

CANADA / JUDGMENT

Kainth v. Kainth

2025 BCSC 1436

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Supreme Court of British Columbia

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2025 BCSC 1436 Kainth v. Kainth

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Kainth v. Kainth,

2025 BCSC 1436

Date: 20250725

Docket: E180079

Registry: Vancouver

Between:

Kuljeet Kaur Kainth

Claimant

And:

Inderpaul Singh Kainth, Gurmel Singh Kainth, Tejwant Kaur Kainth, Gurdeep Kainth, and Deer Lake Enterprises Inc.

Respondents

Before: The Honourable Madam Justice Forth

Reasons for Judgment

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Counsel for the Respondents:

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Place and Dates of Trial:

Vancouver, B.C.

January 20-24, 27-31,

February 3-7, 2025

Place and Date of Judgment:

Vancouver, B.C.

July 25, 2025

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Introduction

- [1] The claimant, Kuljeet Kainth, and the respondent, Inderpaul Kainth ("Paul"), seek a divorce. The main issues in this family law proceeding relate to the division of family property and family debt, as well as the determination of reapportionment and spousal support.
- [2] Complicating matters is the fact that the claimant added to the proceeding Paul Kainth's parents, Tejwant and Gurmeh Kainth, his older brother, Gurdeep Kainth, and Deer Lake Enterprises Inc., a company owned solely by Gurmeh Kainth ("Deer Lake"). I will refer to Paul Kainth as the "primary respondent" and to the remaining respondents collectively as "the secondary respondents".
- [3] In the claimant's further amended notice of family claim, she claimed that the secondary respondents held assets, directly or indirectly, in trust for the primary respondent. At trial, she did not pursue any claims against any properties in the names of family members, except for a condo held jointly in the name of Tejwant and Paul Kainth, or to any of the companies in the names of Gurmeh or Gurdeep Kainth, except half the corporate assets of 663466 B.C. Ltd. ("6634").
- [4] With no disrespect intended, I will refer to the various family members by their first names since they all share the same last name.

Background Facts and Findings

- [5] Paul was born in British Columbia in 1978 and raised in the lower mainland. He is now 46 years old. He attended college and obtained a degree in international business in 1999 and has worked primarily in the mortgage lending business.

- [6] Kuljeet was born and raised in Chandigarh, India in 1980, and is now 44 years old. She was highly educated, earning multiple masters' degrees. She worked at IBM and was ultimately promoted to a Senior Quality Analyst and then a Senior Lead Trainer.
- [7] Paul and his family came to India looking to find a bride. In 2006, Kuljeet first met Paul and his family. She was not interested. In 2007, Kuljeet's father saw a matrimonial advertisement and the discussions between the families renewed. Paul and Kuljeet met again. During this meeting, Paul told her that he was a vegetarian and rarely drank alcohol. This turned out to be untrue. Ultimately, Kuljeet acquiesced to her father's wishes and agreed to the marriage.
- [8] The wedding took place quickly and the couple were married on November 25, 2007, in Chandigarh, India. Kuljeet remained in India for six months while Paul applied for her immigration to Canada. She arrived in Canada on June 27, 2008, and moved into Paul's family home at 6188 Buckingham Drive, Burnaby (the "Buckingham Home"). Tejwant instructed her to take over domestic duties including cleaning the Buckingham Home, a mansion of approximately 5,900 sq. feet. Kuljeet had little knowledge of Paul's financial affairs. She was placed on a joint line of credit, but she never accessed it.
- [9] After one year, Paul and Kuljeet moved to a property registered in Paul's name located at 7347 Welsley Drive, Burnaby (the "Welsley Property"). Prior to moving in, there were significant renovations done to the main floor.
- [10] From 2012 onwards, Paul and Kuljeet's marriage began to deteriorate. The couple struggled with infertility, undergoing IVF treatments that ultimately failed. Kuljeet paid for these treatments, amounting to \$10,000 to \$14,000. Despite promises from Paul, she never received reimbursement. In 2015, the couple commenced marriage counselling, which was ultimately unsuccessful.
- [11] Kuljeet also testified to the violence Paul exhibited. The first occasion was in 2012 when Paul was driving and made a left hand turn into traffic. Kuljeet believes he did so because of a comment she made about him being careful. Their vehicle was struck and Kuljeet suffered significant injuries to her left side. There was another incident of road rage when Paul became angry while driving to a Sikh temple, shaking the steering wheel, and yelling at Kuljeet.
- [12] Kuljeet testified to an incident in 2015 when she woke up after Paul punched her stomach while she was asleep. Paul testified that all he did was bump into her.
- [13] Paul denies ever slapping or hitting Kuljeet. In evidence were photos of patched holes in the drywall in the main bedroom and in the main bedroom door. Kuljeet testified that Paul had punched the wall and the door. She said that Paul was angry and went to punch her in the face but she moved, so he punched the door instead. Paul admitted to creating the holes in the wall and door. However, he testified that he had just gotten angry over something and punched the door and drywall out of frustration. He claims that Kuljeet was not present. He could not remember what had made him so angry.

