

CANADA / JUDGMENT

Jallouq v. Jallouq

2025 BCSC 1756

COURT

Supreme Court of British Columbia

DECIDED

9 September 2025

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2025 BCSC 1756 Jallouq v. Jallouq IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Jallouq v. Jallouq, 2025 BCSC 1756 Date: 20250909 Docket: E17156 Registry: Chilliwack Between: Iryna Jallouq also known as Iryna Volodymyrivna Jallouq Claimant And Farid Samir Jallouq also known as Farid Samir Farid Jallouq Respondent Before: The Honourable Justice Caldwell Reasons for Judgment Counsel for the Claimant: S.S. Sohi The Respondent, appearing in person: F.S. Jallouq Place and Dates of Trial: Chilliwack, B.C. March 26-28 & 31, 2025 April 1, 2025 Place and Date of Judgment: Chilliwack, B.C. September 9, 2025 Table of Contents Background.. 3 Preliminary Matters and Orders. 4 Guideline Income. 5 Child Support and s. 7 Expenses. 7 Spousal Support. 11 Property and Debt Division.. 17 The Family Home. 18 Unequal division. 23 Other assets, debts and adjustments. 26 Summary. 27

[1] This was the trial of a family matter. It has been high conflict from its inception in May of 2020. Each of the parties has changed counsel a number of times over the course of the litigation. This was the fifth scheduled trial date for the matter. There were 162 pretrial filings by the parties.

Background

[2] The parties began living together in Ukraine in October 2010, married in Ukraine on December 25, 2010, and separated on March 26, 2020. They have one son, Daniele, born August 30, 2011 and about to turn 14. He has lived with the claimant since separation and has not had any parenting time with the respondent.

[3] The claimant is 38 years old. She holds a medical degree from Ukraine, which she received in 2009. She practiced as a medical doctor in that country prior to coming to Canada via Switzerland. She did not give evidence indicating that she is qualified to practice medicine in Canada. The claimant has worked for Arcus Community Services for approximately eight years. Her income from employment during most of those years has ranged from \$51,000 to \$66,000. She is currently on a "part-time" schedule but often works extra time and considerable overtime for premium pay. She is paid at the rate of \$31.61 per hour and estimates that she works about 50 hours per week. If those estimates are correct, and without considering an overtime premium, that will put her 2025 income at approximately

\$80,000 - \$82,000.

- [4] The respondent is 56 years old. He is a self-employed hair stylist and has been since at least 2010, when the parties met. He has historically worked from home studios and transacts all or most of his business in cash. His Form 8 financial statements show a claimed income of \$16,800 but, most recently, he indicates that he is no longer working. Social media posts, advertising, and reviews seem to suggest otherwise. In 2018, he had the claimant prepare a tax return for him to file. He showed self-employment income of about \$30,000 but, in her evidence, the claimant testified that to her knowledge his actual cash income was closer to or even above \$40,000 that year. She did not assist him with his taxes after 2018.
- [5] There are allegations by the claimant that this relationship was rife with family violence of various kinds, perpetrated by the respondent. The respondent denies all such allegations. The local police have attended at the parties' residence on occasion, and there have been a series of strict protection orders issued by this Court since these proceedings began in May 2020. Preliminary Matters and Orders
- [6] The parties seek a divorce and the evidence satisfies me that such order is appropriate. An order for divorce is made in the usual terms and based upon the parties having lived separate and apart for a period of well over one year.
- [7] When the matter was called, the parties had also agreed that certain other orders could go by consent, and thus the following orders are made on that basis:
1. Both parties are and remain guardians of the child, Daniele.
 2. The claimant has sole parenting responsibilities as itemized in s. 41 of the Family Law Act, S.B.C. 2011, c. 25 [FLA].
 3. The child will reside primarily with the claimant.
 4. The respondent will have parenting time with the child by video connection, twice per month for up to 30 minutes on each occasion and at such other times as the child may determine.
 5. The parenting issues will be reviewable by either of the parties upon the child reaching the age of 16 on August 30, 2027.
 6. The current protection order will be cancelled and replaced with a protection order in the same terms but expiring on August 31, 2027, being the day after the child turns 16.
- [8] The only issues which remain to be determined are the parties' incomes, actual or imputed, the quantum of child support payable by the respondent (both retroactive and prospective), the proportionate sharing of s. 7 expenses, the quantum and duration of spousal support, if any, payable by the claimant for the benefit of the respondent, and the division of family assets and debt. Guideline Income

