

CANADA / JUDGMENT

Dhesi v. Dhesi

2025 BCSC 2300

COURT

Supreme Court of British Columbia

DECIDED

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2025 BCSC 2300 Dhesi v. Dhesi

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Dhesi v. Dhesi,

2025 BCSC 2300

Date: 20251121

Docket: E66173

Registry: New Westminster

Between:

Mandeep Kaur Dhesi

Claimant

And

Gurshinder Singh Dhesi, also known as Gurshinder Dhesi, and Maninder Dhesi

Respondents

Before: The Honourable Justice Stephens

Reasons for Judgment

The Claimant, appearing in person:

M.K. Dhesi

The Respondent Maninder Dhesi, appearing in person

M. Dhesi

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Place and Dates of Trial:

New Westminster, B.C.

June 2-6, 9-11 and 30, 2025

Place and Date of Judgment:

New Westminster, B.C.

November 21, 2025

Table of Contents

Overview.. 4

Issues. 6

Credibility. 7

Findings Regarding Certain Disputed Factual Issues. 10

Whether Gurshinder and Mandeep Agreed That Each Other's Money Was Their Own Money?. 12

Whether in the Fall of 2021 or Early 2022 Gurshinder, Maninder and Mandeep Agreed That Maninder Would Be on Title to a New Property and that Mandeep Would Not Be on Title?. 12

Whether Mandeep Agreed that Gurshinder should be Paid Approximately \$126,000 from the Maple Ridge Property Net Proceeds?. 13

Whether Maninder Told Mandeep to Leave the Mission Property in May 2022, and Whether Mandeep was Forced to Leave?. 14

Whether Gurshinder and Maninder Intentionally Acted, and Colluded, to Strip Mandeep of her Rightful Interest in a Family Home?. 14

Further Factual Background.. 14

Maple Ridge Property. 15

Purchase of the Mission Property. 16

Close of Purchase of Mission Property. 20

Events After Closing of Mission Property. 22

Post-Separation Events. 22

Issue #1: What Is Maninder's Interest in the Mission Property/Is Maninder Holding a Portion of the Mission Property in Trust for Gurshinder and Mandeep?. 23

Is There a Resulting Trust over Maninder's 50% Interest in the Mission Property?. 24

Was There an Unjust Enrichment Arising from Maninder Having a 50% Interest in the Mission Property?. 26

Conclusion: Issue #1 (re Maninder's Interest in the Mission Property) 27

Issue #2: What Order for Division of Family Property and Debt Is Appropriate?. 28

(a) Division of Family Property - Other than Mission Property. 28

\$126,196.51 Payment to Gurshinder from the Maple Ridge Property Net Proceeds of Sale. 29

(i) \$85,251.29 Asserted Pre-Marriage Excluded Property. 29

(ii) \$21,705 Asserted Gifts from Parents. 33

(iii) \$19,240 - Asserted Reapportionment to Gurshinder 34

\$59,960 of Asserted Gifts from Parents. 36

Summary, Gurshinder's Excluded Property Claim.. 36

Mandeep's Claim to Re-Appportionment of Family Assets. 36

Conclusion: Division of Assets and Liabilities (Other than the Mission Property) 38

(b) The Mission Property: Division of Family Property. 39

(c) Conclusion: Division of Assets and Liabilities. 41

Issue #3: Is Mandeep Entitled to Spousal Support and, if so, what Quantum of Spousal Support?. 42

Issue #4: Is Mandeep Entitled to Occupational Rent for the Mission Property?. 45

Issue #5: Should any other relief sought be granted?. 48

Conclusion and Orders Granted.. 48

SCHEDULE A: GURSHINDER DHESI'S SCOTT SCHEDULE - 1 FROM CLOSING SUBMISSIONS. 51

Overview

- [1] The claimant, Ms. Mandeep Kaur Dhese ("Mandeep"), and the respondent, Mr. Gurshinder Singh Dhese ("Gurshinder"), married in India on February 4, 2018. Mandeep was at that time living in India, and Gurshinder travelled to India from Canada to marry her, and then he returned to Canada. On January 20, 2019, Mandeep moved to British Columbia to join Gurshinder, and they lived in a rented basement apartment.
- [2] Gurshinder's brother, the respondent Mr. Maninder Dhese ("Maninder"), later moved in with Gurshinder and Mandeep in the basement apartment.
- [3] Since the parties share the same last name, I will refer to them by their given names, without meaning any disrespect.
- [4] This family law trial seeks resolution of certain family law issues consequent on the breakdown of Mandeep and Gurshinder's approximately four-year marriage in June 2022, immediately following the acquisition of a home in Mission, BC (the "Mission Property").
- [5] The resolution of the family law issues is complicated by the fact that Gurshinder's brother, Maninder--just prior to Mandeep and Gurshinder's separation --participated in the acquisition of the Mission Property with them. Maninder is currently on the legal title with Gurshinder to the Mission Property, which is the subject of family asset division and, since Mandeep moved out in June 2022, Maninder has largely been paying for the Mission Property mortgage and other expenses.
- [6] By way of background, in February 2020, Gurshinder and Mandeep purchased, in their joint names, property in Maple Ridge (the "Maple Ridge Property"). Gurshinder and Mandeep were each on title to that property, and both worked while living in the Maple Ridge Property.
- [7] On April 28, 2022, Gurshinder and Mandeep acquired the Mission Property, selling the Maple Ridge Property to do so. Controversially--from Mandeep's perspective--Maninder was placed on title to the Mission Property, together with his brother Gurshinder, each as 50% tenants in common --but, unlike the Maple Ridge Property, Mandeep was not put on title to the Mission Property.
- [8] Notably, at the time of closing of the Mission Property purchase, Gurshinder also received approximately \$126,196 of the proceeds from the sale of the Maple Ridge Property, formerly owned jointly by Mandeep and Gurshinder. He put this money into his own personal bank account and claims it as his own excluded property and property to be reapportioned to him, not available for division as a family asset with Mandeep. Whether this \$126,196 is his excluded property, or all or part should be reapportioned to him, or a family asset to be divided equally with Mandeep, are some of the other issues now in dispute.

- [9] Mandeep claims she was significantly upset about the Mission Property purchase, and specifically that Maninder was put on title as a 50% owner to the Mission Property but she was not. Whether there was some prior agreement between all three parties about Maninder going on legal title to the Mission Property is another issue in this action.
- [10] On or about May 4, 2022, shortly after the Mission Property purchase, Mandeep told Gurshinder she wanted to separate, and Mandeep left the Mission Property home on June 14, 2022. Mandeep filed this family claim in November 2022.
- [11] Mandeep and Gurshinder were divorced by order of the court dated March 14, 2025, and this trial concerns the resolution of remaining issues including spousal support, family property and debt division, and a contentious issue relating to Maninder's ownership interest in the Mission Property jointly owned with Gurshinder.
- [12] Mandeep's notice of family claim dated November 10, 2022, raises claims of spousal support (interim and ongoing) and seeks orders relating to family property and debt, unequal division of family property and debt, and occupancy rent. She also makes a claim in trust or, in the alternative, unjust enrichment, against Maninder.
- [13] Gurshinder counterclaims for unequal division of family property and debt and asserts excluded property claims (among other things).
- [14] Maninder also counterclaims, seeking, among other things, a declaration that he is legally and beneficially entitled to 50% of the Mission Property and an order for an accounting with Gurshinder and Mandeep to account for payments made against repayment of funds.
- [15] The parties have significant disagreements about what was said or agreed to--if anything--between them in the months and weeks prior to the Mission Property purchase and separation. Their factual disagreements include about the then-proposed purchase of a new property, and what legal interest Maninder would have in that.
- [16] In these Reasons, I make findings about matters of disputed fact and make orders to divide family property and debt. I also decide the issue of spousal support as well as other issues relating to Maninder's interest in the Mission Property.
- [17] For the reasons which follow, I find that Maninder holds a 50% interest in the Mission Property and order that Gurshinder shall pay a compensation order to Mandeep in the amount of \$99,363.07 for family property division (including for the family property portion of the Mission Property) and spousal support. I further order that Gurshinder shall retain the other 50% interest in the Mission Property and that Mandeep will be removed from the mortgage on the Mission Property, in addition to other orders as set out in these Reasons.

Issues

- [18] The issues in this case are:

1. Does Maninder own any portion of the Mission Property in trust for Gurshinder and Mandeep, and what part of the Mission Property does he hold?
2. What should be the division of family assets and family debt for Gurshinder and Mandeep:
 - a. In respect of family assets and family debt, other than the Mission Property?
 - b. In respect of the Mission Property, in light of the determination of issue 1?
3. Is Mandeep entitled to spousal support from Gurshinder, and, if so, what order for spousal support should be made?
4. Is Mandeep entitled to an order for occupational rent for the Mission Property?
5. Should any other relief sought in Mandeep's notice of family claim, Gurshinder's counterclaim, or Maninder's counterclaim be granted?
6. What orders should be granted?

Credibility

- [19] The factors to be considered when assessing credibility were summarized by Justice Dillon in *Bradshaw v. Stenner*, 2010 BCSC 1398, aff'd 2012 BCCA 296, leave to appeal to SCC ref'd, 35006 (7 March 2013), as follows:
- [186] Credibility involves an assessment of the trustworthiness of a witness' testimony based upon the veracity or sincerity of a witness and the accuracy of the evidence that the witness provides (*Raymond v. Bosanquet (Township)* (1919), 59 S.C.R. 452, 50 D.L.R. 560 (S.C.C.)). The art of assessment involves examination of various factors such as the ability and opportunity to observe events, the firmness of his memory, the ability to resist the influence of interest to modify his recollection, whether the witness' evidence harmonizes with independent evidence that has been accepted, whether the witness changes his testimony during direct and cross-examination, whether the witness' testimony seems unreasonable, impossible, or unlikely, whether a witness has a motive to lie, and the demeanour of a witness generally (*Wallace v. Davis*, [1926] 31 O.W.N. 202 (Ont. H.C.); *Faryna v. Chorny*, [1952] 2 D.L.R. 354 (B.C.C.A.) [Faryna]; *R. v. S.(R.D.)*, [1997] 3 S.C.R. 484 at para.128 (S.C.C.)). Ultimately, the validity of the evidence depends on whether the evidence is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time (Faryna at para. 356).
- [20] There were several disagreements between Mandeep, Gurshinder and Maninder in their evidence and submissions at trial. Each submitted that the other is not telling the truth about what happened in the time period leading up to the purchase of the Mission Property.
- [21] However, I found all of Mandeep, Gurshinder and Maninder to be generally credible witnesses.

