded property of the claimant traceable to the proceeds of sale of the Edmonton condominium;
- (c) whether the \$50,000 payment made by the claimant's mother to assist with the purchase of 145A Street was a gift or a loan, and if a loan, whether it was a loan to the claimant only, or to the claimant and respondent;
- (d) the determination and division of family debt;
- (e) whether the claimant has established that an equal division of the remaining net proceeds of sale of the Edmonton condominium would be significantly unfair to her;
- (f) is the respondent entitled to an order for spousal support and if so, for how long, and in what amount?

DISCUSSION AND ANALYSIS

Division of Family Property and Debt - Applicable Legal Principles

[34] Under s. 81(a) of the FLA, subject to an agreement or order that provides otherwise, spouses are both entitled to family property and responsible for family debt, regardless of their respective use or contribution. Section 81(b) provides that on separation, each spouse "has a right to an undivided half interest in all family property as a tenant in common, and is equally responsible for the family debt".

[35] Subject to s. 85, which deals with excluded property, under s. 84(1), family property includes all real and personal property owned by at least one spouse on the date of separation, or a beneficial interest of one spouse in property. The provisions of s. 84(2) relevant to this action are as follows:

- (2) Without limiting subsection (1), family property includes the following:
 - (e) a spouse's entitlement under an annuity, a pension plan, a retirement savings plan or an income plan;

[36] Under s. 85(1) of the FLA, the following is excluded from family property:

- (b.1) gifts to a spouse from a third party;

- (g) property derived from property or the disposition of property referred to in any of paragraphs (a) to (f).
- [37] The spouse claiming that property is excluded property bears the onus of demonstrating that the property is excluded property: s. 85(2). The test for establishing excluded property is proof on a balance of probabilities, based on clear and cogent evidence, rather than mathematical certainty: *Shih v. Shih*, 2017 BCCA 37 at paras. 40 - 44.
- [38] Family debt is addressed in s. 86:
- Family debt includes all financial obligations incurred by a spouse
- (a) during the period beginning when the relationship between the spouses begins and ending when the spouses separate, and
 - (b) after the date of separation, if incurred for the purpose of maintaining family property.
- [39] Under s. 87, unless an agreement or order provides otherwise and except in relation to the division of pensions under Part 6, the value of the family property must be based on its fair market value. Here, in the absence of an agreement, the value of the family property and family debt must be determined as of the date of hearing.
- [40] As the court noted in *Asselin v. Roy*, 2013 BCSC 1681 at para. 160, there is no requirement under the FLA to establish entitlement to an asset before it is characterized as "family property". Ordinary usage for a family purpose or contribution to the asset need not be shown. The court only has to determine that the property existed on the date of separation and at least one spouse either owned the property or had a beneficial interest in it.
- [41] Section 85 does not provide for the tracing of otherwise excluded property beyond the asset acquired with the excluded property. If there is insufficient equity in the property acquired with excluded funds to repay the original investment, the party seeking the exclusion cannot make up the shortfall from other family property: *Asselin* at para. 222.
- [42] Under s. 95(1)(a), the court may order an unequal division of family property or family debt if it would be significantly unfair to equally divide family property or family debt.
- [43] The factors the court may consider on an application for the unequal division of family property or debt are set out in ss. 95(2) and (3):
- (2) For the purposes of subsection (1), the Supreme Court may consider one or more of the following:
 - (a) the duration of the relationship between the spouses;
 - (b) the terms of any agreement between the spouses, other than an agreement described in section 93 (1) [setting aside agreements respecting property division];
 - (c) a spouse's contribution to the career or career potential of the other spouse;

- (d) whether family debt was incurred in the normal course of the relationship between the spouses;
 - (e) if the amount of family debt exceeds the value of family property, the ability of each spouse to pay a share of the family debt;
 - (f) whether a spouse, after the date of separation, caused a significant decrease or increase in the value of family property or family debt beyond market trends;
 - (g) the fact that a spouse, other than a spouse acting in good faith,
 - (i) substantially reduced the value of family property, or
 - (ii) disposed of, transferred or converted property that is or would have been family property, or exchanged property that is or would have been family property into another form, causing the other spouse's interest in the property or family property to be defeated or adversely affected;
 - (h) a tax liability that may be incurred by a spouse as a result of a transfer or sale of property or as a result of an order;
 - (i) any other factor, other than the consideration referred to in subsection (3), that may lead to significant unfairness.
- (3) The Supreme Court may consider also the extent to which the financial means and earning capacity of a spouse have been affected by the responsibilities and other circumstances of the relationship between the spouses if, on making a determination respecting spousal support, the objectives of spousal support under section 161 [objectives of spousal support] have not been met.
- [44] The test of significant unfairness constrains judicial discretion to depart from the general rule, under s. 81 of the FLA, that each spouse is presumptively entitled to an undivided half interest in all family property, regardless of their respective use or contribution. Significant unfairness must be compelling or meaningful having regard to the factors set out in s. 95(2). Reapportionment will require something objectively unjust, unreasonable or unfair in some important or substantial sense: *Jaszczewska v. Kostanski*, 2016 BCCA 286 at paras, 38, 41 and 42.
- [45] As the court explained in *Jaszczewska* at paras. 43 and 44:
- [43] The determination of whether an equal division would be significantly unfair is also guided by a more precise identification of relevant factors than was found in the FRA. Importantly, the Legislature did not include in s. 95(2) the principle of relative contribution found in s. 65(1)(f) of the FRA. Under s. 65(1)(f), a court could consider circumstances relating to the acquisition, preservation, maintenance, improvement or use of property. Section 95(2), by comparison, refers rather narrowly to career contributions (95(2)(c)) and to post-separation increases in value beyond market trends caused by one spouse (95(2)(f)). I agree with the judge's view that if relative contribution to the acquisition, preservation, maintenance or

improvement of family property during the relationship was intended to be a significant factor or one frequently relied on in justifying the conclusion that the equal division of family property is significantly unfair, the Legislature would have said so. Allowing relative contribution to become a regular consideration in the context of s. 95 would likely create uncertainty and complexity. This would be contrary to the legislative objectives discussed earlier that underlie the FLA division of property regime.