- [9] The claimant's evidence in respect of her income is confusing and inconsistent.
- [10] Her most recent Form 8, sworn in February 2025, states her income to be \$41,667. After deductions for union/professional dues, her Guideline income is stated as being \$40,897.
- [11] Save for two recent years, when part of her income was received by way of Employment Insurance ("EI") payments due to a temporary disability, her income has averaged approximately \$60,000 per annum.
- [12] When giving evidence at trial, she testified that she is currently earning income at the rate of approximately \$80,000 per annum by legitimately manipulating her hours of work to maximize overtime premium payments. She expects that income to continue.
- [13] She denies receiving rental income relative to the family home, although she testified that her mother and father also live in the home, as do her brother, his wife, and their children. She says that they merely help out with contributions to utilities and groceries.
- [14] No evidence was led regarding market rent value relating to the portions of the house which are occupied by her family members.
- [15] She lists her expenses at almost \$110,000 per annum, including mortgage payments of over \$40,000 per year (before taxes or insurance) and school expenses for the child of approximately \$9,000 but shows no accumulated debt commensurate with her annual deficit.
- [16] I do not find the claimant's evidence regarding the contributions made by her family, or lack thereof, to be credible. Alternatively, I find that she alone made a unilateral decision to provide free room and board to her family over these many years to the financial prejudice of the respondent.
- [17] I will deal with the issue of the value and contribution associated with the familial tenants in the home when dealing with the division of family assets and debts.
- [18] The respondent denies that he is working. He has consistently claimed income of approximately \$17,000 which he attributes to social assistance. That is the figure which he claims in his most recent Form 8 filed in February 2025.
- [19] He alleges certain medical problems and compromises to his health which he says contribute to his inability to work and earn income. This includes his allegation of having been the victim of a serious assault in 2024, which resulted in his hospitalization "in a coma" for some six weeks. He provided no evidence whatsoever, medical or otherwise, to support such assertions save and except for showing the Court that he is missing several teeth. I find that he has not established, on the evidence, that he is medically incapable of full-time employment in hair-styling or some other field with modest to medium physical requirements.

- [20] The evidence, including significant advertising and promotional material on social media which seems to have been running consistently and for some time, seems to contradict much of the respondent's testimony regarding his operation of an ongoing hair-stylist business.
- [21] The evidence satisfies me, on a balance of probabilities, that the respondent is in fact working at his trade, enjoying some modest success in his hair-stylist business, capable of generating somewhat more income than he currently claims to be generating, and receiving payments in cash so as to avoid or minimize tax consequences to such earnings. He apparently also continues to receive the noted social assistance.
- [22] I am not satisfied that his income from hair-styling is as consistent or substantial as alleged by the claimant. I accept that the respondent has occasional periods of higher and often significantly lower income over the course of the year. I expect that he also has periods during which he is unable to earn any income. Such is the lot of many self-employed persons.
- [23] I note that the respondent's listed and sworn expenses total about \$46,500 per year. His listed debt is not insignificant, but would not be enough to cover an annual shortfall of \$30,000 per year over a period of about five years.
- [24] Weighing all the evidence presented, I attribute a Guideline income of \$80,000 per year to the claimant. I impute a Guideline income of \$35,000 to the respondent. That figure is based on the evidence as to his past income and is roughly equivalent to full-time employment at the current minimum wage. Child Support and s. 7 Expenses
- [25] Based on the above incomes, I order the respondent to pay child support to the claimant in the amount of \$329 per month commencing April 1, 2020, and continuing thereafter for so long as the child remains a child of the marriage. The arrears to date of trial and this decision (to and including August 2025) are determined at \$21,385.
- [26] Given the respondent's past abject refusal to pay child support and given the ongoing animosity between the parties, I am of the view that this is an appropriate case to consider the option of a lump sum award for future or prospective child support.
- [27] Section 170 of the FLA provides the following regarding the payment of child support: 170 In an order respecting child support or spousal support, the court may provide for one or more of the following:
- (a) that payments be made periodically, annually or otherwise, for an indefinite or limited period or until a specified event occurs;
 - (b) that child support or spousal support be paid respecting any period of time before the date the application for the order is made;
 - (c) that payment of a lump sum be made, directly or in trust;

- (d) that a charge be registered against specific property to secure payment;
- (e) that a person who has a contract of life insurance within the meaning of Part 3 of the Insurance Act
- (i) designate the person's spouse or child as a beneficiary, irrevocably or for the period designated by the court, and (ii) either pay all premiums on the policy, or authorize the person's spouse to pay all premiums on the policy and to compensate the spouse for doing so;
- (f) that expenses arising from and incidental to prenatal care of a mother or child, or the birth of a child, be paid, except in relation to the prenatal care of a surrogate within the meaning of section 29 (1) [parentage if surrogacy arrangement];
- (g) subject to section 171 (1) [support obligations after death], that a duty to pay child support or spousal support continues after the death of the person having the duty, and is a debt of the person's estate for the period fixed by the court.

[28] In general, lump sum awards for child support are rare and are reserved for exceptional circumstances. Over 25 years ago, Justice Levine (as she then was) provided a useful summary or cataloguing of considerations for such order in *Vinciguerra v. Bertram*, [1998] B.C.J. No. 2004, 1998 CanLII 6242 (S.C.):

[51] In *Myatt v. Myatt* (1993), 45 R.F.L. (3d) 45 at 50-2 (B.C.S.C.), Kirkpatrick J. reviewed the jurisprudence relating to lump sum awards of child maintenance and identified the following principles and considerations:

1. The same considerations that apply to orders for lump sum spousal maintenance apply to consideration of a lump sum child maintenance order (p. 51).
2. Lump sum maintenance awards are exceptional, and should be made only when there is some special need or specific circumstances render it appropriate (the *Canadian Family Law Guide*, vol. 1 (Don Mills, Ont.: CCH Canada 1976) (p. 5117), which cited *Krause v. Krause* (1975), 23 R.F.L. 219 (Alta. C.A.) and *Carmichael v. Carmichael* (1976), 27 R.F.L. 325 (B.C.C.A.) [other cites omitted]).
3. The existence of animosity between the parties may favour a lump sum maintenance order to reduce future sources of conflict (*Reid v. Reid* (1974), 15 R.F.L. 125 (B.C.S.C.); *Hayre v. Hayre* (1973), 11 R.F.L. 188 (B.C.S.C.)).
4. The only asset of the parent was his interest in the matrimonial home (*Lawson v. Lawson* (1973), 9 R.F.L. 294 (Ont.H.C.)).
5. The parent was not in a position to pay any amount towards the support of the children (*Dart v. Dart* (1974), 14 R.F.L. 97 (Ont.H.C.)).