- [22] I found Mandeep to be credible in her testimony. I did not detect any significant problems of reliability with her testimony. I do not find that her failure to recount her version of what happened in text messages with Gurshinder, or a conversation with his friend Adnan after the purchase of the Mission Property, to detract from her reliability.
- [23] I also found Gurshinder to be a credible witness, and that he was trying to be truthful in his evidence. I accept as honest and genuine his evidence that he was deeply upset when Mandeep left the family home (the Mission Property) and they separated.
- [24] Further, Gurshinder's testimony about the dates and times of events was generally reliable.
- [25] However, on the topic of important discussions with Mandeep about financial matters, Gurshinder was at times somewhat vague--he at times testified in terms of what their collective understanding between them was (for example, his view that his money was his money, and her money was her money), not what was said explicitly between them. Also, Gurshinder did not provide a good rationale as to why Mandeep was not put on title to the Mission Property when she had been jointly with him on title to the Maple Ridge Property and why, if Maninder was put on title because he was part of mortgage pre-approval for the Mission Property, Mandeep was not similarly put on title since she also was part of the mortgage pre-approval.
- [26] I also find that at times Gurshinder appeared to rely on his recollection that Mandeep did not expressly dispute certain things which were said or happening at a particular point in time to support the position that she had therefore agreed to it as part of their financial arrangements. I did not find this persuasive.
- [27] Further, Gurshinder receiving approximately \$126,000 from the net proceeds of the sale of the Maple Ridge Property (owned jointly with Mandeep) was abrupt in the chronology of events of the parties' marriage . This was particularly so given that \$126,000 was a significant amount (approximately 1/3) of the net proceeds of the Maple Ridge Property that he and Mandeep had bought together in February 2020 and had accumulated for two years. Mandeep had paid for some expenses associated with the costs to live in the Maple Ridge Property.
- [28] In general, I find that Gurshinder cared for Mandeep, but was relatively sophisticated, astute, and assertive about financial matters, which he managed during their marriage before separation. And I find it is more likely than not that he did not always take the time to explain to and ensure that Mandeep, who was less experienced in such matters and would tend to defer to Gurshinder, understood what was happening with their finances and why.
- [29] And it was particularly financially assertive for Gurshinder, after four years of marriage to Mandeep, with Mandeep contributing both with her labour and financially to their marriage and household, to take for himself approximately \$126,000 of cash from the equity in the Maple Ridge Property family home sale which they had owned jointly for over two years.

- [30] Gurshinder and Mandeep's miscommunication in the fall of 2021 and winter of 2022 about financial matters also occurred in the context of a marriage in which each held some resentment toward the other.
- [31] In summary, I find that Gurshinder was an honest and forthright witness and tried to be accurate in his testimony. He was truly upset when Mandeep left him. But, in respect of evidence about Gurshinder's discussions with Mandeep about financial matters during their marriage, and her purported agreement to certain things, I find his evidence is not completely reliable.
- [32] I find that Gurshinder was a caring husband but also assertive (at times, in a manner that favoured himself) about financial matters and took charge of their family financial matters, an area in which Mandeep was outwardly deferential but inwardly resentful. Mandeep's resentment ultimately manifested in their separation following the purchase of the Mission Property, where Mandeep was not placed on title but Maninder was and after Gurshinder arranged to pay himself \$126,000 of the equity of the Maple Ridge Property, which was sold to help finance the Mission Property purchase.
- [33] I did find Maninder also to be a credible witness. I also found Gurshinder's parents, who testified at trial, to be credible witnesses. Mandeep's cross-examination of these witnesses did not detract from the credibility and reliability of their evidence.
- [34] I add that some of the most contentious factual issues in this trial concerned discussions which are not recorded in documents and were the subject of oral evidence only.

Findings Regarding Certain Disputed Factual Issues

- [35] At the outset I make certain findings about the factual background which were especially disputed between the parties.
- [36] Many aspects of what passed between the parties is subject to disagreement between Gurshinder (or Gurshinder and Maninder), and Mandeep.
- [37] There are largely no documents in evidence at trial which document what was allegedly said between them.
- [38] The text messages put in evidence do not assist me in making findings about what was said in verbal discussions not captured in the text exchanges. Gurshinder criticized Mandeep for not saying in the texts certain things which she said in her evidence at trial. However, I do not find this to detract from Mandeep's credibility. She and Gurshinder were in the process of separating, it was a difficult time for both of them, and there is no reason for her to necessarily say in a text message all that she was feeling at the time. The same is true for Gurshinder's criticism of Mandeep in relation to what she said to their friend, Adnan, around this time--it would not necessarily be reasonably expected that Mandeep would say to Adnan everything she felt at that time with respect to Gurshinder.

- [39] I have found all the parties to be generally credible and reliable in their evidence, though I have some doubt about the accuracy of some of Gurshinder's evidence about the financial discussions he had with Mandeep.
- [40] I find that the evidence is equally balanced on several of the factual disputes. Thus, the party with the onus to prove that fact has failed to do so: S.T. v. A.T., 2023 BCSC 875 at para. 115.
- [41] Gurshinder (with Mandinder) seeks to establish that several discussions took place or purported agreements existed. He has the onus of proof to establish that this occurred on a balance of probabilities--more likely than not. He has not met that onus.
- [42] Mandeep, however, has the onus to demonstrate certain events took place in support of her claims. For example, in relation to her assertion that Maninder told her to leave in May 2022, I find she has not met that onus. Also, for example, she has the onus to demonstrate that Maninder holds his interest in the Mission Property in resulting trust, or that he has been unjustly enriched; I find she has also not met that onus to establish such claims.
- [43] Considering all the evidence, I make the following findings of fact about the factual matters which are in dispute.

Whether Gurshinder and Mandeep Agreed That Each Other's Money Was Their Own Money?

- [44] Gurshinder testified that he and Mandeep had an understanding that his money was his money and her money was her money.
- [45] I do not find it more likely than not that during their marriage Mandeep agreed, or had an understanding which was outwardly expressed, with Gurshinder that his money was his money and her money was her money.
- [46] Instead, I find that Mandeep understood that they each kept their own bank accounts, but also that they were in a marriage and working together--she was working hard, as was Gurshinder--to have financial stability, including owning a home. I find Mandeep believed they were contributing together to their marriage, as spouses.
- [47] Gurshinder did not persuade me that Mandeep agreed that, while married, each of them would keep their own money throughout their marriage, despite the fact that they owned the Maple Ridge Property together and that Mandeep contributed to it and their household.

Whether in the Fall of 2021 or Early 2022 Gurshinder, Maninder and Mandeep Agreed That Maninder Would Be on Title to a New Property and that Mandeep Would Not Be on Title?

- [48] I find it is unlikely that Mandeep verbally agreed with Gurshinder and Maninder, or had any explicit discussion with them leading to an express objective common understanding, that Mandeep would not be on title to the Mission Property and that Maninder would be one-half legal owner.

- [49] I rely on the objective evidence of Mandeep's strong negative reaction shortly after being told that she was not going to be on legal title to the Mission Property, but that Maninder would. It is unlikely she agreed to these things, given her subsequent reaction immediately after the Mission Property purchase, in which she was left off title but made a borrower, and Gurshinder was paid out personally approximately \$126,000.
- [50] I find it unlikely that Mandeep told Gurshinder that Maninder should actually be a 99% owner of the Mission Property, as Gurshinder testified in his evidence.
- [51] I do not find that Mandeep is a dishonest person who has manufactured evidence at this trial after-the-fact about how she felt at the time of separation.
- [52] I find Mandeep to be generally credible, though she was not, at the time of the Mission Property purchase, sophisticated as to real estate transactions and probably should have reasonably anticipated that if Maninder was going to be partly responsible for the mortgage on a new property, he would also be a part owner of that property.
- [53] I find that the breakdown of the marriage occurred because of the Mission Property purchase with Maninder taking a 50% legal interest (and Mandeep not being a legal owner on title) and Gurshinder being paid out \$126,000 from the proceeds of the Maple Ridge Property. Given the promptness and forcefulness of Mandeep's negative reaction to this, leading to her wishing to separate from Gurshinder, it is not likely that Mandeep had previously agreed to all of this and then simply had regrets afterwards.
- [54] Mandeep reacted negatively when confronted with the reality that she was not going on title; I find she experienced significant upset from that, although did not show it outwardly at the time. Gurshinder was not fully aware of her displeasure, as the outward manifestation of Mandeep's feelings was not evident to Gurshinder, who underestimated how much she was upset by this.
- [55] In short, I find Mandeep was subjectively surprised and experienced significant upset from the events of the Mission Property purchase, and she decided to separate from Gurshinder because of it.

Whether Mandeep Agreed that Gurshinder should be Paid Approximately \$126,000 from the Maple Ridge Property Net Proceeds?

- [56] Relatedly, Gurshinder has not persuaded me that it is more likely than not that Mandeep agreed that he should be paid, personally, approximately \$126,000 from the Maple Ridge proceeds at the time of the closing of the Mission Property. I do not find that Mandeep helped Gurshinder calculate this amount, or its constituent elements, from his previous contributions, as he suggested in his testimony.

Whether Maninder Told Mandeep to Leave the Mission Property in May 2022, and Whether Mandeep was Forced to Leave?

[57] Here, Mandeep bears the onus of proof and has not demonstrated that it is more likely than not that Maninder, who I found to be a credible witness at trial, spoke words to her telling her to leave the family home at the Mission Property. I find it more likely than not that she left the Mission Property voluntarily.

Whether Gurshinder and Maninder Intentionally Acted, and Colluded, to Strip Mandeep of her Rightful Interest in a Family Home?

[58] I also find that Mandeep has not demonstrated on the evidence at trial that Gurshinder and Maninder executed "an intentional strategy to strip the Claimant of her rightful interest in a family home purchased with family funds." Nor has she proven, on a balance of probabilities, that Maninder was added to title to the Mission Property as a "collusive act to dilute the Claimant's rightful interest."

Further Factual Background

[59] In light of my findings above, and considering all the evidence, I make the following additional findings of fact.

[60] Gurshinder and Mandeep were married on February 4, 2018, in India.

[61] At the time of marriage Gurshinder had approximately \$85,000 in two TD bank accounts.

[62] Mandeep moved to Canada to live with Gurshinder in January 2019, when Mandeep was 26 years old. Gurshinder, born in 1988, was then 30.

[63] After Mandeep moved to British Columbia in January 2019, she and Gurshinder initially lived in a rented basement for about one year. Maninder later moved into the basement apartment with them in January 2020. Gurshinder paid the rent.

[64] Gurshinder was working when he and Mandeep moved in together.