[44] Having said that, in enacting s. 95(2)(i) the Legislature recognized that there may be factors other than those listed that could ground significant unfairness. Hence, while the Legislature intended to limit and constrain the exercise of judicial discretion to depart from equal division, it did not provide a closed list of factors and it did not eliminate the discretion. Accordingly, in my view, one cannot read the FLA as abolishing unequal contribution as a factor that may be relevant to reapportionment, although the circumstances in which it may be considered and relied on are intended to be much constrained.

[46] Bearing these principles in mind, I turn now to the determination and division of family property.

Determination and Division of Family Property

The 78th Avenue Property

[47] As previously discussed, the parties sold the 78th Avenue property on July 30, 2014 for \$711,000. The claimant and the respondent each received an equal share of the net proceeds of sale in the amount of \$113,272.

Household Effects and Furnishings

[48] The claimant gave evidence that upon the sale of the former matrimonial home, the parties made an equal division of household effects and furnishings. When Mr. Gill left the 78th Avenue property, he took with him various household furnishings, including a dining room table and chairs, dishes and utensils and a bed.

[49] The respondent asserts that Ms. Dheenshaw retained a disproportionate share of household furnishings and seeks an order for payment of \$11,000 as compensation for household effects. The respondent led no evidence in support of that claim.

[50] Following the sale of the former matrimonial home, the claimant and the respondent each established new homes for themselves. I find that it is consistent with the probabilities of the situation as it existed at that time that the claimant and the respondent each selected and retained the household effects and furnishings they required to set up their new homes. The respondent has not established, on the balance of probabilities, that any further adjustment is required in order to effect an equal division of household effects and furnishings.

The Edmonton Condominium

- [51] The net proceeds of sale of the Edmonton condominium totalled \$146,227.25. From that sum, the claimant and the respondent have each received an interim distribution of \$10,000. Approximately \$126,227 remains available for distribution between the parties. Before making any order relating to these funds, it will be necessary to consider Ms. Dheenshaw's claims for excluded property and for the unequal division of the remaining proceeds of sale of the Edmonton condominium.

Vehicles

- [52] During the marriage, the claimant and the respondent each owned their own vehicles. As discussed in more detail later in these Reasons, in March 2011, the respondent acquired a 2010 Toyota Matrix for \$24,713.64. By the time of trial, the respondent had replaced that vehicle. In his Form 8 financial statement sworn July 25, 2016, Mr. Gill swore that he currently owns a 2015 Nissan Rogue acquired in October 2015 and valued at \$20,000. For her part, the claimant has sworn in her Form 8 financial statement that she owns a 2013 Hyundai Sante Fe, valued at \$20,000.
- [53] The claimant and the respondent will each retain their respective motor vehicles as their separate property.

Gold Jewellery

- [54] The respondent's parents gave Ms. Dheenshaw some gold jewellery as a wedding present. She later exchanged that jewellery for a smaller necklace and earrings, which she retains.
- [55] The claimant's parents gave Mr. Gill a bracelet, which he disposed of during the marriage.
- [56] Neither party presented any evidence of the value of their respective jewellery.
- [57] I find that each item of gold jewelry was a gift intended for the personal adornment of the recipient, and as such constituted excluded property, rather than divisible family property.

The Claimant's Pension

- [58] Ms. Dheenshaw has been a member of the Teachers' Pension Plan since December 1, 1994. The Teachers' Pension Plan is a 'local plan' within the meaning of Part 6 of the FLA.
- [59] The parties agree that the claimant's pension is family property divisible under Part 6 of the FLA.
- [60] The nominal value of the claimant's pension at the time the parties separated was \$64,394.98. Ms. Dheenshaw proposes that she retain her pension and that the respondent be compensated for his interest in the pension by payment of \$32,197.49 from her share of the remaining net proceeds of sale of the Edmonton condominium.

- [61] As Harvey J. observed in *N.A.J. v. P.L.J.*, 2014 BCSC 948 at para. 207, the default position for the division of employment pensions is Part 6 of the FLA. The court went on to explain that property rights in a pension are not present rights, but rather future rights, subject to future contingencies that may prevent one or both of the spouses from enjoying the benefits of the pension: *N.A.J.* at para. 208.
- [62] Part 6 of the FLA and s. 27(3) of the Division of Pensions Regulation, B.C. Reg. 77/95, as amended, permit compensation payments but contemplate that the amount of such compensation will be determined by a valuation taking into account contingencies that:
- (a) the member may terminate employment or die before commencement of the member's pension;
 - (b) the member may retire at an early, normal, or late retirement date;
 - (c) there may be future increases in pension contributions; and
 - (d) the benefits to be divided and paid may increase in value after the date of the compensation payment.
- [63] I do not have the benefit of the evidence required to assess those contingencies, or to determine whether the proposed compensation payment reflects a fair valuation of the pension.
- [64] Accordingly, the claimant's pension will be divided in accordance with Part 6 of the FLA from the date the parties married on October 9, 1999 to the date of separation, January 11, 2014.
- [65] For greater certainty, this Court declares and orders that:
1. The benefits accrued to the claimant Kuldip Kaur Dheenshaw (the "pension") under the Teachers' Pension Plan (the "Plan") are family property.
 2. The respondent, Sukhraj Singh Gill, is entitled to a share of the pension that accrued during the parties' relationship, determined and divided in accordance with Part 6 of the FLA and this order, and if the respondent becomes entitled to a share of pre-retirement survivor benefits under the Plan, the respondent is entitled to a share of the pre-retirement survivor benefits determined by the same formula that determines the respondent's share of the pension.
 3. For the purposes of determining the respondent's share of the pension (the proportionate share), the respondent's entitlement date is January 11, 2014.