6. It was neither practical nor feasible for the parent to pay periodic maintenance, considering her earning capacity (*Donovan v. Donovan* (1986), 5 R.F.L. (3d) 1 (B.C.S.C.)).
 7. The parent disobeyed a previous maintenance order and had not demonstrated "prudent financial management" (*McLean v. McLean*, 4 January 1991, Vancouver Nos. A892598 and D076500 (B.C.S.C.)).
 8. The parent's plans were to use available monies to pay off debts instead of child support (*Kaminsky v. Kaminsky* (1991), 71 Man.R. (2d) 230 (Man.Q.B.)).
 9. The parent had limited means to earn income in the foreseeable future and one financial asset (p. 52).
- [29] More recently, Justice Marzari dealt with the issue of lump sum child support in the case of *Ma v. Chen*, 2021 BCSC 2741:
- [155] Lump sum child support orders are rare, but they are not unheard of.
- [156] In the case of *Mansoor v. Mansoor*, 2012 BCSC 602, this court ordered child support in a lump sum payment and summarized the factors as follows:
- [95] Section 11 of the Guidelines provides for the payment of lump sum support. The factors to be considered were expressed by this Court in *Myatt v. Myatt* (1993), 45 R.F.L. (3d) 45 at 50-52 (B.C.S.C.). The relevant factors here are:
1. Lump sum support awards are exceptional and should only be made where there is a special need or some specific circumstance which render it appropriate.
 2. The only "known" asset of the parent is his interest in the matrimonial home.
- [96] The court has also awarded lump sum orders where the payor parent has not complied with the court orders and lives in a non-reciprocating jurisdiction: *K.V.D.P. v. T.E.*, 2004 BCSC 537.
- [157] Justice Russell in *Dorey v. Havens*, 2011 BCSC 1777, also made a lump sum award for child support approximately ten years ago, and she said:
- [129] I am satisfied that I can have little confidence in the claimant's evidence concerning his income in general. In light of my order that he pay child support for the twins, I must assume the court can expect him to resist payment in the future just as he has in the past.
- [158] Justice Russell applied the present value tables provided for under the Law and Equity Act, R.S.B.C. 1996, c. 253, to those lump sums, and she specifically applied a 2.5% discount rate, which was the appropriate discount rate at that time: para 173.

- [161] In considering all of these factors, I have determined that a lump sum prospective child support award is in the best interests of the children and fair to both parties. However, I am not prepared to simply multiply the award amounts by the numbers of years until the children reach 19, and I consider that Justice Russell's approach in Dorey of using present value tables is appropriate in this case. I am now going to provide the parties with the Civil Jury Instructions present-value tables that I propose to use.
- [162] As I understand the tables, the practice direction, and the Law and Equity Act, the current rates are 1.5% for present values for income loss and 2% for other losses. I would use the 2% rate and I would apply it over 15 years. I have looked at the fact that there is a different amount for the first 14 years for both children together, and then the youngest child alone in the 15th year. I would calculate Mr. Chen's obligation at \$1,210 a month for 12 months (a \$14,520 annual child-support obligation), and I would multiply that by the 14-year amortization table at 2%, which is 12.1062%, and from that I get a value of \$175,782.
- [30] In the present case, the respondent has failed to pay any child support since separation. The relationship between the parties is and remains acrimonious. The respondent has not maintained a relationship with the child. The respondent's income is sporadic and uncertain and his ability and/or willingness to earn appropriate income in the future is suspect. The house is the only significant asset.
- [31] Based on these facts, I am of the view that this is an appropriate case for an order awarding lump sum prospective child support. In doing so, I follow the same process as used by Justice Marzari in Ma:
1. I take the respondent's obligation as being \$329 per month for 12 months, to arrive at \$3,948 per year;
 2. I multiply that by the 5-year amortization table at 2% which is 4.7135 and I arrive at a current value of \$18,609 which I order paid as lump sum prospective child support for the child to the age of 19, which he should reach in August 2030.
- [32] The claimant has coverage for all health and dental expenses through her employer. The only s. 7 expenses claimed are for swimming and judo. These expenses appear in counsel's closing submissions but are not itemized as s. 7 expenses in her Form 8. There was no evidence that the respondent was consulted regarding whether these activities and expenses were appropriate.
- [33] I order that the parties share s. 7 expenses in proportion to their respective incomes of \$80,000 and \$35,000 but I determine that, at present, given the parties' incomes and expenses, there are no such s. 7 expenses to be divided. The parties are to discuss and agree on any s. 7 expenses prior to incurring them. Failing such agreement, the parties have liberty to apply to the Court for determination. Spousal Support