[14] By mid-December 2017, during the parties' marriage, Paul was involved with another woman. In early January 2018, Paul left for Dubai to spend time with this other woman. When Paul left on January 4, 2018, the parties separated. Kuljeet remained in the Welsley Property.

[15] Before considering the specific issues raised in this proceeding, I will make findings on the credibility and reliability of the parties and witnesses.

Credibility and Reliability

Legal Principles

[16] Credibility and reliability are different concepts. Credibility concerns a witness's truthfulness, while reliability involves assessing the witness's ability to accurately observe, recall, and recount the events in issue. A credible witness can still be unreliable: *Mather v. MacDonald*, 2016 BCSC 948 at para. 18, aff'd 2017 BCCA 323, citing *R. v. Perrone*, 2014 MBCA 74, aff'd 2015 SCC 8.

[17] In *Bradshaw v. Stenner*, 2010 BCSC 1398 at para. 186, aff'd 2012 BCCA 296, leave to appeal ref'd [2012] S.C.C.A. No. 392, Justice Dillon set out a list of factors to be considered when assessing the credibility of a person's evidence. In *M.L. v. R.H.*, 2022 BCSC 1580 at para. 25, Justice Wilkinson helpfully summarized these factors as a series of questions:

1. Is the witness able to resist the influence of interest in modifying their recollection?
2. Does the witness' evidence harmonize with independent evidence that has been accepted?
3. Does the witness change their evidence during examination for discovery, direct examination and cross-examination, or is it otherwise inconsistent in their recollections?
4. Does the witness' evidence seem generally unreasonable, impossible, or unlikely?
5. What demeanour did the witness exhibit when testifying?

[18] This assessment is aimed at considering whether the evidence is "consistent with the probabilities affecting the case as a whole and shown to be in existence at the time": *Faryna v. Chorny*, [1952] 2 D.L.R. 354 at 356, 1951 CanLII 252 (B.C.C.A).

Kuljeet Kainth

[19] Overall, I find that Kuljeet gave credible and reliable evidence. She provided straightforward testimony and appropriately conceded when asked questions that were outside her knowledge. She presented as a truthful individual. The steps she has taken since coming to Canada to further her education, obtain employment, and advance her career, are a testament to the type of immigrants this country should be proud to have. I have no hesitation in accepting that Kuljeet's evidence was truthful and accurate.

Witnesses Called by Kuljeet Kainth

[20] The claimant called five other witnesses:

- a) Tammy Hannah, the operations manager of Sunstar, the property management company for a condo that Paul rented;
- b) Denis Morin, an individual who had borrowed money from Paul and/or Gurmel;
- c) Angela Dublanko, an investor with Paul;
- d) Dean Durperron, a potential investor with Paul; and
- e) Dev Supreen Singh, her younger brother.

[21] I find that all these witnesses provided an honest account of their experiences with Paul and his family. I have no concerns with the veracity and reliability of their evidence. Their evidence was not sufficiently challenged in cross-examination.