4. The claimant must designate the respondent to be beneficiary of the respondent's proportionate share of pre-retirement survivor benefits under the pension, and maintain the designation until such time as the respondent's proportionate share of the pension is registered in the name of the respondent and the claimant may designate any person permitted by law to be beneficiary of the claimant's share of the pension, including pre-retirement survivor benefits under the claimant's share.
5. The claimant is a trustee of the respondent's interest in the pension and owes the respondent all the duties of a trustee to a trust beneficiary in respect of that interest.
6. To the extent that the claimant's estate, or any person deriving entitlement through the claimant, receives any portion of the pension representing the respondent's proportionate share of the pension, including pre-retirement or post-retirement survivor benefits belonging to the respondent, the person receiving the benefits, upon receiving actual or constructive notice of the respondent's interest in those benefits, must hold those benefits in trust for the respondent and immediately pay them to the respondent.
7. The parties have liberty to apply for such directions and further orders as may be necessary to facilitate and enforce the division of the pension.
8. The parties will share equally the administrative costs charged by the Plan for carrying out a pension division in accordance with the Family Law Act and the Division of Pension Regulation (B.C. Reg. 77/95).
9. The claimant must provide a certified copy of her birth certificate to the respondent.

The Claimant's Registered Retirement Savings Plans

- [66] At the time of the marriage, Ms. Dheenshaw held \$5,200 in a BPI Mutual Funds RRSP account. Shortly after the marriage, she withdrew funds from that RRSP to pay the start-up costs for her wedding album business which she later closed. Over the course of the marriage, the claimant accumulated additional RRSP savings. By September 30, 2013, the last reporting period in evidence prior to the parties' separation, the claimant held \$8,336.80 in her RRSP.
- [67] After the parties separated, on November 25, 2014, Ms. Dheenshaw cashed out her RRSP. After payment of withholding tax, she received a net redemption of \$7,323.06, all of which she applied to the payment of outstanding family debts.
- [68] The respondent makes no claim regarding the claimant's RRSP. In any event, no portion of the claimant's RRSP remains available for division.

Respondent's Pensions

[69] For his part, the respondent has not listed any RRSP or pension in either of his Form 8 financial statements sworn July 31, 2015 and July 25, 2016. The claimant gave evidence that during the marriage, the respondent cashed out the pension benefits he had accrued during his employment with Corrections Canada, and used the proceeds to pay her \$3,000 toward the in vitro fertilization costs the parties had incurred. The respondent produced no documents relating to any pension benefits he may have earned or received during the marriage. Given his history of short term employment with multiple employers, it is unlikely that Mr. Gill accrued any significant employment pension benefits. In any event, there is no evidence that upon separation the respondent held any RRSP or pension that would constitute divisible family property.

THE PAYMENTS FROM THE CLAIMANT'S MOTHER

The \$10,000 payment for the Townhouse down payment

[70] The claimant contends that her mother made a gift to her of the \$10,000 required for the down payment on the Prince Charles Blvd townhouse, which Ms. Dheenshaw purchased in her name only on December 14, 2001. She says that the \$10,000 payment constituted a "gift to a spouse from a third party" within the meaning of s. 85(1)(b.1) of the FLA and that she is entitled to payment of \$10,000 from the net proceeds of sale of the Edmonton condominium, as excluded property derived from her mother's gift. The claimant contends that her mother's second advance of \$50,000, to assist with the purchase of 145A Street, was a loan which both she and the respondent are obliged to repay.

[71] The respondent says that he was not a party to the arrangements made between the claimant and her mother for either the townhouse down payment or Mrs. Gurmej Dheenshaw's subsequent contribution of \$50,000 toward the purchase of 145A Street in April 2004. Mr. Gill maintains any obligation to repay the monies advanced by the claimant's mother should be borne solely by Ms. Dheenshaw. The respondent also contends that if either or both payments were gifts, the funds are not traceable to the proceeds of sale of the Edmonton condominium.

[72] In *Beaverstock v. Beaverstock*, 2011 BCCA 413, the Court addressed the correct approach to the resolution of a dispute about whether a gratuitous advance from a parent to an adult child is a loan or a gift. As the Court held at para. 9:

The correct approach to the resolution of this dispute is not in dispute. It is set out in *Pecore v. Pecore*, 2007 SCC 17, [2007] 1 S.C.R. 795. Whether the transfer was a loan or a gift depends on the actual intention of the appellant when she made the advance, which is a question of fact. As the advance was gratuitous, the onus was on the respondent to demonstrate that the appellant intended a gift, since equity presumes bargains, not gifts (para. 24). This equitable principle gives rise to a presumption the son received the money on a resulting trust, which is a rebuttable presumption of law. The trial judge was therefore required to presume the advance was not a gift

and to determine whether the respondent had satisfied the burden of rebutting the presumption of resulting trust on a balance of probabilities (para. 44).

[73] In *Byrne v. Byrne*, 2015 BCSC 318, the issue was whether bi-weekly payments of \$1,000 made by the claimant's father to a joint account held by the claimant and the respondent and used to pay for household expenses constituted a gift or loan. Mr. Justice Armstrong began his analysis at paras. 41 and 42:

[41] Payments from a parent to an adult child are generally not presumed to be gifts; they are presumed to form a resulting trust in which the parent keeps an interest in the property. However it is open to a party claiming the transfer is a gift to rebut the presumption of a resulting trust by providing evidence to that effect: *Pecore v. Pecore* . . .

[42] In *Pecore*, the Supreme Court of Canada addressed how the presumptions operate in the context of transfers from a parent to an adult child:

- (a) the focus in any dispute over a gratuitous transfer is the actual intention of the transferor at the time of the transfer . . .
- (b) When the transferor's intent is unavailable or unpersuasive, the presumptions of advancement (a gift) and resulting trust are useful guides and will apply . . .
- (c) gifts from parents to independent adult children are not presumed to be gifts; rather the presumption of a resulting trust applies . . .
- (d) there may be circumstances where a transfer between a parent and an adult child was intended to be a gift and it is open to the party claiming that the transfer is a gift to rebut the presumption of resulting trust by bringing evidence to support that claim . . .
- (e) the burden on the party claiming a gift was made is proof on a balance of probabilities . . .