- [34] The respondent seeks an order for spousal support pursuant to both the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.), and the Family Relations Act, R.S.B.C. 1996, c. 128 [FRA].
- [35] The statutory criteria regarding spousal support, including entitlement to and objectives of spousal support, are set out in the Divorce Act at s. 15.2: Spousal support order 15.2 (1) A court of competent jurisdiction may, on application by either or both spouses, make an order requiring a spouse to secure or pay, or to secure and pay, such lump sum or periodic sums, or such lump sum and periodic sums, as the court thinks reasonable for the support of the other spouse. Interim order
- (2) Where an application is made under subsection (1), the court may, on application by either or both spouses, make an interim order requiring a spouse to secure or pay, or to secure and pay, such lump sum or periodic sums, or such lump sum and periodic sums, as the court thinks reasonable for the support of the other spouse, pending the determination of the application under subsection (1). Terms and conditions
- (3) The court may make an order under subsection (1) or an interim order under subsection (2) for a definite or indefinite period or until a specified event occurs, and may impose terms, conditions or restrictions in connection with the order as it thinks fit and just. 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. Spousal misconduct
- (5) In making an order under subsection (1) or an interim order under subsection (2), the court shall not take into consideration any misconduct of a spouse in relation to the marriage. 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.
- [36] Moreover, the FLA at ss. 160-162 and 170 provides: Duty to provide support for entitled spouse 160 If, after considering the objectives set out in section 161 [objectives of spousal support], a spouse is entitled to spousal support, the other spouse has a duty to provide support for the spouse in accordance with section 162 [determining spousal support]. Objectives of spousal support 161 In determining entitlement to spousal support, the parties to an agreement or the court must consider the following objectives:
- (a) to recognize any economic advantages or disadvantages to the spouses arising from the relationship between the spouses or the breakdown of that relationship;
 - (b) to apportion between the spouses any financial consequences arising from the care of their child, beyond the duty to provide support for the child;
 - (c) to relieve any economic hardship of the spouses arising from the breakdown of the relationship between the spouses;
 - (d) as far as practicable, to promote the economic self-sufficiency of each spouse within a reasonable period of time. Determining spousal support 162 The amount and duration of spousal support, if any, must be determined on consideration of the conditions, means, needs and other circumstances of each spouse, including the following:
 - (a) the length of time the spouses lived together;
 - (b) the functions performed by each spouse during the period they lived together; (c) an agreement between the spouses, or an order, relating to the support of either spouse. Matters that may be provided for in support orders 170 In an order respecting child support or spousal support, the court may provide for one or more of the following:
 - (a) that payments be made periodically, annually or otherwise, for an indefinite or limited period or until a specified event occurs;
 - (b) that child support or spousal support be paid respecting any period of time before the date the application for the order is made;
 - (c) that payment of a lump sum be made, directly or in trust;
 - (d) that a charge be registered against specific property to secure payment;
 - (e) that a person who has a contract of life insurance within the meaning of Part 3 of the Insurance Act
 - (i) designate the person's spouse or child as a beneficiary, irrevocably or for the period designated by the court, and (ii) either pay all premiums on the policy, or authorize the person's spouse to pay all premiums on the policy and to compensate the spouse for doing so;

- (f) that expenses arising from and incidental to prenatal care of a mother or child, or the birth of a child, be paid, except in relation to the prenatal care of a surrogate within the meaning of section 29 (1) [parentage if surrogacy arrangement];
- (g) subject to section 171 (1) [support obligations after death], that a duty to pay child support or spousal support continues after the death of the person having the duty, and is a debt of the person's estate for the period fixed by the court.
- [37] Since this is a divorce action, I am proceeding on the basis that the claims for spousal support are being sought primarily pursuant to the Divorce Act sections and I make the orders herein pursuant to that legislation.
- [38] The background of their relationship requires examination, particularly as to the objectives of and the entitlement to spousal support.
- [39] The claimant testified that the respondent was a hairstylist in Ukraine when they met. She was working as a medical doctor but had low income.
- [40] At his insistence, they moved to Switzerland in 2011. He exerted significant control over her financially and in limiting her contact to and relationship with her family. She could not work as a doctor in Switzerland and qualified to receive social assistance.
- [41] In or about 2013/2014, again at the respondent's insistence, they moved to Hamilton, Ontario. He continued to work as a hairstylist; her employment outside of the home was limited or non-existent.
- [42] She says that he imposed stricter rules on her and became more physically and emotionally abusive following the move to Canada.
- [43] In or about September 2014/2015, they moved to Abbotsford, British Columbia. They bought an apartment/condominium which they later sold in 2017. The respondent required that he appear as the sole owner of that property as the claimant was not working outside of the home at the time.
- [44] They then rented for a period of time before purchasing the home in Mission, British Columbia in December 2019. This time, the claimant appeared as the holder of 10% of the title while the respondent was shown as owning 90% of the property.
- [45] Throughout the various relocations, the respondent maintained his hairstylist business and operated largely, if not entirely, out of their various residences. I am satisfied on the balance of probabilities that he generated between \$30,000 and \$45,000 per year in gross income during those years.
- [46] In his evidence, he testified that, in 2017, he qualified as a "Behavioural Interventionist" but has not sought to work in that field as he "didn't like the work".