[65] Mandeep started to work shortly after coming to Canada, in March 2019. Gurshinder helped her with a job search. She also did most of the housework, cooking, cleaning and the laundry. Mandeep paid for groceries, Gurshinder paid the rent, and they saved for a home.

[66] Gurshinder and Mandeep kept separate bank accounts.

[67] Gurshinder testified that he and Mandeep agreed that his money was his money, and her money was her money. I do not find any such explicit discussion took place between the two of them; they simply had their own bank accounts. I find on a balance of probabilities that Mandeep sensed that Gurshinder wanted it that way and complied. Mandeep did not have knowledge of how much money was in Gurshinder's bank accounts.

Maple Ridge Property

- [68] Gurshinder and Mandeep bought the Maple Ridge home in February 2020 for \$440,000. They were both part of the mortgage approval process, and Mandeep was needed to qualify for the mortgage in this amount.
- [69] Gurshinder and Mandeep were both on legal title as joint tenants to the Maple Ridge Property.
- [70] Maninder moved with them from the basement apartment to the Maple Ridge Property.
- [71] Gurshinder paid the approximate amount of \$89,000 toward the Maple Ridge home from his pre-marriage accounts (in installments of \$20,000 and \$68,818).
- [72] Shortly thereafter, the COVID pandemic began.
- [73] Gurshinder paid the mortgage for the Maple Ridge Property, property taxes and other household expenses, and occasionally bought groceries.
- [74] Using money she made from working, Mandeep paid the strata fees for the Maple Ridge Property, and the hydro expenses (starting in 2021).
- [75] Mandeep bought groceries; she cooked the meals and cleaned.
- [76] Maninder occasionally helped with buying groceries and sometimes helped Mandeep with cooking preparation. Gurshinder testified that Maninder paid the internet. Maninder did not pay rent for staying with Gurshinder and Mandeep in the Maple Ridge Property.
- [77] The vast majority of cooking and cleaning at the Maple Ridge Property was done by Mandeep.
- [78] The parties lived in this way for the approximately two years that Gurshinder and Mandeep owned the Maple Ridge Property.
- [79] Just before they sold and moved out of the Maple Ridge Property, in about March 2022, Gurshinder's parents also moved into the Maple Ridge Property with Mandeep, Gurshinder, and Maninder.

Purchase of the Mission Property

- [80] Prior to purchasing the Mission Property, on January 14, 2022, RBC had pre-approved mortgage financing for purchase of a property of \$1.5 million, with Gurshinder, Mandeep and Maninder making this financing application.
- [81] On February 3, 2022, Gurshinder and Mandeep (without Maninder) were also approved by the bank for a mortgage for a property valued at \$1.15 million.

- [82] On February 9, 2022, Gurshinder signed a contract of purchase and sale to purchase the Mission Property, paying a deposit of \$50,000. The Maple Ridge Property had not yet then sold.
- [83] On March 18, 2022, the parties entered into an agreement to sell the Maple Ridge Property. Gurshinder and Mandeep made approximately \$382,000 in net proceeds on the sale of the Maple Ridge Property.
- [84] On April 28, 2022, Gurshinder and Mandeep closed the Mission Property acquisition. The purchase price was \$1.386 million.
- [85] The buyer's statement of adjustments for the Mission Property purchase shows \$126,196.51 from the Maple Ridge Property net proceeds was transferred to Gurshinder directly (though the statement of adjustments refers to this as funds due to Gurshinder and Maninder). Gurshinder referred to these as surplus funds, the logic being, as I understand it, that their plan was to make a 20% down payment (being approximately \$300,000, calculated as 20% of a \$1.5 million property) for the Mission Property, and the \$126,000 was excess to the amount of approximately \$300,000 paid by Gurshinder and Mandeep (the \$50,000 deposit, and approximately \$255,000 of remaining proceeds of the Maple Ridge Property net of the \$126,196.51) .
- [86] Aspects of what was discussed in regard to the Mission Property purchase is disputed between the parties, and I have dealt with this above.
- [87] Maninder assisted in the Mission Property acquisition by being part of the mortgage preapproval and financing and providing his views in the property search that was done at this time. The text messages between Mandeep and Gurshinder at the time from February 9, 2022, indicate that Mandeep was aware that Maninder's views were being sought about proposed house purchases.
- [88] There is not in evidence any correspondence with the bank leading up to the mortgage preapprovals. Gurshinder testified that there were emails about this, but in the absence of any emails in evidence, I place no weight on that testimony.
- [89] However, I find that Mandeep knew, before the Mission Property purchase, that Maninder was part of a financing application for a \$1.5M property purchase. However, I also find that she did not subjectively appreciate that this would mean Maninder would go on title to the purchased property, and this was not made explicit to her.
- [90] Gurshinder paid a \$50,000 deposit for the Mission Property out of his bank account. The remainder of the down payment for the Mission Property came from the proceeds of the Maple Ridge Property.
- [91] Maninder did not pay any of the down payment for the Mission Property.

Events Leading Up to Sale of Maple Ridge Property and Purchase of Mission Property

- [92] The parties disagree about what was said, or not said, as between them prior to purchase of the Mission Property. Considering all the evidence, I make the following findings.
- [93] Gurshinder testified that he and Mandeep agreed with Maninder that Maninder would not pay any down payment for the Mission Property, but would equalize his contribution and match Gurshinder and Mandeep's down payment over time through mortgage payments.
- [94] I find that Gurshinder, Mandeep and Maninder had discussions about selling the Maple Ridge Property and upgrading to a larger home during the fall of 2021.
- [95] However, Gurshinder and Maninder have not proven on a balance of probabilities that they discussed with Mandeep, and that she agreed (objectively communicated to them that an agreement had been reached), that if Maninder was a co-borrower for the new property, he would be a 50% property owner because he would pay over time an amount to equate to their down payment.
- [96] There is no document reflecting such an agreement, and the evidence of Gurshinder and Maninder, on the one hand, and Mandeep, who denies this, on the other, is equally balanced. As such, I find Gurshinder and Maninder have not proven that it is more likely than not that such an agreement or objectively communicated understanding existed.
- [97] I find instead that what more likely than not occurred is that there were discussions about buying a new home, that Mandeep was present for some of those discussions, and Maninder's involvement with mortgage pre-approval for a larger home was discussed in her presence. But it was not made clear to Mandeep, who at the time was not a sophisticated property buyer, that Maninder would become a 50% owner of a new home and that she would be removed from legal title altogether.
- [98] I do not find that this was an intentional non-disclosure by Gurshinder and Maninder. I do not find they colluded against Mandeep, or that there was bad faith, as Mandeep alleged; she has not demonstrated this at trial on a balance of probabilities. I find more likely than not that, particularly closer to the time of the purchase of the Mission Property, Gurshinder was under stress, since the Maple Ridge Property had not yet sold but he had already signed the purchase agreement for the Mission Property in February 2022, and through oversight in this time period his communication to Mandeep was lacking.
- [99] I thus find there was a misunderstanding and lack of clear communication between them. That, combined with Mandeep not having experience purchasing property before, and Gurshinder handling the property acquisition logistics and finances, including coordinating mortgage pre-approval, led to her lack of subjective knowledge and understanding of what Gurshinder and Maninder anticipated the ultimate arrangement between the three of them would be.

- [100] Mandeep arguably should have been put on inquiry about what status Maninder would have--whether he might be a part legal owner--in a new property if he was part of mortgage approval.
- [101] It is more likely that not that Gurshinder and Maninder had more detailed discussions about the proposed arrangements for the purchase of a larger property than what was spoken directly to Mandeep. This reconciles Gurshinder and Maninder's confident view this had all been agreed, with Mandeep's evidence that it was not discussed with her. It is more likely than not that matters discussed with her were on a level of generality that did not make clear to her what Gurshinder and Maninder had discussed. This misunderstanding was also caused by the arrangement not being reduced to writing at the time and shown to Mandeep.
- [102] It is reasonably understandable that Mandeep could experience resentment from a scenario: having previously been a co-legal owner of the Maple Ridge Property and working both in the home and to make money to partly pay the carrying costs of that property, to thereafter not being a legal owner on a new property; and from Maninder, who had paid no rent in the Maple Ridge Property, becoming a 50% owner in a new property, the down payment for which was funded principally from the equity of the Maple Ridge Property which Mandeep co-owed.
- [103] The misunderstanding that prevailed in the fall of 2021 and into January 2022 continued later in 2022, when the parties bought the Mission Property but were having trouble selling the Maple Ridge Property. Gurshinder was under stress, and things started to move quickly. There was not, in this time period, clear communication to Mandeep to explain the situation.
- [104] I do not find any of Gurshinder, Maninder, or Mandeep were acting in bad faith. They had a fundamental misunderstanding, which ultimately caused Mandeep significant upset and led to her separation from Gurshinder. Her growing resentment about financial matters throughout the marriage came to a head with this event and Gurshinder taking approximately 33% (\$126,000) of the Maple Ridge Property equity for himself at the closing of the Mission Property four years into his marriage to Mandeep.

Close of Purchase of Mission Property

- [105] The first time Mandeep understood she would not be put on title, but that Maninder would be on title with Gurshinder, was at a meeting at the bank in late March 2022. Gurshinder, his parents, and Maninder were also there. I find she felt confused and angry, and did not speak out at this time.
- [106] Although I find that she was surprised and upset, I also find that it is more likely than not she did not show her feelings to them.

- [107] On closing of the Mission Property, Gurshinder and Maninder were put on title, 50% each as tenants in common.
- [108] A joint account was created at the bank for Gurshinder, Mandeep and Maninder. This is the first time that Gurshinder and Mandeep had held a joint account together in Canada since marriage.
- [109] Gurshinder, Mandeep and Maninder are all parties to the mortgage for the Mission Property. For clarity, Mandeep currently remains on the mortgage as a borrower.
- [110] The sale of the Maple Ridge Property had generated net proceeds of approximately \$382,000.
- [111] However, not all the net proceeds were used toward the purchase of the Mission Property, to reduce the amount to be mortgaged.
- [112] Instead, as noted above, immediately following closing, on or about April 25, 2022, Gurshinder received the amount of \$126,196 from the Maple Ridge Property proceeds, which is reflected in the Buyer's Statement of Adjustments.
- [113] That \$126,196 amount was put into Gurshinder's own bank account.
- [114] Gurshinder did not satisfy me on a balance of probabilities that Mandeep helped him calculate how much money was owed to him at this point in the marriage, and I find she did not agree to Gurshinder solely receiving this \$126,196.51.
- [115] I find that this event, too, upset Mandeep. Gurshinder's evidence is that Mandeep was fine with him receiving \$126,196 directly, but I do not find that she was. While Mandeep did deliver the cheque to Gurshinder, she nevertheless resented this amount being received by Gurshinder from the sale of the Maple Ridge Property.