[74] At para. 43, the court noted that in *Kuo v. Chu*, 2009 BCCA 405 at para. 9, the Court of Appeal adopted the following factors from *Locke v. Locke*, 2000 BCSC 1300, as applicable to the question of whether a loan or a gift was intended:

- (a) Whether there were any contemporaneous documents evidencing a loan;
- (b) Whether the manner for repayment is specified;
- (c) Whether there is security held for the loan;
- (d) Whether there are advances to one child and not others, or advances of unequal amounts to various children;
- (e) Whether there has been any demand for payment before the separation of the parties;
- (f) Whether there has been any partial repayment; and,
- (g) Whether there was any expectation, or likelihood, of repayment.

- [75] The Locke factors are items of circumstantial evidence relevant to the transferor's actual intention. They are not exhaustive and are to be weighed by the trial judge, along with all of the other evidence, in order to determine the transferor's actual intention as a matter of fact: *Beaverstock* at para. 11.
- [76] Whether the opposing spouse was aware of the transaction is not determinative of the question of whether a loan was made: *Byrne* at para. 47.
- [77] In *Beaverstock*, the Court held that the trial judge had erred in law by failing to begin his analysis with the presumption of resulting trust and in failing to make a finding concerning the appellant's actual intention when she advanced the funds to her son.
- [78] In *Savost'Yanova v. Chui*, 2015 BCSC 516, where the husband's father had advanced \$60,000 to assist with the purchase of the matrimonial home, Mr. Justice Weatherill held that in determining the intent of the person of who advances money in a family context, the court must weigh all of the evidence to determine whether the presumption of resulting trust has been rebutted: *Chui* at para. 77.
- [79] At para. 75, the court adopted the following summary of the applicable legal principles:
- [75] The law regarding whether a transfer made by a parent to an adult child is a loan or a gift was summed up by Madam Justice Brown in *Hawley v. Paradis*, 2008 BCSC 1255 at para. 30, after a review of the applicable authorities:
- [30] Based on the case law presented to me, I conclude:
1. that the presumption of advancement no longer applies between adult children and their parents;
 2. that as between adult children and their parents, the presumption is a resulting trust when the parents make gratuitous transfers to children;
 3. that the court must consider all of the evidence in determining whether the parent intended the transfer as a gift or a loan;
 4. that the factors considered in *Wiens* and *Locke* will assist the court in determining whether the advance was a loan or a gift.
- [80] Here, I must determine whether the actual intention of the claimant's mother was to make a gift or a loan. Because the advance was gratuitous, the claimant bears the onus of demonstrating that her mother intended a gift, "since equity presumes bargains, not gifts". In determining the transferor's intention, the court must take into account the Locke factors, along with all of the other evidence.

- [81] Mrs. Gurmej Dheenshaw, who is elderly, and in frail health, testified through a Punjabi interpreter. In both her direct and cross-examination, she gave consistent evidence that she gave \$10,000 as a gift to her daughter 'Kip' to assist her with the purchase of the Prince Charles Blvd townhouse. She emphasized that she gave \$10,000 "only to Kip". Mrs. Dheenshaw said that her daughter had approached her to ask for some money to buy a house, and said that after she thought about it, she gave \$10,000 to the claimant.
- [82] Mrs. Dheenshaw identified her signature on Exhibit 12, the document recording her gift of the \$10,000 down payment to the claimant, and also identified the cheque she gave to the claimant for the down payment on the townhouse.
- [83] While Mrs. Dheenshaw was adamant that she expected repayment of the subsequent \$50,000 advance, she expressed no expectation of repayment for her \$10,000 contribution for the townhouse down payment.
- [84] There appears to have been no discussion about the repayment of the first \$10,000 and there is no evidence of any demand for repayment of that sum before or after the parties separated.
- [85] The claimant's sister, Ms. Subjit Vankempenseket, testified that it was her idea to put the October 27, 2001 "gift letter" together. She told both the claimant and Mrs. Dheenshaw that they needed to protect themselves. She understood that Mrs. Dheenshaw gave the claimant of the money for the down payment on the townhouse.
- [86] I find that on the whole of the evidence, the claimant has established that at the time Mrs. Dheenshaw advanced \$10,000 for the down payment on the Prince Charles Blvd townhouse, she intended and made a gift in that amount to the claimant, rather than a loan.
- [87] I turn now to consider whether the claimant is entitled to \$10,000 from the net proceeds of sale of the Edmonton condominium as excluded property traceable to Mrs. Dheenshaw's gift of \$10,000 for the townhouse down payment.
- [88] In *Lahdekorpi v. Lahdekorpi*, 2016 BCSC 2143, the claimant husband conceded at trial that \$30,000 of the parties' property was excluded property under s. 85(1)(b) of the FLA as property of the respondent derived from an inheritance from her mother. After the trial, and as a result of the decision of the Court of Appeal in *V.J.F. v. S.K.W.*, 2016 BCCA 186, the claimant sought to withdraw his concession on the ground that the inheritance was used to purchase a matrimonial home on Shirley Road in Thunder Bay and had lost its character as excluded property. The husband argued that the \$30,000 inheritance was subject to equal division between the parties, along with other family property.

[89] In V.J.F., the husband had received an inheritance of \$2 million during the marriage. He used the inheritance to purchase a property placed in the sole name of his wife. The trial judge, applying the common law presumption of advancement, held that the \$2 million ceased to be excluded property when the husband gifted it to his wife. The Court of Appeal affirmed that the \$2 million lost its excluded status when it was placed in the name of the wife.

[90] In Lahdekorpi, the court distinguished V.J.F., primarily on the ground that there the court found the husband had made a gift of property to the wife when he intentionally transferred title to her and registered the property solely in the wife's name. In Lahdekorpi, the Shirley Road property was purchased, in part, with the respondent's \$30,000 inheritance and the property was registered jointly in both parties' names. At para. 94, the court held:

In my view, the joint tenancy effectively preserved her contribution to the property, which was purchased for approximately \$130,000. In these circumstances, I am not persuaded that the respondent could reasonably be said to have intended to gift her inheritance to the claimant. I note that, although the parties purchased subsequent properties using, in part, income derived from the Shirley Road property, the properties were either held jointly or in the sole name of the respondent. In my view, the \$30,000 used in the purchase of the Shirley Road property can be traced back to the inheritance, such that it does not lose its character as an inheritance.