- [47] In 2017, the claimant was hired by Arcus Community Resources and has remained there to the present day. She says that since obtaining that job, she has been solely responsible for all the family expenses, and that the money which the respondent earned, he kept for his own purposes and use.
- [48] The claimant currently lives in the family home in Mission, and has done so since the July 2020 order of Master Cameron, which granted her exclusive occupancy of that home. The respondent currently lives in shared accommodation with four other people in a townhouse in Surrey, and shows his rent as being \$850 per month on his Form 8.
- [49] Very little of this evidence was denied or disputed by the respondent.
- [50] It appears clear on the evidence that the respondent has not foregone career opportunities as a result of the marriage. He has, in fact, pursued his chosen career in at least three countries. The claimant accompanied him throughout, even abandoning a career as a medical doctor in the process.
- [51] The respondent did not compromise his career by assuming the primary care of the child; that responsibility remained with the claimant.
- [52] Compensatory spousal support was addressed by the Court of Appeal in *Chutter v. Chutter*, 2008 BCCA 507 at paras. 50-52:
- [50] 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. The compensatory support principles are rooted in the "independent" model of marriage, in which each spouse is seen to retain economic autonomy in the union, and is entitled to receive compensation for losses caused by the marriage or breakup of the marriage which would not have been suffered otherwise (Bracklow, at paras. 24, 41). The compensatory basis for relief recognizes that sacrifices made by a recipient spouse in assuming primary childcare and household responsibilities often result in a lower earning potential and fewer future prospects of financial success (Moge, at 861-863; Bracklow, at para. 39). In *Moge*, the Supreme Court of Canada observed, at 867-868: The most significant economic consequence of marriage or marriage breakdown, however, usually arises from the birth of children. This generally requires that the wife cut back on her paid labour force participation in order to care for the children, an arrangement which jeopardizes her ability to ensure her own income security and independent economic well-being. In such situations, spousal support may be a way to compensate such economic disadvantage.
- [51] In addition to acknowledging economic disadvantages suffered by a spouse as a consequence of the marriage or its breakdown, compensatory spousal support may also address economic advantages enjoyed by the other partner as a result of the recipient spouse's efforts. As noted in *Moge* at 864, the doctrine of equitable sharing of the economic consequences of marriage and marriage breakdown underlying compensatory support "seeks to recognize and account for both the economic disadvantages incurred by the spouse

who makes such sacrifices and the economic advantages conferred upon the other spouse" (emphasis added).

- [52] The Court in *Moge* discussed the relevance of the parties' standards of living in the context of compensatory support at 870: Although the doctrine of spousal support which focuses on equitable sharing does not guarantee to either party the standard of living enjoyed during the marriage, this standard is far from irrelevant to support entitlement . As marriage should be regarded as a joint endeavour, the longer the relationship endures, the closer the economic union, the greater will be the presumptive claim to equal standards of living upon its dissolution. [Emphasis added, internal citations omitted.]
- [53] Leave to appeal this decision to the Supreme Court of Canada was refused: see *Chutter v. Chutter*, 2009 CanLII 27232 (S.C.C.).
- [54] Based on the evidence in the present case, I find that the respondent has not established an entitlement to compensatory spousal support.
- [55] The Court of Appeal went on in *Chutter* to address non-compensatory spousal support and said at paras. 54 and 55:
- [54] Where compensatory principles do not apply, need alone may be sufficient to ground a claim for spousal support (*Bracklow*, at para. 43). Non-compensatory support is grounded in the "social obligation model" of marriage, in which marriage is seen as an interdependent union. It embraces the idea that upon dissolution of a marriage, the primary burden of meeting the needs of the disadvantaged spouse falls on his or her former partner, rather than the state (*Bracklow*, at para. 23). Non-compensatory support aims to narrow the gap between the needs and means of the spouses upon marital breakdown, and as such, it is often referred to as the "means and needs" approach to spousal support.
- [55] 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. As stated by Finch J.A. (as he then was) in *Myers v. Myers* (1995), 17 R.F.L. (4th) 298, 65 B.C.A.C. 226, at para. 10: "Need" or "needs" are not absolute quantities. They may vary according to the circumstances of the parties and the family unit as a whole. "Need" does not end when the spouse seeking support achieves a subsistence level of income or any level of income above subsistence. "Needs" is a flexible concept and is one of several considerations which a trial judge must take into account in deciding whether any order for spousal support is warranted.
- [56] In the present case, I find on the evidence that there is a significant disparity in the standard of living of the parties. While not a long marriage, this was a marriage of some significant years; it was not merely fleeting. The parties undertook significant personal and geographic locational changes over the course of the relationship.

- [57] I find on the evidence that the respondent has established an entitlement to a modest level of non-compensatory spousal support. Given the ongoing animosity between the parties and the benefits associated with, as far as possible, finalizing matters so as to minimize their future interactions, I order that the claimant satisfy this entitlement by paying to the respondent a one-time lump sum payment of \$20,000. Property and Debt Division
- [58] Property and debt division is governed by the FLA, including particularly ss. 81, 86-87 which provide: Equal entitlement and responsibility 81 Subject to an agreement or order that provides otherwise and except as set out in this Part and Part 6 [Pension Division],
- (a) spouses are both entitled to family property and responsible for family debt, regardless of their respective use or contribution, and
 - (b) on separation, each spouse has a right to an undivided half interest in all family property as a tenant in common, and is equally responsible for family debt. Family debt 86 Family debt includes all financial obligations incurred by a spouse
- (a) during the period beginning when the relationship between the spouses begins and ending when the spouses separate, and
- (b) after the date of separation, if incurred for the purpose of maintaining family property. Valuing family property and family debt 87 Unless an agreement or order provides otherwise and except in relation to a division of family property under Part 6,
- (a) the value of family property must be based on its fair market value, and
 - (b) the value of family property and family debt must be determined as of the date
- (i) an agreement dividing the family property and family debt is made, or (ii) of the hearing before the court respecting the division of property and family debt. The Family Home
- [59] The family home in Mission is the main and by far most valuable family property or asset held by the parties. It was purchased in December 2019 for \$635,000. Current appraisal evidence puts the current (trial date) value of the home at \$975,000. The mortgage balance as at December 1, 2024 was \$479,500.
- [60] I am not convinced that the date of valuation for the home should be other than the presumed date, being the date of trial, and I proceed on that basis. I do, however, note that the likely commission on a sale at or about this price would be approximately \$30,000 and I take that into consideration in valuing the house and its net market value.
- [61] The claimant wishes to buy out the respondent's interest in the family home.