Events After Closing of Mission Property

- [116] Gurshinder, Mandeep, Maninder, and Gurshinder's parents all moved into the Mission Property shortly after closing.
- [117] Mandeep was unhappy with Gurshinder after the closing of the Mission Property but initially did not show her reaction.
- [118] On about May 4, 2022--only days after the closing of the Mission Property--she told Gurshinder she was leaving him, she had enough and was giving up on their marriage.
- [119] Gurshinder and Maninder suggested that Mandeep was, at the time of the closing of the Mission Property, externally fine with what occurred. That she was present at the time the papers were signed and did not raise any objection.

[120] I find that, despite how Mandeep externally presented herself, she was subjectively upset by being left off title to the Mission Property and from Gurshinder receiving \$126,196 from the Maple Ridge Property proceeds.

[121] There is a dispute on the evidence between Mandeep and Maninder about an interaction they had in May 2022. Mandeep testified that Maninder told her to leave the Mission Property home; Maninder denies this. I have dealt with this above.

[122] Mandeep left the Mission property on June 15, 2022. I find she left voluntarily. I find this to be the date of separation.

Post-Separation Events

[123] Mandeep has not lived in the Mission Property since separation.

[124] After separation, Mandeep moved in with her uncle.

[125] Gurshinder and Maninder, together with Gurshinder's parents, continued to live in the Mission Property.

[126] In about September 2022, Maninder's wife came to BC and moved in as well to the Mission Property.

[127] Mandeep has not made any payments toward the mortgage on the Mission Property since separation (although she did contribute \$1,000 in May 2022). Nor has she paid for any of the other costs associated with the Mission Property.

[128] Instead, Maninder has chiefly paid the mortgage and other costs for the Mission Property since approximately June 2022 .

[129] Maninder says that he has contributed toward the Mission Property the amount of \$194,445 since June 2022, in the form of mortgage payments, property insurance, property taxes, and city utilities. The Mission Property has a suite that has been rented out during this time, and Maninder has received some of this rental income. Maninder submits that he and Gurshinder have also received approximately \$40,000 in rental payments for the Mission Property from that date.

[130] In the result, Maninder has, since Gurshinder and Mandeep separated, largely paid for the mortgage and other costs for the Mission Property for the last approximately three years.

[131] Mandeep testified that post-separation, she has not received any financial support or any assets from Gurshinder.

Issue #1: What Is Maninder's Interest in the Mission Property/Is Maninder Holding a Portion of the Mission Property in Trust for Gurshinder and Mandeep?

[132] Gurshinder submits that 50% of the Mission Property is family property which is available for division between Mandeep and Gurshinder.

[133] Mandeep submits that "a resulting trust arises over the 50% interest in the Mission Property held by Maninder Dhesi." She relies on *Kuo v. Chu*, 2009 BCCA 405. She seeks a "declaration that Maninder Dhesi holds his 50% interest in resulting trust."

[134] In Mandeep's reply submissions, she "ask[s] the Court to find that Gurshinder holds 100% beneficial interest and that a constructive trust or resulting trust in my favour is appropriate based on my prior contributions and his unjust enrichment." She "respectfully ask[s] the court to recognize this as a constructive trust or resulting trust, and to reapportion the Mission Property accordingly under s. 5 of the Family Law Act."

[135] Maninder opposes any trust claim over his portion of the Mission Property, and submits: that 50% of the Mission Property is family property which is available for division between the Claimant and the Respondent Gurshinder. The remaining 50% belongs to respondent Maninder. If [the] Court determines Maninder's share to be zero for any reason instead of 50% for Mission property, Maninder's position is return of all money he has put in Mission property. If my share is determined less than 50%, please adjust and return share of my funds accordingly.

Is There a Resulting Trust over Maninder's 50% Interest in the Mission Property?

[136] A "resulting trust arises when title to property is in one party's name, but that party, because he or she is a fiduciary or gave no value for the property, is under an obligation to return it to the original title owner": *Guest v. Guest*, 2024 BCSC 1138 at para. 14, citing *Pecore v. Pecore*, 2007 SCC 17 at para. 20.

[137] *Pecore* at para. 24, holds that,

The presumption of resulting trust is a rebuttable presumption of law and general rule that applies to gratuitous transfers. When a transfer is challenged, the presumption allocates the legal burden of proof. Thus, where a transfer is made for no consideration, the onus is placed on the transferee to demonstrate that a gift was intended: see *Waters' Law of Trusts*, at p. 375, and *E. E. Gillese and M. Milczynski, The Law of Trusts* (2nd ed. 2005), at p. 110. This is so because equity presumes bargains, not gifts.

[138] In matters where land is involved, the law of resulting trust intersects with the law with respect to s. 23(2) of the Land Title Act, R.S.B.C. 1996, c. 250: *Guest* at para. 17; *Jafar-Gholizadeh v. Larijani*, 2018 BCSC 279 at para. 31 [Jafar].

[139] Section 23(2) of the Land Title Act is a statutory presumption that "indefeasible title is conclusive evidence at law and in equity that the person named in the title as registered owner is indefeasibly entitled to an estate in fee simple to the land described in the indefeasible title": *Jafar* at para. 30.

[140] *Jafar* sets out exceptions to the statutory presumption:

[31] In *Suen v. Suen*, 2013 BCCA 313 (*Suen #1*), Justice Smith stated:

[34] The central issue to be determined by the trial judge was whether the statutory presumption of indefeasible title as to the joint ownership of Capstan Way was rebutted by either of the parties. This Court has endorsed three considerations for determining this issue:

- (i) the operation of a resulting trust which may be inferred where no value is given for a legal interest;
- (ii) the operation of an agreement between the parties that is contrary to the registered legal title; or
- (iii) taking into account the underlying equitable interests between the parties (e.g., considerations that arise in claims for unjust enrichment).

See *Bajwa v. Pannu*, 2007 BCCA 260, paras. 12-14, 18, and 23; and *Aujla v. Kaila*, 2010 BCSC 1739, paras. 31-36.

[141] Maninder was part of the mortgage pre-approval required to purchase the Mission Property; he pledged his credit. He made it possible for Gurshinder and Mandeep to buy property they otherwise were unable to buy, and he exposed himself to the risk of having to meet mortgage payments or reimburse a shortfall if there was default. He provided real and direct contribution to the purchase of the property, without which it is unlikely Gurshinder and Mandeep would have been able to acquire it: *Chohan v Chohan*, 2024 BCSC 420 at para. 77.

[142] In my view, Maninder gave value and the presumption in s. 23(2) has not been rebutted: *Jafar* at para. 133; *Virk v. Pannu*, 2006 BCSC 921 at para. 40, *aff'd Bajwa v. Pannu*, 2007 BCCA 260. No other exceptions set out in *Jafar* are in my view applicable.

[143] I do not find that *Kuo* case, relied on by Mandeep, militates in favour of a resulting trust in this case.

[144] In short, I dismiss Mandeep's claim to a resulting trust over Maninder's 50% portion of the Mission Property.

Was There an Unjust Enrichment Arising from Maninder Having a 50% Interest in the Mission Property?

[145] Mandeep submits that:

Alternatively, the Claimant asserts that the Respondents have been unjustly enriched at her expense.

- Enriched by receiving 50% title,
- You [Mandeep] were deprived (your [Mandeep's] Maple Ridge equity funded the home),
- No juristic reason -- no gift, contract, or agreement

- [146] The three required elements of the test for unjust enrichment are well established: (i) enrichment of the defendant; (ii) corresponding deprivation of the plaintiff; and (iii) the lack of a juristic reason for the defendant to retain the benefit: *Garland v. Consumers' Gas Co.*, 2004 SCC 25 at para. 30; *Pro-Sys Consultants Ltd. v. Microsoft Corporation*, 2013 SCC 57 at para. 85.
- [147] The second stage of the juristic reason analysis requires a consideration of reasonable expectations of the parties and public policy considerations: *Garland* at para. 54.
- [148] To the extent that Mandeep's claim of unjust enrichment might be construed to be, in part, against Gurshinder, the Family Law Act, S.B.C. 2011, c. 25 [FLA] serves as a juristic reason for any asserted enrichment: *Julka v Wadhera*, 2025 BCSC 1396 at paras. 241-243.
- [149] Mandeep has not established that Maninder has been unjustly enriched by holding 50% of the Mission Property. Her claim does not succeed since: (1) Maninder is a borrower on the mortgage for the Mission Property; and (2) since Mandeep's separation from Gurshinder, Maninder has been principally paying the carrying costs of the Mission Property for approximately three years as of the time of trial, including paying the twice-monthly mortgage payment of \$2,341.
- [150] While Maninder has benefitted from sharing rent received from the Mission Property in the approximate amount of \$40,000 since June 2022, this does not detract substantially from the significant amounts he has paid for the Mission Property since that time. Further, while Maninder has been able to live in the Mission Property since June 2022, and Mandeep has not, this is because Mandeep voluntarily left this property at that time.
- [151] Mandeep points out that Maninder's financial contributions to the Mission Property started after it was purchased, and that "[h]e resided in the home, benefiting from occupancy and rent." However, again, without Maninder's participation in the mortgage pre-approval and acquisition process, the parties would not have been able to purchase the Mission Property.
- [152] Maninder's financial contribution to the Mission Property over the last three years is approaching \$200,000, and he was instrumental in acquiring this property. He has not been enriched at this point, and even if he has been to some extent, consideration of the reasonable expectations of the parties leads to the conclusion that he has not been unjustly enriched at law.
- [153] I do not find these circumstances establish Mandeep's claim of unjust enrichment on the part of Maninder for his acquiring 50% of the legal title to the Mission Property.

Conclusion: Issue #1 (re Maninder's Interest in the Mission Property)

[154] For these reasons, I dismiss that part of the relief in Schedule 5 of Mandeep's notice of family claim seeking relief against Maninder, including relief that he has been unjustly enriched and that Maninder holds his interest in the Mission Property as the court may determine in trust for Mandeep and/or Gurshinder.

[155] Further, I grant the following relief in Maninder's counterclaim:

a declaration the Respondent, Maninder Dhesi, legally and beneficially owns 50% of the real property civically located at 8747 Machell Street, Mission, BC V4S 0B6 and legally described as PID: 029-245-532 Lot 5 Section 29 Township 17 New Westminster District Plan EPP26506 (the "Machell Property");

[156] In the manner I have disposed of this issue, no accounting or tracing of monies contributed by Maninder to the Mission Property is necessary or appropriate. I therefore further dismiss Maninder's relief at para. 6 of his counterclaim seeking an "accounting between the Co-Respondent Gurshinder Singh Dhesi also known as Gurshinder Dhesi and the Claimant." Further, I decline to grant other declaratory relief sought at paras 2-5 of his counterclaim.