[91] Here, the claimant purchased the Prince Charles Blvd townhouse in her own name. When the claimant sold the townhouse, she applied all of the sale proceeds toward the purchase of the parties' second home at 145A Street in Surrey. The claimant purchased and held title to 145A Street in her name only. Later, after the sale of 145A Street, the parties applied the proceeds from that sale to the purchase of the 78th Avenue property, which they held as joint tenants. The claimant and the respondent both contributed to payment of the mortgage on the 78th Avenue property, and financed their purchase of the Edmonton condominium, in joint tenancy, from their equity in the 78th Avenue property.

[92] At separation, on January 11, 2014, the parties held both the 78th Avenue property and the Edmonton condominium.

[93] After separation, the parties sold the 78th Avenue property and divided the net proceeds of sale equally.

[94] Here, the \$10,000 used for the down payment on the townhouse can be traced back to Mrs. Dheenshaw's gift to the claimant. This case is similar to Lahdekorpi to the extent that the parties acquired 145A Street, and later, the 78th Avenue property, using, in part, income derived from the townhouse property. The townhouse and 145A Street were each held in the sole name of the claimant, while the 78th Avenue property was held by both parties, in joint tenancy.

- [95] While the claimant's gift of \$10,000 from her mother may have been traceable to the 78th Avenue property, the parties made a complete disposition of that property, without any exclusion, when they sold it on July 30, 2014.
- [96] I find there is no link between the gift of \$10,000 for the townhouse down payment and the Edmonton condominium capable of supporting a finding that the plaintiff is entitled to payment of \$10,000 from the proceeds of sale of that property as excluded property derived from her mother's gift, or from the disposition of that gift.
- [97] I conclude that the claimant has failed to establish her claim for payment of \$10,000 as excluded property from the remaining net proceeds of sale of the Edmonton condominium.

The \$50,000 Advance from the Claimant's Mother

- [98] Mrs. Dheenshaw testified that at the claimant's request, she put up \$10,000 for the deposit and provided a bank draft in the amount of \$40,000 for the purchase of 145A Street. The claimant's mother testified that the \$50,000 was a loan. Mrs. Dheenshaw emphasized that, as a former farm worker, she did not make gifts of \$50,000.
- [99] In her direct examination, Mrs. Dheenshaw testified the claimant told her that she and Mr. Gill would repay her. In cross-examination, Mrs. Dheenshaw acknowledged that Mr. Gill was working outside the country when the claimant requested the \$50,000, and when she signed the April 26, 2004 "gift letter".
- [100] Mrs. Dheenshaw recalled that she travelled from her home in Victoria to Vancouver, where she, her daughter Subjit and the claimant met with a bank officer. Mrs. Dheenshaw said she wanted her name on title to 145A Street, but the banker refused.
- [101] Ms. Vankempenseket testified she took her mother to Vancouver to deliver the \$40,000 down payment that the claimant required in order to complete the purchase of 145A Street. She recalled that she and the claimant talked to the banker about having their mother on title, however the bank was not prepared to have the property encumbered with any additional debt. She recalled the claimant said she would repay their mother.
- [102] Because the bank wanted the transaction documented as a gift rather than a loan, Mrs. Dheenshaw and her two daughters each signed the April 26, 2004 "gift letter".
- [103] At the time the gift letter was made, Mr. Gill was working as a teacher in England.
- [104] In cross-examination, Ms. Vankempenseket agreed that the arrangement for the advance of the \$50,000 was made between Mrs. Dheenshaw and the claimant, and that it was the claimant, rather than Mr. Gill who approached Mrs. Dheenshaw for the \$50,000. However, as she pointed out, Mr. Gill also benefited from the advance.
- [105] Ms. Vankempenseket was not aware of her mother giving money to any of her siblings, other than the funds she provided to the claimant.

- [106] Mrs. Dheenshaw testified that when the claimant sold 145A Street, she wanted her loan repaid. However, she said both the claimant and the respondent told her they would not be able to purchase their new home, the 78th Avenue property, if they repaid the \$50,000.
- [107] According to Mrs. Dheenshaw, the claimant told her that whenever she received a refund from the Canada Revenue Agency she would apply that money toward the loan.
- [108] Mrs. Dheenshaw also gave evidence that she wanted repayment in the amount of \$5,000 a year from both the claimant and the respondent. However, neither the claimant nor the respondent agreed to any specific repayment schedule.
- [109] The claimant confirmed that she told her mother that she intended to apply an anticipated CRA refund to partially repay the loan.
- [110] On September 3, 2009, the claimant received an income tax refund in the amount of \$7,849.26. At that time, the respondent had significant debts. According to the claimant, her mother told her to apply the CRA refund to Mr. Gill's debts.
- [111] Mrs. Dheenshaw recalled the claimant telling her that she had received some money, and that Mr. Gill had some debts. As I understood Mrs. Dheenshaw's evidence, which was not entirely clear on this point, the claimant was crying, and the outcome of their conversation was a decision that it would be better to apply the CRA refund to pay Mr. Gill's debt, rather than to pay down her \$50,000 advance.
- [112] In light of the fact that Mrs. Dheenshaw had advanced the funds in April 2004, and had received no repayment by September 2009, I find it is more consistent with the circumstances as they existed at that time that the claimant persuaded her mother that the CRA refund should be applied to pay Mr. Gill's debts than that Mrs. Dheenshaw "told" her daughter to do so.
- [113] In the event, the claimant applied the full amount of her 2009 tax refund to the payment of bailiff's charges relating to the respondent's vehicle, credit card debt incurred by the respondent and payment of 2009 property taxes on the 78th Avenue property.
- [114] Neither the claimant nor the respondent has repaid any portion of the \$50,000 advance.
- [115] In support of his position that if the \$50,000 advance was a loan to the claimant that he has no obligation to repay, Mr. Gill relies on Exhibit 50, an e-mail from the claimant dated February 7, 2010. In that e-mail, Ms. Dheenshaw, after referring to the bank's insistence that the transaction be characterized as a gift, continued, "Why do you care so much? We're not asking you for any money to pay it off. I've been doing that myself."