- [62] Part of the purchase monies for the Mission home came from the sale of properties previously owned by the parties and registered in one or more of their names. I find that those properties were family properties, regardless of the ownership reflected on the title to the property, and that the sale proceeds which found their way into the purchase of the Mission home were also family property.
- [63] The respondent lived in the home for a relatively short period of time, from December 2019 until July 2020.
- [64] The claimant and the child moved out of the home in March 2020, and remained out of the home until July 2020, when she obtained an order that she have exclusive possession and occupancy of the home. The claimant had been making the mortgage payments from the date of purchase but stopped upon moving out.
- [65] This was a period of time when people were significantly impacted by the COVID-19 pandemic and the related social upheaval. Financial issues had to be addressed by governments and businesses alike.
- [66] When the claimant returned to the home in July 2020, she learned that the respondent had, at some point between March and July, deferred the mortgage payments until February 2021.
- [67] She also discovered that the home and contents had been significantly damaged during the respondent's tenure of residence.
- [68] In addition to damage to walls, doors, and windows, paint had been strewn around certain areas including the garage, children's toys had been hung from the ceiling and windows by their necks, other children's toys had been decapitated, crosses had been painted on the windows, and a large cross, with the claimant's name on it, had been erected on the upper deck.
- [69] During an earlier visit to the home, the claimant had discovered one of the family vehicles parked in the driveway and extensively splashed by several cans of paint.
- [70] I find on the evidence that the respondent made little, if any, direct financial contribution to expenses relating to the home at any time after it was purchased. I also find on the evidence that the respondent was responsible for the damage caused to the home. Such damage had a direct impact on the value of the home and necessitated significant repairs to be undertaken at considerable expense to the claimant.
- [71] When the claimant moved back into the home in July 2020, her mother moved back into the home as well. Sometime later, the claimant's father joined them and began living in the home. From October 2020 until sometime in early 2021, the claimant rented out a portion of the home to tenants for \$1,500 per month. She retained that money and declared it on her tax returns. In January 2022, the claimant's brother, his wife, and their children moved into the home and have resided there ever since.

- [72] Although the claimant testified that her family makes only minimal contribution to expenses, I find her evidence in that regard to be lacking credibility. Her sworn expenses vastly exceed her sworn income, by about \$67,000 annually. Even accepting her evidence at trial that her actual income is currently approximately \$80,000, her sworn expenses exceed that figure by over \$28,000 annually.
- [73] Market rent for a portion of the home which was rented to tenants was apparently \$1,500 per month in late 2020 and early 2021. The claimant, the child, and the claimant's mother occupied the balance of the home. I find it reasonable to assess the conservative market rent payable as follows:
1. by the claimant's parents or either of them, \$1,000 per month; and,
 2. by her brother's entire family, \$1,400 per month from January 2022 to present.
- [74] The claimant and the respondent would each be entitled to share that rental income equally to offset the mortgage payment which, for purposes of my calculations, I fix at \$3,600 per month throughout the period from February 2021 to present. The remaining \$1,200 contribution to the mortgage should be to the account of the claimant and the respondent, divided equally. For her \$600 the claimant lives in the family home. The respondent, while notionally paying that \$600, must also find and rent other housing at additional expense.
- [75] For purposes of this matter, I have accepted that the mortgage payments were deferred until February 1, 2021, and have assumed that the home was not rentable from July 2020 through September 2020 due to damage and ongoing repairs. I calculate the rental credits and mortgage contributions as follows: 2020 Month Rental Mortgage Respondent is owed July - - 0 Aug - - 0 Sep - - 0 Oct \$1,500 + \$1,000 - (\$1,250) Nov \$1,500 + \$1,000 - (\$1,250) Dec \$1,500 + \$1,000 - (\$1,250) Respondent is owed: (\$3,750) 2021 Month Rental Mortgage Respondent owes Jan \$1,500 + \$1,000 - (\$1,250) Feb \$1,000 \$3,600 \$1,300 Mar \$1,000 \$3,600 \$1,300 Apr \$1,000 \$3,600 \$1,300 May \$1,000 \$3,600 \$1,300 Jun \$1,000 \$3,600 \$1,300 Jul \$1,000 \$3,600 \$1,300 Aug \$1,000 \$3,600 \$1,300 Sep \$1,000 \$3,600 \$1,300 Oct \$1,000 \$3,600 \$1,300 Nov \$1,000 \$3,600 \$1,300 Dec \$1,000 \$3,600 \$1,300 Respondent owes: \$1,300 x 11 = \$14,300 - (\$1,250) = \$13,050 2022 Month Rental Mortgage Respondent owes Jan \$1,000 \$3,600 \$1,300 Feb \$2,400 \$3,600 \$600 Mar \$2,400 \$3,600 \$600 Apr \$2,400 \$3,600 \$600 May \$2,400 \$3,600 \$600 Jun \$2,400 \$3,600 \$600 Jul \$2,400 \$3,600 \$600 Aug \$2,400 \$3,600 \$600 Sep \$2,400 \$3,600 \$600 Oct \$2,400 \$3,600 \$600 Nov \$2,400 \$3,600 \$600 Dec \$2,400 \$3,600 \$600 Respondent owes: \$1,300 + (\$600 x 11) = \$7,900 2023 Month Rental Mortgage Respondent owes Jan \$2,400 \$3,600 \$600 Feb \$2,400 \$3,600 \$600 Mar \$2,400 \$3,600 \$600 Apr \$2,400 \$3,600 \$600 May \$2,400 \$3,600 \$600 Jun \$2,400 \$3,600 \$600 Jul \$2,400 \$3,600 \$600 Aug \$2,400 \$3,600 \$600 Sep \$2,400 \$3,600 \$600 Oct \$2,400 \$3,600 \$600 Nov \$2,400 \$3,600 \$600 Dec \$2,400 \$3,600 \$600 Respondent owes: \$600 x 12 = \$7,200 · 2024: Same as 2023, with Respondent owing \$7,200 2025 Month Rental Mortgage Respondent owes Jan \$2,400 \$3,600 \$600 Feb \$2,400 \$3,600 \$600 Mar \$2,400 \$3,600 \$600 Apr \$2,400 \$3,600 \$600 May \$2,400 \$3,600 \$600 Jun \$2,400 \$3,600 \$600 Jul \$2,400 \$3,600 \$600 Aug \$2,400 \$3,600 \$600 Sep \$2,400 \$3,600 \$600 Respondent owes \$600 x 9 = \$5,400 AMOUNT