Issue #2: What Order for Division of Family Property and Debt Is Appropriate?

[157] I next decide the matter of property division and spousal support between Gurshinder and Mandeep.

[158] Although the issues of property division and spousal support are "inextricably linked," property division should, in almost all cases, be decided before making a final order for spousal support: *Tereposky v. Fooks*, 2023 BCSC 1989 at para. 32. Mandeep submitted she should receive her fair share of the family assets.

(a) Division of Family Property - Other than Mission Property

[159] The main item at issue here concerns the approximately \$221,000 in Gurshinder's RBC bank accounts at separation, following a payment to him of \$126,196.51 from the Maple Ridge Property proceeds upon closing of the Mission Property purchase.

[160] The "Respondent Gurshinder seeks an excluded sum of \$166,916.00 from his RBC accounts", as well as the amount of \$19,000 to be reapportioned to him. Under s. 85(2) of the FLA, "[a] spouse claiming that property is excluded property is responsible for demonstrating that the property is excluded property."

[161] Gurshinder submits "that he was paid the sum of \$126,196.51 to compensate him for the payments he made for the deposit and downpayment he made for the Maple Ridge Property which were a total of approximately \$89,749.83 and deposit of \$50,000 for the Mission Property."

[162] I will deal with each of the amounts claimed.

\$126,196.51 Payment to Gurshinder from the Maple Ridge Property Net Proceeds of Sale

[163] The \$126,196.51 does not correspond to a precise amount of excluded property asserted by Gurshinder and is said to be a combination of several amounts.

[164] Specifically, Gurshinder submits that the \$126,196.51 is comprised of three amounts: of \$85,251.29 said to be Gurshinder's excluded property from pre-marriage savings; \$21,705.00, said to be his excluded property as gifts from his parents; and the balance of \$19,240, which Gurshinder submits should be "a reapportionment to him for the unequal contributions made by the parties during the relationship for the maintenance of the Maple Ridge property given the short duration of the relationship, and given the arrangement between the parties that each party will be entitled to the money in their respective accounts."

(i) \$85,251.29 Asserted Pre-Marriage Excluded Property

[165] Property acquired by a spouse before the relationship is considered "excluded property" under s. 85(1)(a) of the FLA.

[166] Gurshinder did have approximately \$85,280 in his savings at the time of marriage which could constitute excluded property had that pre-marriage money remained there throughout the marriage: FLA, s. 85(1)(a).

[167] However, this \$85,280 did not remain in his personal bank accounts throughout marriage. In February 2020, Gurshinder contributed approximately \$89,000 to the purchase the Maple Ridge Property, which he and Mandeep jointly owned and which had Mandeep on the mortgage.

[168] This family claim was commenced in 2022. This Court recently described the legal principles concerning pre-May 11, 2023, family claims, in *Thiessen v. Thiessen*, 2025 BCSC 150:

[80] Recent amendments to the FLA under Bill 17, Family Law Amendment Act, 4th Sess., 42nd Parliament, British Columbia, 2023 (assented to May 11, 2023), clarify that excluded property remains excluded even if ownership is transferred to the other spouse. However, these rules apply only to cases initiated after May 2023. For pre-existing proceedings, the legal effect of such transfers remains governed by earlier interpretations, such as *Venables v. Venables*, 2019 BCCA 281, where the court emphasized the importance of the transferring spouse's intention in determining whether excluded property becomes family property.

[81] Under the pre-Bill 17 framework, the common law principles of resulting trust and the presumption of advancement still apply. The presumption of advancement assumes a transfer between spouses is a gift unless proven otherwise. It can be rebutted with evidence demonstrating a different intent, such as keeping the property excluded.

- [169] Justice Blake discussed *Venables v. Venables*, 2019 BCCA 281, in *A.K. v. N.R.P.*, 2025 BCSC 1718:
- [185] in the appeal decision, the Court of Appeal made clear that it is the intention of the spouse who transfers ownership of excluded property that is the key consideration. As Justice Griffin noted:
- [93] Two questions arise under the FLA when ownership of excluded property is transferred from one spouse's name to the other spouse's name, solely or jointly, and remains in that form of ownership at the time of separation:
- a) first, does the "excluded property" become "family property", or does s. 85(1)(g) apply with the result that it continues to be excluded property; and,
 - b) second, if it does become family property, on relationship breakdown, can the origins of the property that previously made it excluded property be considered as a factor that might make it "significantly unfair" to divide the family property equally, justifying judicial reapportionment of the family property under s. 95?
- [94] This Court has already spoken on this first question in *V.J.F.*, which was followed in *Pisarski v. Piesik*, 2019 BCCA 129 and *Namdarpour v. Vahman*, 2019 BCCA 153.
- [95] What emerges from these authorities, of relevance to the current appeal, is that the intention of the spouse transferring ownership is key in determining whether the property transferred from one spouse to the other remains excluded property or becomes family property. If it is found that the spouse who transferred the property intended that the property be a gift to the other spouse, and there is no agreement that it is to remain excluded property, then it will become family property: *V.J.F.* at paras. 74-79; *Namdarpour* at para. 46.
- [186] As the Court of Appeal made the applicable law clear in *Venables*, that is the law that I must apply to the issues in this case.
- [170] In *V.J.F. v. S.K.W.*, 2016 BCCA 186, Justice Newbury stated that the presumption of advancement (with respect to gifts) between spouses applies under the FLA, as it then was:
- [74] With all due respect to the contrary view, I conclude that the new FLA scheme does not constitute a "complete code" that "descends as between the spouses" and eliminates common law and equitable principles relating to property. Rather, the scheme builds on those principles, preserving concepts such as gifts and trusts, and evidentiary presumptions such as the presumption of advancement between spouses. Thus I find that the gift of (slightly less than) \$2 million made by Mr. F. to Ms. W. became her property and was "property owned by at least one spouse" under s. 84, as opposed to "property derived from the disposition of [excluded] property" within the meaning of s. 85. At the time the definitions are applied - the date of separation - the fact Mr. F. had originally received the \$2 million as a gift was no longer relevant. He lost the exclusion when he voluntarily and

unreservedly directed that the West 33rd property be transferred to Ms. W. and 'derived' no property from that disposition.

- [75] I do not interpret the FLA as reversing the gift or requiring that it be ignored because of the spouses' separation. Nor do I agree that the FLA effectively 'prohibits' gifts between spouses, as Mr. F. suggested. (See para. 56.) Gifts between spouses can continue as they have through the ages. It would take much clearer wording to render them suddenly revocable or null or illegal. (See the comments of Chief Justice Farris in a slightly different context in *Duncan v. Duncan* (No. 2) [1950] B.C.J. No. 50 at para. 13 (S.C.), *aff'd* [1950] B.C.J. No. 41. (C.A.).)
- [76] Contrary to the suggestion made in P.G., moreover, the \$2 million gift received by Ms. W. does "fall back into the communal pot" on separation and is divisible as family property in the normal way. The spouses are presumptively entitled to equal shares as tenants in common. The fact s. 95 does not list the same set of factors previously listed in s. 65 of the FRA is, with respect, a choice made by the Legislature. (See *Ward v. Ward* 2012 ONCA 462 at para. 25.) The FLA is not to be interpreted by means of a comparison of the fairness of its provisions with those of the FRA.
- [77] In the absence of a clear statement abolishing the presumption of advancement, I also conclude that it continues to apply under the FLA (although I would not necessarily refer to it as a "right" within the meaning of s. 104). Had the Legislature intended to abolish the presumption, it would have been an easy thing to so state, as other provinces have done. It would also be an easy matter to provide, or perhaps clarify, that the presumption applies to common law as well as formal marriages and even that it should apply to gifts from a wife to her husband, not just the reverse. (See *Donavan Waters, Mark Gillen and Lionel D. Smith, Waters' Law of Trusts in Canada* (4th ed., 2012) at 413; *J.B. v. S.C.*, *supra*, at paras. 85-7; *Lawrence v. Mulder*, *supra*, at paras. 66-75; *Kerr v. Baranow* 2011 SCC 10 at para. 20.)
- [78] I acknowledge that judges may in some cases have to determine whether transfers of excluded property that may have taken place years before, were gifts or not. This seems likely to occur most often in cases where inherited property is transferred by the heir to his or her spouse or into joint names. (Of course, the presumption of advancement was invented as a way of resolving such questions where the evidence is unclear or equivocal.) That said, there are means by which the inheriting or recipient spouse can protect against 'losing' the exclusion. Subject to other relevant provisions of the FLA, for example, the transferor can require the transferee to acknowledge that no gift of the excluded property (or its value) is intended.
- [79] Finally, I take some comfort from the fact that my conclusions are generally in accord with the conclusions arrived at by other appellate courts under other "excluded property" legislation, and in particular from the fact that most jurisdictions regard inter-spousal gifts as constituting family property rather than exempt or excluded property.

[Emphasis in original.]

- [171] I find these principles have not been altered by the recent decision of *Mills v. O'Connor*, 2025 BCCA 34 discussing the law of tracing excluded property.
- [172] The Maple Ridge Property was held in both Gurshinder and Mandeep's names for approximately two years, from February 2020 to April 2022. In February 2020, Gurshinder transferred his \$85,280 pre-marriage cash contribution to that property in part to Mandeep as joint owner in the Maple Ridge Property. The presumption of advancement applies to assets transferred into joint ownership, requiring the contributor-- here Gurshinder-- to prove that he did not intend this as a gift, with the burden on Gurshinder to rebut that presumption: *Thiessen* at paras. 100-01; *Pecore* at para. 27.
- [173] In my view, Gurshinder has failed to prove that he intended to preserve its excluded status and thus has failed to rebut the presumption of advancement. I am not satisfied on the evidence that he did not intend this amount to be a gift. He did not ask Mandeep to acknowledge that no gift of his excluded property was intended: *V.J.F.* at para. 78. While Gurshinder testified that he did not intend to gift his pre-marriage savings of approximately \$85,280 to Mandeep, in his testimony he linked this to his assertion that he and Mandeep had an "understanding" that each other's money in their own accounts would belong to each of them, but I have found no such agreement or mutual understanding existed between the two. He lived in the Maple Ridge Property with Mandeep as his wife. Mandeep contributed to the Maple Ridge Property both financially and with her housework and cooking. I do not find his testimony rebuts the presumption of advancement.
- [174] Therefore, I find that the \$85,251.29 portion of the down payment on the Maple Ridge Property, which Gurshinder paid in February 2020, became family property when the Maple Ridge Property was placed into Mandeep and Gurshinder's name jointly. It did not constitute "property derived from the disposition of [excluded] property" within the meaning of s. 85(1)(g) of the FLA. When Gurshinder transferred to himself \$85,251.29 as part of the \$126,196.51 from the sale of the Maple Ridge Property in April 2022, this \$85,251.29 remained family property and is not his excluded property.
- (ii) \$21,705 Asserted Gifts from Parents
- [175] However, I am satisfied that \$21,705 of the \$126,000 was a gift from Gurshinder's parents to him in September and November 2021 and used for the \$50,000 deposit for the purchase of the Mission Property. This can be traced to his bank accounts and remains his excluded property.
- [176] A gift is an item of excluded property: FLA, s. 85(1)(b.1). This gift can be traced to the monies put down for the Mission Property and subsequently returned to him: s. 85(1)(g) and *Mills* at paras. 79-80.
- [177] This \$21,705 amount was briefly used to fund the deposit for the Mission Property, and returned to Gurshinder on closing, and this amount remains Gurshinder's excluded asset.