- [116] Ms. Dheenshaw made her comment during the course of a heated and ill-considered exchange with the respondent at a time when their relationship was particularly fraught. The claimant's assertion that she was repaying her mother was untrue. This was neither a considered nor an informed concession concerning her legal position. In determining what obligations, if any, the parties have to re-pay the \$50,000 advance, I attach no weight to Exhibit 50.
- [117] Turning to the Locke factors, there were no contemporaneous documents evidencing a loan of \$50,000 from Mrs. Dheenshaw to the claimant, because Coast Capital, the bank providing financing for the claimant's purchase of 145A Street, was not prepared to have any additional debt registered against title to that property, and insisted that Mrs. Dheenshaw's advance be characterized as a gift rather than a loan.
- [118] Although Mrs. Dheenshaw wanted security for her advance by having her name on title, she obtained no security.
- [119] While Mrs. Dheenshaw made no demand in writing for repayment of the \$50,000 advance, I find that she did raise the subject of repayment when the claimant sold 145A Street, and that both the claimant and the respondent made representations to her that they would not be able to purchase the 78th Avenue property if they repaid her \$50,000 advance. Mrs. Dheenshaw deferred to the wishes of her daughter and son-in-law to acquire a larger and more expensive home, but still expected repayment of her advance.
- [120] Mrs. Dheenshaw's evidence that at the time she advanced the \$50,000 she intended a loan and expected repayment is corroborated by the testimony of her daughter Subjit, who confirmed that the claimant acknowledged, when her mother advanced the funds on April 26, 2004, that the transaction was a loan.
- [121] There was no agreement between the claimant and her mother regarding a repayment schedule, or regarding what interest, if any, was payable on the advance. However, I am satisfied, on the whole of the evidence, that when Mrs. Dheenshaw advanced the \$50,000, she expected that the claimant would repay the principal amount as and when she was able to do so, with the assistance of the respondent, and that the claimant shared that expectation.
- [122] Although the claimant requested the \$50,000 advance from her mother, and the respondent was not a party to the April 26, 2004 "gift letter", he benefited from the advance, particularly when the parties retained the \$50,000 following the sale of 145 A Street and applied those funds to the purchase of the 78th Avenue property.

[123] I find that the \$50,000 advance was a loan from Mrs. Dheenshaw to the claimant, rather than a gift. I also find the claimant acknowledged her liability to repay the \$50,000 when her mother made the loan, and again in September, 2009, when she discussed with Mrs. Dheenshaw the application of her income tax refund in partial repayment of the loan. The claimant continued to acknowledge her debt to her mother for the \$50,000 advance to the time trial.

DETERMINATION AND DIVISION OF FAMILY DEBT

The \$50,000 Advance from the Claimant's Mother

[124] The \$50,000 loan from Mrs. Dheenshaw to the claimant constitutes a financial obligation incurred by a spouse before separation and as such is a family debt within the meaning of s. 86(a) of the FLA. On separation, each spouse became equally responsible for repayment of that debt. The full amount of the debt remained owing at the time of trial. The only property from which the debt owed to Mrs. Dheenshaw may be satisfied is the remaining net proceeds of sale of the Edmonton condominium.

[125] This Court orders that Patrick A. Reid, Professional Corporation pay from the funds it holds in trust from the net proceeds of sale of the Edmonton condominium the sum of \$50,000 to the claimant's mother, Mrs. Gurmej Dheenshaw.

Debt related to Toyota Matrix

[126] Ms. Dheenshaw claims that she loaned monies to Mr. Gill for his purchase, in March 2011, of a 2010 Toyota Matrix vehicle. The claimant's position on the amount she advanced toward the purchase of the Matrix was not entirely consistent. Ms. Dheenshaw testified that she loaned Mr. Gill \$15,000 for the purchase of the vehicle. However, in her closing submissions, Ms. Dheenshaw contended that she had advanced \$13,437 to Mr. Gill and that he remained indebted to her for \$3,000. For his part, the respondent was unsure of the amount he had borrowed from the claimant.

[127] Ms. Dheenshaw bears the onus of establishing, on the balance of probabilities, the amount of her loan to the respondent, and the amount of the loan if any, that remained unpaid at the date the parties separated.

[128] By a bill of sale dated March 7, 2011, made between Mr. Gill as purchaser and Sherwood Park Toyota as vendor, the respondent purchased the Toyota Matrix for a total price of \$24,713.64. After deduction of a \$3,500 cashback allowance, the bill of sale provided for payment of \$15,000 on delivery of the vehicle, with a remaining balance due of \$6,549.10, which Mr. Gill financed through Toyota Credit Canada.

[129] Neither party has produced a cheque or other document showing the source of the funds Mr. Gill used to make the \$15,000 payment.

- [130] The respondent has produced a record of transactions on his Vancity account number 861*** marked as Exhibit 74, which shows that on March 31, 2011 he made a direct payment to Toyota Credit Canada in the amount of \$6,568.41. I find that amount constituted payment in full of the balance then due for the purchase of the Toyota Matrix vehicle.
- [131] Exhibit 25 includes various monthly statements for the claimant's Vancity account number 379* **that show deposits to her account, between September 23, 2011 and June 18, 2012 totalling \$13,437. Each of those transactions is a transfer from the respondent's Vancity account 861* in payment for the Toyota Matrix.** Exhibit 74 also records transfers of funds from the respondent's account to the claimant's account for the Matrix that correspond to entries in Exhibit 25.
- [132] For the last deposit to her account, in the amount of \$1,000, made on June 18, 2012, the claimant added the following notation: "(last pmt with interest)".
- [133] The inference I draw from this notation is that by June 18, 2012, when Mr. Gill had paid to the claimant a total of \$13,437, he had repaid in full the amount advanced to him by the claimant for the purchase of the Toyota Matrix.
- [134] The claimant has failed to establish that the respondent is indebted to her in any amount for the purchase of the Matrix. Ms. Dheenshaw's claim for debt related to the Toyota Matrix vehicle is denied.