[22] I note that Supreen Singh expressed some disappointment in how Paul treated him, particularly because Paul did not pay him for the numerous services he provided. However, I am persuaded that Mr. Singh was an honest witness. It appears that he was another individual that Paul took advantage of, as was Angela Dublanko.

Tejwant and Gurmel Kainth

[23] It was clear that Tejwant had very little involvement in the financial affairs, ownership, and maintenance of any of the properties. She testified that she simply does what her husband tells her to do. If she is told to sign a paper, she will sign it without reading it. Little of her evidence assisted me in understanding the true nature of the family businesses.

[24] Gurmel presented in a manner that was initially reliable. To his credit, when he heard the evidence from his son about his excessive spending and the questionable draws he made from the Deer Lake mortgage, Gurmel appropriately took the position that Kuljeet should not be responsible for any of that mortgage. That position reflects positively on his integrity.

[25] I was concerned with aspects of his discovery evidence that was put to him on cross-examination. Under oath at his discovery, he stated that he had never loaned money to his son. That was clearly contradicted by his trial evidence in which he testified to several loans he gave Paul over many years. In submissions, it was suggested that perhaps Gurmel had misheard or misunderstood the question, but the question was a simple one. Gurmel has a good command of the English language. I am not persuaded that Gurmel misunderstood the question.

- [26] In addition, in his discovery, Gurmel gave evasive answers regarding the Norfolk property. He suggested that his wife would know about where the rents were deposited and what happened to the sale proceeds. In reality, Gurmel knew the answers to those questions. He claims he was following instructions to only answer questions about property that he owned. I do not accept that as a basis to be less than honest in answering questions under oath.
- [27] I find that I must carefully assess the evidence of Gurmel on the totality of the evidence at this trial.

Paul Kainth

- [28] There were many aspects of Paul's testimony that were troubling. It is clear to me that Paul will take advantage of a governmental body or an individual if he can. He clearly believes he can operate "outside of the law". I will provide three examples.
- [29] First, I accept the claimant's counsel's submission that Paul has engaged in an "outrageous level of tax evasion" between 2006 to 2022. Paul did not report all of the income he was receiving nor any rental income which he admitted receiving. I will address this issue further when considering the issue of what income should be imputed to Paul for the purposes of lump sum spousal support.
- [30] I pause to point out that the Income Tax Act, R.S.C. 1985, c. 1 (5th Supp.) [ITA] imposes a "duty on every person resident in Canada at any time in the year to report income accurately"; not doing so is a criminal offence: *R. v. Millar*, 2017 BCSC 402 at para. 102. Section 239(1) of the ITA makes it an offence to make a false or deceptive statement on a return, certificate, statement, or answer filed as required under the ITA or Regulation.
- [31] I make no finding as to whether Paul has committed this offence, however, this offence highlights the seriousness of Paul's conduct and, particularly, the high degree of dishonesty it requires. If Paul is willing to deceive the Canada Revenue Agency for many years to benefit himself, I have no doubt that he is willing to do the same to this Court.
- [32] Second, Paul admitted that the Welsley Property was used as a rental property from the time of its purchase. It was also renovated from approximately 2002 to 2009 (the approximate year he occupied it with Kuljeet). Paul proceeded to claim the homeowner's grant to reduce his property taxes for the Welsley Property, while it was being used solely as a rental property. It was only after he was reported to the City of Burnaby that he was assessed for wrongfully claiming the homeowner's grant for many years.
- [33] Third, Paul admitted to having his driver's licence suspended because of drinking and driving. He also admitted that although he has no driver's licence, he continues to drive in contravention to his licence being suspended. This conduct supports that Paul is willing to breach laws that apply to all citizens. As I commented above, he approaches matters as if he can operate outside of the law. This reflects poorly on his credibility and honesty.