OWING BY RESPONDENT Year Respondent owes 2020 (\$3,750) 2021 \$13,050 2022 \$7,900 2023 \$7,200 2024 \$7,200 2025 (thru September) \$5,400 Mortgage payment adjustment: \$37,000 Tax payment adjustment: \$8,606 Total: \$45,606

- [76] The result is that the respondent owes the claimant \$37,000 as his contribution to mortgage payments since separation. He also owes her a total of \$8,606 for half of the property taxes paid by the claimant. The total adjustment payment from the respondent to the claimant is \$45,606 relative to the house. Unequal division
- [77] The claimant seeks unequal division of the equity in the home. Her claim is based on s. 95 of the FLA: Unequal division by order 95 (1) The Supreme Court may order an unequal division of family property or family debt, or both, if it would be significantly unfair to
- (a) equally divide family property or family debt, or both, or
 - (b) divide family property as required under Part 6 [Pension Division].
- (2) For the purposes of subsection (1), the Supreme Court may consider one or more of the following:
- (a) the duration of the relationship between the spouses;
 - (b) the terms of any agreement between the spouses, other than an agreement described in section 93 (1) [setting aside agreements respecting property division];
 - (c) a spouse's contribution to the career or career potential of the other spouse;
 - (d) whether family debt was incurred in the normal course of the relationship between the spouses;
 - (e) if the amount of family debt exceeds the value of family property, the ability of each spouse to pay a share of the family debt;
 - (f) whether a spouse, after the date of separation, caused a significant decrease or increase in the value of family property or family debt beyond market trends;
 - (g) the fact that a spouse, other than a spouse acting in good faith,
 - (i) substantially reduced the value of family property, or (ii) disposed of, transferred or converted property that is or would have been family property, or exchanged property that is or would have been family property into another form, causing the other spouse's interest in the property or family property to be defeated or adversely affected;
 - (h) a tax liability that may be incurred by a spouse as a result of a transfer or sale of property or as a result of an order;
 - (i) any other factor, other than the consideration referred to in subsection (3), that may lead to significant unfairness.

- (3) The Supreme Court may consider also the extent to which the financial means and earning capacity of a spouse have been affected by the responsibilities and other circumstances of the relationship between the spouses if, on making a determination respecting spousal support, the objectives of spousal support under section 161 [objectives of spousal support] have not been met.
- [78] The conduct of the parties is not a valid consideration for the Court in dealing with the division of family property. It is, however, clear that some of the considerations listed in s. 95 relate to conduct which can be considered by the Court in determining whether, in the circumstances of the particular case, equal division would be significantly unfair. Examples include consideration of a spouse's contribution to the career or potential of the other spouse, and the actions of a spouse related to the decrease in value of a family property.
- [79] In the present case, I find that the respondent actively and significantly damaged the home prior to departing it as required by court order. Such damage not only devalued the home but caused significant additional and remedial work to be undertaken by the claimant at her own expense. Even if the claimant is ultimately re-paid such expenses, she has had to deal with the additional work and stress related to dealing with the repairs and has had to assume the cost of being without those monies for approximately four years.
- [80] The same can be said of the mortgage payments, house taxes, and day-to-day upkeep and repairs to the home. These have been entirely left to the claimant to handle and administer. Not only did the respondent not contribute cash payment to these expenses, he actively refused to cooperate with such things as the renewal of the mortgage with the result that the interest rate increased well beyond what would have been the case had he cooperated. Again, the claimant has had to pay out significant funds over time and deal with all administrative matters associated with such payment to maintain the home. Repayment in present time ignores the cost of use regarding the funds paid over time by the claimant.
- [81] The claimant has also assumed full-time care and financial support of the child since separation without any contribution or assistance from the claimant.
- [82] In *Singh v. Chandi*, 2024 BCSC 771, Justice Ahmad noted:
- [106] Based on those decisions, the Court in *Mao* concluded:
- [213] As in *Gutierrez*, I conclude that it would be significantly unfair for the claimant to benefit from the increased equity in the home when the respondent has taken on the sole burden of paying down the principal of the mortgage payments post-separation.
- [214] To the extent that the respondent's post-separation mortgage payments resulted in a reduction in the principal outstanding on the mortgage, they also caused an increase in the equity in the family property beyond market trends. I note that the claimant will benefit from valuing the home at the later date of trial by gaining his proportionate share of appreciation in value in market trends.