Credit Card Debt

- [135] The respondent's disclosure of his bank and credit card statements was incomplete, and of little assistance in determining the parties' credit card debt at the time of separation.
- [136] In the later years of the marriage, the claimant managed the family consumer debt using two MBNA Master Card accounts. At the time of separation, the total balance outstanding on the two MBNA accounts was \$13,955.76. I find that amount is the best available evidence of the divisible family credit card debt at separation.

The Claimant's Tax Debt

- [137] On November 5, 2015, the claimant received a notice of reassessment for income tax due for the 2012 tax year in the amount of \$4097.90. This reassessment concerns a financial obligation incurred by the claimant before separation. As such, it constitutes a divisible family debt.
- [138] The claimant contends that the respondent should pay the full amount of her outstanding, and as yet unpaid 2012 income tax reassessment. Ms. Dheenshaw says she paid income tax debt Mr. Gill incurred for the 2007 tax year, and asserts that in these circumstances she should not have to bear any part of her 2012 tax liability.

- [139] In 2010, Mr. Gill was reassessed for \$25,000 of income tax owing for the 2007 tax year. That reassessment was later reduced to \$20,435.72. In December, 2010, the claimant made two payments, of \$9,850 and \$4,945 respectively, in partial payment of Mr. Gill's 2007 tax debt. The respondent maintains he paid the balance. I find that it is more probable than not that he did so, although his bank records are incomplete. Mr. Gill lists no outstanding tax debt in his Form 8 financial statements.
- [140] I will return to the division of the claimant's 2012 tax debt after I have considered other grounds advanced by Ms. Dheenshaw in support of her claim that she made a disproportionate contribution to the payment of the parties' debts during the marriage.

In Vitro Fertilization Treatments and Travel

- [141] In 2012 and 2013, the claimant and the respondent made one trip to India and two trips to Greece for Ms. Dheenshaw's in vitro fertilization treatments. Their travel and treatment costs totalled \$30,536.49. Mr. Gill was at times less than enthusiastic in his support of the claimant's desire to conceive a child in the later years of their relationship. The claimant paid the greater share of the costs. Mr. Gill paid a total of \$8,912.32. Ms. Dheenshaw maintains the respondent should pay her an additional \$6,355.93, in order to equalize their contributions at \$15,268.25 each.
- [142] As I have previously found, in 2013 the respondent had a line 150 income of \$35,065. In the same year, the claimant earned a line 150 income of \$57,951. Both parties were living beyond their means and struggled to make their respective contributions to the in vitro fertilization treatment and travel costs.

Other Debt Payments

- [143] The claimant paid \$2,116.21 for landscaping for the 78th Avenue property. As she points out, the respondent did not contribute to this cost, which was incurred and paid in full well before the parties separated. However, I find Mr. Gill contributed time and labor to the maintenance of the 78th Avenue property during those times he was not working outside the province.
- [144] From 2008 until the sale of the 78th Avenue property in 2014, the claimant made mortgage payments totalling \$59,684.29, while the respondent contributed \$28,193.10 toward payment of the mortgage. The respondent made monthly payments of \$530, representing one half of the principal and interest due each month, after application to the mortgage of the parties' rental income from the 78th Avenue property. Ms. Dheenshaw chose to make larger payments of \$780 per month, in order to increase the parties' equity in the 78th Avenue property.
- [145] The claimant maintains that during the marriage she paid from her own funds student loan, credit card and income tax debt of the respondent totalling \$44,081. There is evidence that the claimant negotiated reductions to personal debts the respondent had brought into

the marriage, and that she used approximately \$44,000 from her own funds to pay a significant amount of the respondent's debt. However, as shown by Exhibit 69, Mr. Gill also made payments totalling \$28,865 in February and March 2006 in satisfaction of his student loans. Further, in 2009 and 2010, while he was teaching in China, the respondent made one remittance of \$1,600 and at least seven remittances of \$2,500 each to a CIBC account in the claimant's name. Ms. Dheenshaw used those funds to pay debts incurred by the respondent during the marriage.

Has the Claimant shown that equal division of the remaining proceeds of sale of the Edmonton condominium would be significantly unfair?

[146] The claimant bears the onus of establishing that equal division would result in unfairness that is compelling or meaningful having regard to the applicable s. 95(2) factors.

[147] Here, the parties were in a relationship for approximately 14 years.

[148] Throughout the marriage, the claimant and the respondent each pursued their own careers. The claimant did not compromise her own career in order to contribute to the respondent's career, or career potential.

[149] The debts the parties incurred during the marriage were incurred in the normal course of their relationship, although often in amounts which exceeded the parties' capacity to manage their financial affairs effectively and without mutual recrimination.

[150] The "other factor" which the claimant relies on under s. 95(2)(i) is her payment of a disproportionate share of the family expenses throughout the relationship. As we have seen, the claimant made the larger share of the mortgage payments on the 78th Avenue property, made significant payments in reduction of debt the respondent brought into the marriage, and paid the greater part of the debt the parties incurred for in vitro fertilization and related travel expenses.

[151] However, the respondent also made significant contributions to these and other expenses incurred by the parties during the marriage. I also bear in mind that while the claimant had continuous employment throughout the marriage, the respondent held a variety of short-term positions. His income fluctuated with the nature and duration of his employment. There were times when he was unemployed while he sought new employment. In these circumstances, it was not exceptional that the claimant, as the partner with the more stable income, would bear a larger proportion of the family expenses during the marriage.

[152] In all of the circumstances of this case, I am not persuaded that an equal division of the remaining proceeds of sale of the Edmonton condominium (after the repayment of Mrs. Gurmej Dheenshaw's \$50,000 loan) would be "objectively unjust, unreasonable or unfair in some important or substantial sense."

[153] Accordingly, the claimant's claim for an unequal division of the remaining net proceeds of sale of the Edmonton condominium in her favor is denied.