- [34] The evidence supports the conclusion that Paul will take advantage of individuals or game the system when it financially suits his needs. Mr. Singh testified that he was hired to do work on various properties. He expected to be paid for the services he provided. In particular, Mr. Singh was hired by Paul in 2008 to do demolition work on the McBride property. Mr. Singh testified that Paul had told him to keep detailed time sheets of the work he performed. Aside from receiving a cheque for \$700 for his first week of work, Mr. Singh was not compensated for the many days of work he performed. It appears Paul's view was that he could use Mr. Singh as an unpaid labourer whenever he needed one.
- [35] Angela Dublanko, owner of Nyblad Capital Corp. ("Nybald"), testified that she had provided an investment in a mortgage and that she found out that Paul had paid himself and his father out prior to her mortgage, which should have been paid out first. As a result, she only got back a small portion of the money she had loaned.
- [36] Paul testified that he made the spreadsheet of pay-outs from the Deer Lake mortgage with his father and the schedule set out the draws provided. Gurmel testified that Paul did all the calculations and he denied that he sat with Paul and prepared the spreadsheet. The spreadsheet was not accurate and included payments that were not, in any way, related to advances on the Deer Lake mortgage. This is an example of where Paul is prepared to create a document that is not accurate to try and take advantage of Kuljeet.
- [37] In an affidavit sworn on November 18, 2019 and filed in this proceeding, Paul stated that: "I have been homeless since the separation, staying in my parent's basement". This was a dishonest statement. The evidence shows that, after separation in early January 2018, Paul flew to Dubai to celebrate the birthday of a woman he was in a relationship with. In the summer of 2018, he moved into a townhouse in Coal Harbour with rent of \$5,900 a month. He then moved to the Jameson House, a luxury residential building located downtown. He stayed there from the summer of 2019 to the summer of 2020. The suggestion by Paul that he was "homeless" does not reflect the reality of Paul's living arrangements. It is disparaging of those individuals who are "homeless" in our society.
- [38] I find that much of Paul's testimony is unreliable and that he is a dishonest witness. I find it difficult to accept much of his testimony.

Other Witnesses Called by the Respondents

- [39] Gurdeep, Paul's older brother, testified mainly to the work his company Symphony Homes Limited ("Symphony") was engaged in and any involvement Paul had in that company.
- [40] There were discrepancies between Gurdeep's discovery and affidavit evidence, as well as his evidence at trial. The plaintiff argues that this supports a finding that Gurdeep is prepared to fabricate testimony when it suits him. In my view, the different explanations provided are more likely due to a failure to properly review the evidence and to determine whether any explanatory documents existed. However, I accept that Gurdeep was prepared to testify in a manner to try and support his parents, as such, his evidence also must be closely

scrutinized.

- [41] The other witnesses called by the respondents, Gurjit Jawandha and Gregory Calpakis, were both individuals who borrowed money from Gurmel or Paul. I had no concerns with the reliability of their testimony.

Should any Adverse Inference be Made

- [42] Prior to dealing with the substantive issues, the claimant argued that an adverse inference should be drawn for the failure of the respondents to call Eric Aleksejev and Tim Lack, lawyers, who could have corroborated the lawyers' practice of how funds would have been paid of their law firms. The respondents counter this assertion, arguing that since Eric Aleksejev was listed on the claimant's witness list there can be no adverse inference drawn against the respondents for the claimant's failure to call her own listed witness.
- [43] The current test for an adverse inference was articulated by the Court of Appeal in *Singh v. Reddy*, 2019 BCCA 79:

The Adverse Inference Principle

- [8] The principle is described by authors S.N. Lederman, A.W. Bryant and M.K. Fuerst in *The Law of Evidence in Canada* (2018, 5th ed.) as follows:

§6.471 In civil cases, an unfavorable inference can be drawn when, in the absence of an explanation, a party litigant does not testify, or fails to provide affidavit evidence on an application, or fails to call a witness who would have knowledge of the facts and would be assumed to be willing to assist that party. In the same vein, an adverse inference may be drawn against a party who does not call a material witness over whom he or she has exclusive control and does not explain it away. The inference should only be drawn in circumstances where the evidence of the person who was not called would have been superior to other similar evidence. The failure to call a material witness amounts to an implied admission that the evidence of the absent witness would be contrary to the party's case, or at least would not support it. [Emphasis added.]