- [178] These funds were not co-mingled with an asset jointly held with Mandeep, or "[c]ommingled with joint family funds" as Mandeep asserts; instead, they were used in February 2022, to partially fund the down payment for the Mission Property, and paid back to Gurshinder in April 2022, upon closing of the purchase of that property. They are traceable to an excluded asset and therefore remain an excluded asset: FLA, s. 85(1)(g).
- (iii) \$19,240 - Asserted Reapportionment to Gurshinder
- [179] Gurshinder seeks as a reapportionment of \$19,240 to him "for the unequal contributions made by the parties during the relationship for the maintenance of the Maple Ridge property given the short duration of the relationship, and given the arrangement between the parties that each party will be entitled to the money in their respective accounts."
- [180] Also, in the alternative, Gurshinder submits that if the court finds the \$126,196.51 is not excluded property, then the entire \$126,196.51 should be reapportioned to him.
- [181] The \$19,240 constitutes proceeds from the sale of the Maple Ridge Property and is presumptively family property.
- [182] Further, Gurshinder submits that, "if the court finds that his TD funds lost their exclusion due to being deposited into a property in joint names, then there should be a reapportionment of those funds in favor of the Respondent Gurshinder."
- [183] While the FLA aims to create a "certain and predictable" regime for the division of property, it also accounts for potential unfairness arising from equal division: Tereposky at para. 37, citing Sperring v. Shutiak, 2023 BCCA 54 at para. 112, aff'g B.L.S. v. D.J.S., 2021 BCSC 1311.
- [184] In Tereposky, I stated:
- [39] The spouse seeking an unequal division of property bears the onus of establishing significant unfairness: FLA, s. 85(2); Toth at para. 62. It is a higher threshold than the test for unequal division under the Family Relations Act, R.S.B.C. 1996, c. 128. However, equal property division is significantly unfair if there is evidence of something "objectively unjust, unreasonable or unfair": Jaszczewska v. Kostanski, 2016 BCCA 286 at paras. 41-42. To justify an unequal distribution, the court must find that the unfairness is "compelling or meaningful" with regard to the s. 95(2) factors: Remmen at para. 44. However, the purpose of s. 95(2) is not to put the parties in a position of absolute equality: A.D.J. v. F.J., 2022 BCSC 600 at para. 192; L.G. v. R.G., 2013 BCSC 983 at para. 71.
- [40] Section 95(2) requires a consideration of several factors to assess significant unfairness, with the goal of achieving an outcome that is "reasonable and fair to both parties": Rana v. Ullah, 2022 BCCA 192 at para. 44, citing Zilic at para. 34. Evidence should not be "compartmentalized in a mechanical fashion, rather it is considered globally": Rana at para. 44.

[185] Gurshinder contends he and Mandeep had an agreement that each spouse's money should be their own. I do not accept this as a matter of fact, but did deal with the related topic of informal agreements and surrounding circumstances in Tereposky:

D. Informal Agreements and Surrounding Circumstances

[44] Informal agreements regarding the division of assets and the spouses' financial arrangements during the relationship may support a finding of significant unfairness. Written or oral agreements must be considered under s. 95(2)(b): *B.L.S. v. D.J.S.*, 2021 BCSC 1311 at paras. 105, 110-111, *aff'd* 2023 BCCA 54; see e.g., *Brown v. Brown*, 2016 BCSC 1037 at paras. 76-79; *Voitchovsky v. Gibson*, 2022 BCSC 355 at para. 39, *aff'd* 2022 BCCA 428. However, so too may working arrangements to keep finances separate be considered, in the absence of an express agreement in place: *Sperring* at paras. 114, 117. Circumstances surrounding the spouses' financial arrangements may also be considered under s. 95(2)(i): see e.g., *Moynihan v. Nakano*, 2022 BCSC 2186 at para. 65.

[186] The "threshold of significant unfairness [is] a high one that reflects the Legislature's intent that the general rule of equal division should prevail except where persuasive countervailing reasons militate dispositively in favour of a different result": *Mills* at para. 54.

[187] I find that Gurshinder has not met his onus to demonstrate that the \$19,240 should be re-apportioned. I find he has not proven an "arrangement between the parties that each party will be entitled to the money in their respective accounts." Nor does the relatively short duration of the marriage (four years) and that he contributed more financially than Mandeep for the Maple Ridge Property justify a reapportionment of this family asset, in my view.

[188] Gurshinder has not demonstrated that there is something "objectively unjust, unreasonable or unfair" about equally dividing the family property proceeds of the Maple Ridge Property which would justify a reapportionment to him of \$19,240 of those proceeds. He has not met the "high threshold" demonstrating significant unfairness from an equal division of this family asset: *V.J.F.* at para. 81.

[189] Gurshinder's \$19,240 reapportionment claim is therefore dismissed.

[190] For similar reasons, I find that Gurshinder's alternative claim for reapportionment of the entire \$126,196.51 amount is also dismissed.

\$59,960 of Asserted Gifts from Parents

[191] The remainder of the \$166,916 in Gurshinder's RBC accounts at separation over which he claims excluded property is comprised of \$59,960 gifted to him by his parents for the purchase of the Mission Property in March 2022, which he did not utilize for the purchase.

[192] I am satisfied that this amount is a gift and therefore Gurshinder's excluded property: FLA, s. 85(1)(b.1).

Summary, Gurshinder's Excluded Property Claim

[193] In summary, I make the following findings regarding Gurshinder's excluded property claim of \$166,916, and his claim for reapportionment of \$19,240 (or, alternative reapportionment claim of \$126,196.51):

Whether amount forms part of \$126,196.51

payment to Gurshinder in April 2022

Decision

Excluded Property

Gurshinder's Excluded Property Claims

\$166,916.00:

\$85,251.29

yes

dismissed

-

\$21,705.00

yes

allowed

\$21,705.00

\$59,960.00

no

allowed

\$59,960.00

Gurshinder's Reapportionment claim(s)

\$19,240

(or, alternatively \$126,196.51)

yes

dismissed

-

[194] The amounts in Gurshinder's Scott Schedule shall be adjusted accordingly.

Mandeep's Claim to Re-Appportionment of Family Assets

[195] Mandeep also seeks a re-apportionment of family assts on the grounds of significant unfairness.

[196] Mandeep seeks "an unequal division of the 50% interest held by Gurshinder under section 95 of the Family Law Act." She contends that equal division would be significantly unfair under s. 95(1) for the following reasons:

- The Claimant was excluded from title despite her financial and emotional contributions;
- The title was transferred to Maninder without the Claimant's consent;
- The Claimant remains liable for the mortgage while receiving no benefit;
- The exclusion caused financial hardship.

The Claimant relies on section 95(2)(i), which allows the Court to consider other factors contributing to significant unfairness.

[197] She seeks "[a]n unequal division in the Claimant's favour (70%-75%) of the property's net value."

[198] I refer to the principles of reapportionment claims, based on significant unfairness, set out above.

[199] Further, excluded property is not to be the subject of division unless it would be "significantly unfair" not to divide it: FLA, s. 96(b); Thiessen at para. 41. Relatedly, in support of her re-apportionment claim Mandeep submitted in her reply submissions that Gurshinder "benefited from family gifts from his parents while blocking my rightful share." However, under the FLA, a gift is a valid form of excluded property of a spouse, and his receipt of gifts from his parents in this case does not justify a finding of significant unfairness.

[200] Mandeep submits in regard to the Mission Property purchase: "This was not a bona fide transaction. It was a coordinated attempt to shield family assets and avoid equitable distribution. Maninder is not an innocent third party."

[201] However, I have found that while Mandeep subjectively did not understand that Maninder would hold a legal interest to the Mission Property, she ought reasonably to have inquired about this given her knowledge that Maninder was part of the mortgage financing application for a \$1.5 million property purchase.

- [202] In my view, Mandeep has further failed to prove there was bad faith on Gurshinder and Maninder's part in the Mission Property purchase. Nor am I satisfied that she has demonstrated significant unfairness, "something objectively unjust, unreasonable or unfair in some important or substantial sense" (Mills at para. 54), under s. 95 to justify an unequal division of family assets.
- [203] That Maninder's financial contribution to the Mission Property since June 2022 may have been funded by transfers or gifts of money to him from his parents does not make his contribution significantly unfair.
- [204] Further, having rejected Mandeep's claims to resulting trust and constructive trust, I decline to reapportion the Mission Property on these grounds under s. 95 of the FLA as she sought in her reply submissions.
- [205] I therefore dismiss Mandeep's claim for unequal division of family property.