- [154] After the \$50,000 payment to Mrs. Gurmej Dheenshaw, the remaining net proceeds of sale of the Edmonton condominium will total approximately \$76,227.25. The claimant and the respondent are each entitled to one half of that amount.
- [155] Patrick A. Reid, Professional Corporation will pay from the net proceeds of sale of the Edmonton condominium that it holds in trust the sums of \$38,113.62 to each of the claimant and the respondent. Any interest earned on the net proceeds of sale will also be divided and paid in equal shares to the claimant and the respondent.
- [156] I have previously found that the claimant's MBNA Master Card debt of \$13,955.76 and her 2012 tax debt of \$4,097.90 are divisible family debts. The total amount of these debts is \$18,053.66. To equalize these debts, there will be an order that the respondent pay to the claimant from his share of the net proceeds of sale of the Edmonton condominium the sum of \$9,026.83.

THE RESPONDENT'S CLAIM FOR SPOUSAL SUPPORT

- [157] I turn now to the respondent's claim for spousal support.
- [158] Shortly before trial, the respondent filed his counterclaim for spousal support under the FLA.
- [159] The obligation to pay spousal support is set out in s. 160 of the FLA:
- 160 If, after considering the objectives set out in section 161 [objectives of spousal support], a spouse is entitled to spousal support, the other spouse has a duty to provide support for the spouse in accordance with section 162 [determining spousal support].
- [160] The objectives the court must consider in determining entitlement to spousal support are set out in s. 161:
- 161 In determining entitlement to spousal support, the parties to an agreement or the court must consider the following objectives:
- (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.
- [161] Section 162 of the Act sets out criteria for determining the amount and duration of 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.

[162] These factors closely parallel the objective for spousal support under s. 15.2(4) and (6) of the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.). The principles stated in case law setting up the conceptual bases for entitlement to spousal support under the Divorce Act apply to claims for spousal support under the FLA.

[163] Here, Mr. Gill claims entitlement to spousal support on non-compensatory grounds alone. There was no agreement between the parties for spousal support. Compensatory principles have no application here, where the respondent and the claimant each pursued their own employment throughout the marriage and where Mr. Gill never subordinated his career to that of claimant, or otherwise incurred an economic disadvantage as a result of the marriage.

[164] Non-compensatory support addresses the need of a spouse following the breakdown of the marriage and is based upon the social obligation of a spouse to support a former spouse in financial need, rather than have the public bear that burden: *Bracklow v. Bracklow*, [1999] 1 S.C.R. 420 at para. 23.

[165] "Need" is a relative term and must be considered taking into account the marital standard of living and the other spouse's post-separation standard of living: *Chutter v. Chutter*, 2008 BCCA 57 at paras. 57 - 61.

[166] Income disparity alone will not entitle a spouse to non-compensatory support: *Lee v. Lee*, 2014 BCCA 383.

[167] In determining a claim for spousal support, the court must weigh all of the objectives and factors, and strike a balance "that best achieves justice in the particular case": *Bracklow* at para. 32.

[168] At the time of trial, Mr. Gill had been unemployed since mid-October 2015. He testified that his only source of income was his share of the rent, in the amount of \$520 per month, from the Edmonton condominium. He had a pending application for employment insurance benefits. Mr. Gill said he was using his credit card to finance his living expenses, and that he had accumulated post-separation debt, including \$13,500 in unpaid legal fees.

[169] For her part, Ms. Dheenshaw continued to work as a teacher, at an annual salary of \$60,210. However, she had entered into a new relationship, was planning to remarry and contemplated moving with her new husband to the United States, which, she anticipated, would result in her relinquishing her employment with the Surrey School Board.

- [170] Although the respondent received institutional care for a mental disorder some years ago, he testified that he was mentally fit to work at the time of trial; that he was ready to work; and was looking for employment.
- [171] Mr. Gill claimed that his field of vision was restricted, but adduced no medical evidence in support of that assertion.
- [172] Any financial hardship the respondent was experiencing at the time of trial arose not from the breakdown of the relationship between the parties, but rather from Mr. Gill's post-separation unemployment.
- [173] The claimant is economically self-sufficient, and was self-sufficient throughout the marriage.
- [174] As previously discussed, Mr. Gill has a broad range of skills and experience as both a teacher and an IT department head. However, he has had considerable difficulty, throughout his career, in maintaining consistent employment.
- [175] Even when holding positions for only a few months at a time, he has demonstrated the capacity to earn an annual income of \$35,000.
- [176] At the time of trial, Mr. Gill had experienced a protracted period of unemployment and was in financial need.
- [177] Bearing in mind the social obligation of a spouse to support a former spouse in financial need, I find that Mr. Gill has established an entitlement to some non-compensatory spousal support.
- [178] Turning to quantum and duration of support, I take into account the parties' 14-year relationship. As previously noted, throughout that relationship, each party pursued their own career.
- [179] At the time of trial, the claimant had a Guidelines income of \$60,210. Based on his age, skills, experience, and capacity to work, I would impute to the respondent a Guidelines income at the time of trial of \$35,000.
- [180] Under the Spousal Support Advisory Guidelines "without child support" formula, the range for monthly spousal support is from \$441 at the low end, through \$515 at the mid-range, to \$588 and the high end. The SSAG formula suggests a duration of seven to 14 years from the date of separation, subject to variation and possibly review.
- [181] In my view, given Mr. Gill's particular qualifications, skills and experience, the claimant has a limited and temporary obligation to assist her former spouse in moving toward economic self-sufficiency.

[182] Weighing and balancing all of the factors, I find the appropriate award for spousal support is a lump sum payment of \$12,000, an amount roughly equivalent to 12 months' support at the mid-point of the range produced by the SSAG formula.

[183] Accordingly, there will be an order that the claimant will pay to respondent lump sum spousal support in the amount of \$12,000.

Costs

[184] Success has been divided. Each party will bear their own costs of the action.

[185] In order to assist the parties, I will draw and arrange for entry of the formal order of the Court, and ensure that the parties each receive a copy of the order through the Registry.

"PEARLMAN J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/17/03/2017BCSC0319.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/dheenshaw-v-gill-2017>

Prepared on 26 October 2026 · Esheria