In *Thomasson v. Moeller* 2016 BCCA 14, this court summarized the principle in similar terms:

An adverse inference may be drawn against a party, if without sufficient explanation, that party fails to call a witness who might be expected to provide important supporting evidence if their case was sound: *Jones v. Trudel*, 2000 BCCA 298 at para. 32. The inference is not to be drawn if the witness is equally available to both parties and unless a prima facie case is established: *Cranewood Financial v. Norisawa*, 2001 BCSC 1126 at para. 127; *Lambert v. Quinn* (1994) 110 D.L.R. (4th) 284 (Ont. C.A.) at 287. [At para. 35; emphasis added.]

(See also *Rohl v. British Columbia (Superintendent of Motor Vehicles)* 2018 BCCA 316 at paras. 1-5.)

[9] As noted in Rohl, it is now generally accepted that the court is not required as a matter of law to draw an adverse inference where a party fails to call a witness. Thus in *Witnesses* (looseleaf), A.W. Mewett and P.J. Sankoff write:

A considerable number of cases now reinforce the view that there is no such thing as a "mandatory adverse inference" to be drawn where a party fails to call a witness. Rather, the question of whether to make such an inference seems to depend upon the specific circumstances, in particular whether:

- There is a legitimate explanation for the failure to call the witness;
- The witness is within the "exclusive control" of the party, and is not "equally available to both parties"; and
- The witness has material evidence to provide; and
- The witness is the only person or the best person who can provide the evidence.

Essentially, the decision to draw an adverse inference is discretionary and premised on the likelihood that the witness would have given harmful testimony to the party who failed to call him or her. In a case before a jury, where there are circumstances that support the drawing of such an inference, the trial judge should charge the jury that it is "appropriate for a jury to infer, although [jurors] are not obliged to do so, that the failure to call material evidence which was particularly and uniquely available to [a party] was an indication that such evidence would not have been favourable to [that party]. [At 2-23 to 2-24; emphasis added.]

[10] The judge in the case at bar began her analysis by stating, correctly, that the approach to drawing an adverse inference engages the court's discretion and requires the trier of fact to consider the following factors:

- a) Whether there is a legitimate explanation for failing to call the witness;
- b) Whether the witness is within the exclusive control of the party or is equally available to both parties; and
- c) Whether the witness has key evidence to provide or is the best person to provide the evidence in question.

(At para. 55, citing *McIlvenna v. Viebig* 2012 BCSC 218 at para. 71, aff'd on other grounds at 2013 BCCA 411.)

[Emphasis in original.]

[44] I am not persuaded that an adverse inference should be drawn against the respondents for the failure to call Eric Aleksejev for the following reasons:

- a) It was open to either party to subpoena Mr. Aleksejev to attend the trial.

- b) Mr. Aleksejev's evidence was available to the claimant since there was an order by Justice Choi on April 14, 2023, that he be subject to a pre-trial examination of a witness by counsel for the claimant for a period of three hours. During the trial, claimant's counsel confirmed that a pre-trial examination of this witness took place.
 - c) Mr. Aleksejev was listed on the claimant's list of witnesses.
- [45] The claimant did not provide any substantive submissions on how or why Mr. Lack should have been called. I am not persuaded that Mr. Lack has any key evidence to provide, nor that he was under the exclusive control of the respondents.

Issues

[46] The following issues arise:

1. Should a divorce order be granted?
2. Property division:
 - i. What assets are family property and what are their value?
 - ii. Is there an excluded property claim?
 - iii. How should they be divided?
3. Family debt:
 - i. What are the family debts?
 - ii. How should they be divided?
4. Spousal support:
 - i. Is Kuljeet entitled to spousal support?
 - ii. If so, what income should be attributed to Kuljeet and Paul?
 - iii. Should periodic or lump sum support be ordered?
5. Are there any other funds owed to Kuljeet?
6. Should Paul be held in contempt for failing to comply with an existing restraining order?
7. What orders are granted against the secondary respondents?