- [215] This factor supports an unequal division of that equity to give the respondent the benefit of those payments: s. 95(2)(f).
- [107] As set out above in this case, between separation and trial, Ms. Chandi has paid \$56,430 as the sole contributor to the mortgage. While some of those payments were used to pay interest and property taxes, as was the case in *Mao and Gutierrez*, to the extent that Ms. Chandi's post-separation mortgage payments resulted in the reduction in the mortgage principal, they also caused an increase in the value of the Family Home beyond market trends. Those payments favour an unequal division of the increase in the post-separation equity.
- [108] Indeed, Ms. Chandi's post-separation payments were not limited to the mortgage payments but also included payments for the pipe replacement, for property insurance which ensured that she was able to repair the property damage caused by the 2019 flood, and for property taxes. I cannot conclude that those payments increased the value of the Family Property. However, they served to preserve the property. In *Rudyak*, the same finding made in respect of property taxes and house insurance was enough on which to conclude that equal division would be significantly unfair.
- [109] This factor militates in favour of a finding of significant unfairness.
- [83] I am of the view that similar considerations apply here. I have found that the appropriate date for valuing the home is the date of trial, but I am satisfied on the evidence that there would be significant unfairness in ordering an equal division of the net equity of the home. I order that the equity in the home be divided 55 percent to the claimant and 45 percent to the respondent. Other assets, debts and adjustments
- [84] The respondent cashed in the child's RESP in the amount of \$4,485 and used the money for his own purposes. He withdrew the money sometime between April and June 2020. He has had the use of those funds since that time. He has deprived the child of the benefit of those funds and any interest which could have been added to that money. I order that the respondent repay the entirety of the \$4,485 and that such money be reinvested into and RESP or other savings vehicle for the child's benefit.
- [85] The respondent received payment of \$3,000 from the claimant for the transfer of title to the Jaguar vehicle but subsequently refused to cooperate in the transfer of title. I order that that car be forthwith transferred to the claimant free and clear from any claim by the respondent. The respondent is ordered to sign the transfer documents forthwith upon presentation to him, failing which the documents may be signed by a Registrar or District Registrar of the Court and, in such event, the respondent is ordered to pay a further \$2,000 adjustment to the buy-out balance.
- [86] The respondent sold a Ford Escape vehicle for \$500 and retained the money. The claimant shall receive a \$250 credit as her share of that sale.

- [87] I order that the respondent be solely responsible for the repairs to the home in the amount of \$7,495.
- [88] The respondent, by his actions, caused a government lien in the apparent amount of \$19,221.31 to be placed on the title to the family home. The amount is stated as being related to the Speculation and Vacancy Tax Act, S.B.C. 2018, c. 46. The claimant has made the appropriate disclosures and filings since separation but it appears that the respondent has not. I order that, as between the two parties, the respondent is solely responsible for that debt or for its resolution with the appropriate authorities. If, within 60 days of this order, the respondent has not made appropriate arrangements for payment or resolution of the lien so as to result in its cancellation, the claimant may pay the amount required to obtain the discharge of the lien and may deduct such amount from the monies owed to the respondent pursuant to this order. Summary
- [89] The following summarizes the total buyout amount: House value net of commission: \$945,000 Mortgage: \$475,000 Net Value: \$470,000 45% of \$470,000: \$211,500 Deduct past child support: \$21,385 Deduct lump sum future child support: \$18,609 Add lump sum spousal support: \$20,000 Deduct mortgage contribution: \$37,000 Deduct property tax contribution: \$8,606 Deduct cost of damage repairs: \$7,495 Deduct RESP repayment: \$4,485 Deduct share of Ford Escape proceeds: \$250 Total buyout amount: \$133,670
- [90] The claimant may buy out the respondent's interest in the family home in Mission by payment of \$133,670 to the respondent. Upon such payment, the respondent shall sign all transfer documents required to transfer his interest in the property to the claimant. Should he refuse or neglect to sign such transfer documents within 7 days of presentation to him, they may be signed by a Registrar or District Registrar of the Court. Should this become necessary, there shall be a further \$2,000 deduction from monies owed to the respondent.
- [91] The claimant shall have 120 days from the release of this decision to arrange for the above detailed buyout. If she is unable to arrange such payment within 120 days, the family home is ordered to be sold with the parties having joint conduct of the sale. The net proceeds shall be divided 55 percent to the claimant and 45 percent to the respondent, subject to the above-noted adjustments. The parties shall have liberty to apply for further directions if necessary.
- [92] Payment is subject to the terms relating to the Speculation and Vacancy Tax lien as outlined above and, in particular, the provision for holdback and payment of that debt if required.
- [93] Save as provided above, each party shall retain the assets currently in their respective possession and shall be solely responsible for the debts incurred in their respective names. All other claims in the notice of family claim and counterclaim, except as to costs, are dismissed. The claimant is entitled to her costs under Appendix B of the Supreme Court Family Rules, B.C. Reg. 169/2009, with the matter being determined as one of ordinary difficulty. "Caldwell J."

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