Conclusion: Division of Assets and Liabilities (Other than the Mission Property)

- [206] As to the division of family assets and liabilities (other than the Mission Property), I will adjust up Gurshinder's family assets available for distribution by \$85,251 and I do not accept a \$19,240 reapportionment to him. This results in an amount available for division in Gurshinder's name, from his RBC accounts, in the amount of \$132,376, and not \$27,885 as was claimed in his Scott Schedule-1 at Tab 3 of his submissions (at Schedule A to these Reasons).
- [207] As to the Mazda owned at separation, Gurshinder submitted that the debt associated with the vehicle exceeded the value of the vehicle at the time of separation. I find that Gurshinder shall keep the vehicle along with the loan without any contribution from Mandeep. I note that Mandeep and Gurshinder's modest other debts (other than the mortgage on the Mission Property) on separation substantially negate each other.
- [208] This results in an amount of family assets for distribution of \$183,125.30 as per my table below, or \$91,562.65 for each of Mandeep and Gurshinder, as shown below in Gurshinder's adjusted Scott Schedule - 1:

Asset/(Debt)

Value/ (Balance) at June 15, 2022

Excluded Property of Gurshinder or

Adjustment

Balance for division

Claimant

Gurshinder

Gurshinder's RBC Accounts ending in 1080

\$12,930.64

Gurshinder's excluded property: \$166,916.00

\$81,665

+\$19,240 as reapportionment

\$27,885.00

\$132,376.07

\$27,885.00

\$132,376.07

Gurshinder's RBC Accounts ending in 1098

\$201,110.43

Claimant's TD Account ending in 8578

\$32,254.52

\$32,254.52

\$32,254.52

Claimant's TD Accounts ending in 9736

\$10,190.70

\$10,190.70

\$10,190.70

Joint RBC Account ending in 6897

\$30,845.50

\$22,000.00 deposited by Maninder

\$8,845.50

\$8,845.50

Claimant's TD Visa ending in 8159

(\$399.64)

(\$399.64)

(399.64)

Gurshinder's RBC Avion Visa ending in 0283

(\$141.85)

(\$141.85)

(\$141.85)

Mazda with Loan- Gurshinder to keep without accounting

TOTAL

\$183,125.30

\$42,045.58

\$141,079.72

(b) The Mission Property: Division of Family Property

[209] The total amount of the mortgage remaining on the Mission Property at the date of trial is \$1,008,377.05, which is less than its purchase price in 2022.

[210] There is no property appraisal for the Mission Property. Mandeep declined an invitation by Gurshinder to obtain a joint appraisal of the Mission Property prior to trial and submits that her doing so was "a protest against the Respondents' wrongful exclusion of her from the legal ownership of the home." She submits that "the most appropriate valuation for determining her equitable interest is the purchase price of the Mission Property and any reasonable market-based estimate, rather than relying on the BC Assessment."

[211] I have evidence of the assessed value of the Mission Property. There is no other market-based evidence for the Mission Property in this trial. Absent other evidence, the BC assessment value is the appropriate amount to use to value the Mission Property, being the best and most relevant evidence before the Court: T.C. v. L.A., 2020 BCSC 1313 at para. 106; Dosanjh v. Liang, 2015 BCCA 18 at paras. 60-61; A.J.E. v. T.B.W., 2017 BCSC 1657 at para. 142.

[212] Mandeep sought, in her reply submissions, an order that the court "[d]ivide the family property and debts based on the values as of the date of separation" and not as at the date of trial. I take this to seek an order valuing the Mission Property as of the date of separation, not the date of trial. However, I decline to do so. Under s. 87(b)(ii) of the FLA, "the value of family property and family debt must be determined as of the date . of the hearing before the court respecting the division of property and family debt" (subject to certain exceptions that are not applicable in his case).

- [213] If equal division would be significantly unfair, the court may also vary the date for the division of property under s. 87: Tereposky at para. 41; FLA, s. 95. While I have the discretion under s. 87 of the FLA to value the Mission Property on the date of separation if there would be significant unfairness under s. 95(2), I find Mandeep has not demonstrated significant unfairness. I decline to adjust the valuation date for the Mission Property to the date of separation.
- [214] There is therefore \$123,623.00 of equity in the Mission Property, 50% of which belongs to Maninder, leaving the value of family property in the Mission Property to be one half of \$123,623.00, or \$61,812. Gurshinder is the current holder of a 50% legal interest in the Mission Property.
- [215] Mandeep, in her reply submissions submitted that, "The property should be listed for sale, and my share determined on actual net sale proceeds." I decline to order a sale of the Mission Property to determine its market value and actual sales proceeds after Mandeep declined to participate in a joint market value appraisal of the Mission Property before trial. Gurshinder and Maninder have been living in the Mission Property since Mandeep left in June 2022, and I find Gurshinder is likely able to buy out Mandeep's share of the 50% family property interest in that property. In my view, it would be unfair to force a sale of the Mission Property as a primary remedy to determine a value for it due to Mandeep's unwillingness to obtain a joint appraisal of that property for purposes of trial. "It is true that the value of a property is only actually determined by a sale" (Bordignon v. Bordignon, 2024 BCSC 1226 at para. 141), but here the best evidence at trial of the value of the Mission Property is its assessed value, and Mandeep has not established a basis to order a sale of the Mission Property to serve as a proxy for her not obtaining a market value appraisal for trial.
- [216] Dividing the family asset of the Mission Property equally leads to an amount of \$30,906 for each of Mandeep and Gurshinder.
- (c) Conclusion: Division of Assets and Liabilities
- [217] I therefore conclude that each of Mandeep and Gurshinder are entitled to family property in the amount of $\$91,562.65 + \$30,906 = \$122,498.65$ each.
- [218] Since Mandeep held \$42,105.58 in assets at separation, she is entitled to a compensation order from Gurshinder equalizing the division of family assets in the amount of \$80,363.07 ($=\$122,498.65 - \$42,105.58$).
- [219] I have discretion to allow a period of time for Gurshinder to pay Mandeep the compensation order (equalization payment) and will provide him 90 days to do so: Tereposky at para. 97, citing Robinson v. Robinson, 2011 BCSC 1489 at paras. 131-32, aff'd 2012 BCCA 497.

[220] As noted, Mandeep sought an order that the Mission Property be listed immediately and sold, but I find that it is appropriate to instead order that Gurshinder and Maninder take steps to remove her as borrower from the mortgage, failing which the Mission Property shall be sold.

Issue #3: Is Mandeep Entitled to Spousal Support and, if so, what Quantum of Spousal Support?

[221] Mandeep seeks "interim and on going spousal support" in Schedule 3 of her notice of family claim and seeks an amount of \$21,882 to \$28,134. Gurshinder disputes this and submits "the Claimant is not entitled to spousal support from him."

[222] The court may in appropriate circumstances make an order for spousal support pursuant to s. 15.2(1) of the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.), taking into account the following factors in s 15.2(4):

Factors

- (4) In making an order under subsection (1) or an interim order under subsection (2), the court shall take into consideration the condition, means, needs and other circumstances of each spouse, including
 - (a) the length of time the spouses cohabited;
 - (b) the functions performed by each spouse during cohabitation; and
 - (c) any order, agreement or arrangement relating to support of either spouse.

[223] I also consider the objectives of spousal support in s. 15.2(6) of the Divorce Act:

Objectives of spousal support order

- (6) An order made under subsection (1) or an interim order under subsection (2) that provides for the support of a spouse should
 - (a) recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown;
 - (b) apportion between the spouses any financial consequences arising from the care of any child of the marriage over and above any obligation for the support of any child of the marriage;
 - (c) relieve any economic hardship of the spouses arising from the breakdown of the marriage; and
 - (d) in so far as practicable, promote the economic self-sufficiency of each spouse within a reasonable period of time.

[224] Compensatory support is intended to provide redress to the recipient spouse for economic disadvantage arising from the marriage or the conferral of an economic advantage upon the other spouse: Tereposky at para. 90, citing Chutter v. Chutter, 2008 BCCA 507 at paras. 50-53.

[225] Where compensatory principles do not apply, need alone may be sufficient to ground a claim for spousal support: Tereposky at para. 91, citing Chutter at para. 54. The concept of "needs" in the context of non-compensatory spousal support goes beyond basic necessities of life and varies according to the circumstances of the parties. Self-sufficiency, a spousal support objective primarily related to non-compensatory support, is a relative concept informed by the standard of living previously enjoyed by the parties: Tereposky at para. 91, citing Chutter at para. 56.

[226] I find that Mandeep is entitled to spousal support on a compensatory and non-compensatory basis: Bracklow v. Bracklow, [1999] 1 S.C.R. 420 at para. 49, 1999 CanLII 715; Chutter, at paras. 45-54; Divorce Act, ss. 15.2(1) and (6).

[227] During their approximately 4.25 year marriage, Mandeep did the majority of the housework, including cooking, supporting Gurshinder's career, while at the same time working herself. Further, since separation, she has not lived in the same manner as she did during the marriage, having lived with her uncle and currently living on her modest income of approximately \$57,000 and without Gurshinder's financial support.

[228] Mandeep worked as an accounting clerk from 2019 to December 2021 and now works for a construction company in accounts receivable. Her income was:

- 2019: \$27,973
- 2020: \$36,771
- 2021: \$41,365
- 2022: \$49,034
- 2023: \$53,733
- 2024: \$57,114

[229] Gurshinder's income over this time period was:

- 2019: \$62,284
- 2020: \$62,241 (with EI)
- 2021: \$97,968
- 2022: \$108,278
- 2023: \$146,346

· 2024: \$136,454

[230] Mandeep has experienced an economic disadvantage since the breakdown of their marriage. After separation, Gurshinder paid no spousal support to Mandeep.

[231] I find a lump sum spousal support award to Mandeep under the Divorce Act to be appropriate in the circumstances. As stated in the Spousal Support Advisory Guidelines at p. 107, "In some very short marriages cases where the support entitlement is limited and there is available property, a lump sum award that allows for a clean break may be appropriate." I find that their marriage, of a little over four years, was of a short duration.

[232] A DivorceMate table provided by Gurshinder (tab 6 of his Closing Submissions), used guidelines incomes of \$142,000 for Gurshinder and \$57,114 for Mandeep and provided calculations for spousal support and lump sum amounts. That table provided lump sum spousal support calculations assuming a spousal support duration of two years, three months. But instead, I find that four years duration is more appropriate having regard to the strength of Mandeep's spousal support claim and her needs, and since, upon marriage, Mandeep moved from India to Canada to live together with Gurshinder, and now she lives in Canada with her uncle.

[233] Making an assessment to adjust for a four year (not 2.25 year) duration in the mid range, I find that a \$19,000 lump sum spousal support amount to be appropriate as payment for Gurshinder's past, present and future spousal support obligations.

Issue #4: Is Mandeep Entitled to Occupational Rent for the Mission Property?

[234] Mandeep seeks an order of "[o]ccupational rent in proportion to her beneficial interest."

[235] The legal principles relating to a claim for occupational rent were summarized in Thiessen:

Legal Principles Governing Occupational Rent

[153] Occupational rent is an equitable remedy aimed at achieving fairness between co-tenants in family law matters. It is not a standalone claim but must be assessed as part of the broader division of property. Leading authorities in British Columbia on occupational rent include: *J.D.G. v. J.J.V.*, 2016 BCSC 2389; *Stasiewski v. Stasiewski*, 2007 BCCA 205; and *Oyama v. Oyama*, 2009 BCCA 114.

[154] In *Stasiewski*, the Court of Appeal clarified that occupational rent in family law proceedings is not a stand-alone claim but must be assessed in the broader context of property division. Similarly, in *Shen v. Tong*, 2013 BCCA 519, Justice D. Smith emphasized that occupational rent aims to achieve a "just and equitable" outcome under s. 65(1) of the Family Relations Act., R.S.B.C. 1996, c. 128 at para. 94.

- [155] In *Lennox v. Lennox*, 2022 BCCA 44, the Court of Appeal confirms that occupational rent is an equitable remedy that requires the exercise of judicial discretion to achieve fairness between the parties based on the specific circumstances of each case. The court emphasizes that occupational rent is not an automatic entitlement, but a flexible remedy designed to address imbalances arising when one party occupies a jointly owned property to the exclusion of another or incurs significant property-related expenses.
- [156] The court directs that each case must be assessed on its own facts, considering relevant factors such as the parties' contributions, the benefits derived by the party in possession, any delay in asserting the claim, and whether unjust enrichment arises. The analysis aims to ensure that the remedy aligns with principles of equity and fairness in the particular circumstances.
- [157] Occupational rent, as an equitable remedy, is distinct from ordinary rent. Justice Paris articulated the foundational principles of occupational rent in *Donovan v. Donovan* (1986), 7 B.C.L.R. (2d) 221, 1986 CanLII 774 (B.C.S.C.) at 225, noting:
- a) **Right to Possession:** A co-tenant out of possession typically cannot claim occupational rent because they retain the legal right to re-enter the property.
 - b) **Ouster Exception:** A claim for occupational rent may arise if the co-tenant was compelled to vacate or was ousted from the property.
 - c) **Condition for Equitable Relief:** A tenant seeking equitable relief, such as reimbursement for property-related expenses, must accept the potential for an occupational rent claim, even if the other tenant left voluntarily.
- [158] These principles highlight that occupational rent is a discretionary remedy designed to balance fairness between parties, particularly in cases involving shared property where one party seeks to recover expenses or benefit from equitable relief.
- [159] Justice Shergill more recently outlined the relevant principles of occupational rent in *Bishop v. Wang*, 2018 BCSC 781, emphasizing its application as an equitable remedy to address fairness in specific circumstances.
- [160] These principles confirm that occupational rent aims to balance the equities between co-tenants, addressing the occupying party's exclusive use of the property and the expenses associated with its maintenance or improvement of that property.
- [236] Further, in *Bordignon* at para. 312 this Court quoted *MFSJ862 v. FFSJ862*, 2022 BCSC 1259, which quoted *Petrie v. Lindsay*, 2019 BCSC 371 as to the principles relating to occupational rent:
- [163] In *Petrie v. Lindsay*, 2019 BCSC 371, Sharma J. discusses such a claim:

[136] Occupational rent is not typically asserted as a stand-alone claim, but is often considered in the reapportionment analysis. Even in that context, it is an exceptional remedy that should only be used cautiously and only to achieve a just and equitable result: L.W. at paras. 166-168; *Stasiewski v. Stasiewski*, 2007 BCCA 205 at para. 30. Additionally, *Shen v. Tong*, 2013 BCCA 519, contains a non-exhaustive list of factors to consider in assessing a claim for occupational rent (at para. 94):

- a) whether there has been ouster (although several authorities have indicated that this is not a requirement);
- b) whether children are residing with the occupying spouse;
- c) whether the occupying spouse has made a claim for contribution from the non-occupying spouse for the expenses related to the premises;
- d) whether child and/or spousal support was being paid by the non-occupying spouse;
- e) whether the occupying spouse increased the selling value of the property;
- f) the duration of the occupancy; and
- g) any other competing claims.

[Emphasis added.]

[237] Unlike in *Thiessen*, where a claim to occupational rent was found to be substantiated (paras. 161-62, 171), Mandeep has not demonstrated on a balance of probabilities that Gurshinder or Maninder compelled her to vacate the Mission Property. She has not proven on the evidence that she "was ousted from the Mission Property" as she contends. Instead, I find that she left voluntarily, approximately one month after telling Gurshinder she wished to separate. She has not contributed to the substantial mortgage payments or any of the expenses associated with the Mission Property since she left in June 2022. In my view, Mandeep has not established that, to achieve fairness, she has an entitlement to occupational rent from Gurshinder.

[238] Further, I do not find *Griffiths v. Zambosco*, 54 O.R. (3d) 397, 2001 CanLII 24097 (O.N.C.A.), which Mandeep appears to rely on, to be similar to the case at bar. In that case a trial judge had awarded occupational rent, and the Ontario Court of Appeal stated that: "Griffiths occupied it for over six years after he and Sloan separated, the trial judge clearly had jurisdiction to order Griffiths to pay occupation rent if it was reasonable and equitable to do so": at para. 49.

[239] Here, Gurshinder has lived with Maninder, who is a joint owner, in the Mission Property for approximately three years after Mandeep left that property after deciding to separate from Gurshinder. While Mandeep has, in this interim period, "remained liable on the mortgage" she has not contributed to the mortgage and instead Maninder chiefly has paid the mortgage and other expenses for the Mission Property.

[240] To the extent that Mandeep has had to incur an expense to live with her uncle since separation, in my view this does not justify a reapportionment of family assets and can be addressed through the combination of family asset apportionment on an equal basis and an award of lump sum spousal support.

[241] Having regard to the consideration that occupational rent is "an exceptional remedy that should only be used cautiously," I find Mandeep has not established that it is necessary "to achieve a just and equitable result" in the circumstances: Petrie at para. 136.

Issue #5: Should any other relief sought be granted?

[242] Other relief was sought by Mandeep, Gurshinder and Maninder in their respective claims and counterclaims. For example, Mandeep sought an order for "an accounting of the rents, profits, dividends, interests, monies and income received by the Respondent Maninder Dhesi and the Respondent spouse, in respect of" the Mission Property.

[243] Except as ordered in these Reasons, any other relief sought by Mandeep, Gurshinder and Maninder is not granted.

Conclusion and Orders Granted

[244] For these reasons, I make the orders as set out in these Reasons, including the following orders:

[245] Subject to my orders in these Reasons, I order that Gurshinder and Mandeep shall each retain the assets which are held in their own names and are responsible for those debts in their respective names. For clarity, Gurshinder shall retain his 50% registered interest in the Mission Property, but Mandeep shall be removed from the mortgage on the Mission Property, per my orders below.

[246] I further order that Gurshinder shall pay Mandeep a compensation order within 90 days from the date of these Reasons in the amount of \$99,363.07, broken down as follows:

Family property and debt division

\$80,363.07

Spousal Support (lump sum)

\$19,000

Total

\$99,363.07

[247] The CPP credits of the claimant Mandeep and the respondent Gurshinder will be divided for the period of cohabitation

[248] The respondents Gurshinder and Maninder shall within 90 days have Mandeep's name removed from the mortgage registered against the Mission Property, any other charges registered against the Mission Property, and from any other liabilities associated with the Mission Property.

[249] I grant the following relief in Maninder's counterclaim with respect to Maninder's ownership in the Mission Property:

a declaration the Respondent, Maninder Dhesi, legally and beneficially owns 50% of the real property civically located at 8747 Machell Street, Mission, BC V4S 0B6 and legally described as PID: 029-245-532 Lot 5 Section 29 Township 17 New Westminster District Plan EPP26506 ;

[250] In the event the respondents Gurshinder and Maninder are unable to complete the name removal of claimant Mandeep from the mortgage within 90 days from the date of this Order, the Mission Property will be jointly listed for sale and sold with the sale proceeds to be disbursed as follows:

- a. Firstly, the usual charges and debts against the Mission Property will be paid out of the sale proceeds such as:
 - i. Mortgage or any other charges registered against the Mission Property;
 - ii. Costs associated with the sale of the Mission Property;
 - iii. All applicable real estate commissions and taxes associated with the sale of the Mission Property;
 - iv. All applicable conveyancing fees, disbursements and taxes; and
 - v. All necessary adjustment for taxes and utilities.
- b. Secondly, the balance will be equally as follows:
 - vi. The Respondent Maninder will receive 50% of the net sale proceeds.
 - vii. The balance of the 50% will be divided between the Claimant Mandeep and the Respondent Gurshinder as per my order.

[251] I order that Mandeep shall cooperate with the removal of her spousal protection charge, certificate of pending litigation or any other charges she may have registered against the Mission Property, including in connection with the removal of her name from the Mission Property mortgage, including any refinancing of the Mission Property, or the sale of the Mission Property if required by this Order. The parties have liberty to apply to me for further orders, if required, with respect to the removal of charges Mandeep may have registered against the Mission Property.

[252] These Reasons dispose of all relief sought in the claimant Mandeep's notice of family claim filed November 16, 2022, the respondent Gurshinder's counterclaim filed December 22, 2022, and Maninder's counterclaim filed December 23, 2022, except for the matter of costs.

[253] If the parties cannot agree on costs they may, within 30 days, submit a request to Supreme Court Scheduling for a court appearance before me to make submissions on the matter of costs.

"Stephens J."

SCHEDULE A: GURSHINDER DHESI'S SCOTT SCHEDULE - 1

FROM CLOSING SUBMISSIONS

Asset/(Debt)

Value/ (Balance) at June 15, 2022

Excluded Property of Gurshinder Or

Adjustment

Balance for division

Claimant

Gurshinder

Gurshinder's RBC Accounts ending in 1080

\$12,930.64

Gurshinder's excluded property: \$166,916.00

+\$19,240 as reapportionment

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\$201,110.43

Claimant's TD Account ending in 8578

\$32,254.52

\$32,254.52

\$32,254.52

Claimant's TD Accounts ending in 9736

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Joint RBC Account ending in 6897

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(\$399.64)

(\$399.64)

(399.64)

Gurshinder's RBC Avion Visa ending in 0283

(\$141.85)

(\$141.85)

(\$141.85)

Mazda with Loan- Gurshinder to keep without accounting

TOTAL

\$78,634.23

\$42,045.58

\$36,588.65

Mission Property subject to Maninder's share of the property:

2025 BC Assessed Value:

\$1,132,000

Mortgage Balance at June 15, 2022:

(\$1,103,974)

Equity for division:

\$28,026.00

2025 BC Assessed Value:

\$1,132,000

Mortgage Balance current- May 31, 2025:

(1,008,377.05)

Equity for division (subject to contribution for mortgage and other Property expenses payable by the Claimant)

\$123,623.00

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