Issue 1: Should a Divorce be Granted?

- [47] Both the claimant and primary respondent seek a divorce. They have been living separate and apart since January 2018. I am satisfied that the grounds for a divorce, pursuant to s. 8 of the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.) [DA], are met in this case. I therefore grant an order for divorce that will take effect on the 31st day after the date these reasons are pronounced.

Issue 2: Property Division

Applicable Legal Principles

- [48] The relevant provisions of the Family Law Act, S.B.C. 2011, c. 25 [FLA] are contained in Part 5, "Property Division."

Family Property

- [49] The key provisions are ss. 81, 84, and 85. Under s. 81 of the FLA, each spouse is entitled to a presumptive one-half undivided interest in family property as a tenant in common upon separation regardless of their respective use or contribution to same.
- [50] Family property includes all real and personal property owned, legally or beneficially, by a spouse at the date of separation, as well as property derived from same after separation: FLA, s. 84(1). Generally, the value of the family property must be based on its fair market value as of the date of trial: FLA, s. 87.
- [51] Pension division is dealt with under Part 6 of the FLA. These sections are intended to be a comprehensive breakdown of how to divide pensions.

Unequal Division

- [52] The relevant provisions of the FLA with respect to the issues of reapportionment and compensation are ss. 95, 96, and 97.
- [53] Despite the presumption of equal division, the court may order an unequal division of family property if it would be significantly unfair to divide it equally: FLA, s. 95(1). Significant unfairness requires something "objectively unjust, unreasonable, or unfair in some important or substantial sense" having regard to the factors set out in s. 95(2) of the FLA: *Jaszczewska v. Kostanski*, 2016 BCCA 286 at para. 42.
- [54] A two-stage analysis is used to determine whether an unequal division of family property would be significantly unfair: *Polard v. Polard*, 2017 BCSC 1963 at para. 19. At the first stage, the court must determine the extent of family property in accordance with ss. 84-86 of the FLA and undertake the notional exercise of dividing property equally. The second stage requires the court to determine whether the equal division would be significantly unfair, taking into account the factors in s. 95(2) of the FLA.
- [55] The previous Family Relations Act, R.S.B.C. 1996, c. 128, permitted an unequal division of family property if an equal division would result in unfairness. The current FLA raises that bar; a court is only to reapportion family property if an equal division would be "significantly unfair". Justice Brown touched on this difference in *L.G. v. R.G.*, 2013 BCSC 983, stating:

- [71] In my view, the term "significantly unfair" in s. 95(1) of the FLA essentially is a caution against a departure from the default of equal division in an attempt to achieve "perfect fairness". Only when an equal division brings consequences sufficiently weighty to render an equal division unjust or unreasonable should a judge order depart from the default equal division.
- [56] Significant unfairness is further discussed in *Remmem v. Remmem*, 2014 BCSC 1552, where Justice Butler explained:
- [43] It is only at the very end of the exercise that equitable considerations come into play pursuant to s. 95. After determining the full extent of the family property, the court must go through the notional exercise of dividing that property equally. The court must consider if equal division would be "significantly unfair". If it would, then it is possible to order an unequal division.
- [44] The FLA provisions granting the court a discretion to order other than an equal division are very different from the provisions in the previous legislative scheme. Pursuant to s. 65(1) of the Family Relations Act, R.S.B.C. 1996, c. 128 (the "FRA"), courts had a discretion to divide family property in unequal shares if the court found that the division of property (pursuant to agreement or the provisions of the FRA) would be unfair having regard to the factors set out in that section. The first and obvious difference between the discretion given under the FRA and the discretion given in Part 5 of the FLA is that in order to exercise the discretion, it is no longer sufficient to find that a division of property is merely "unfair". There must be a finding that the division of property pursuant to the statutory scheme is "significantly" unfair. The Concise Oxford English Dictionary defines "significant" as "extensive or important enough to merit attention." Significantly is understood to mean more than a regular impact - something weighty, meaningful, or compelling. In other words, the legislature has raised the bar for a finding of unfairness to justify an unequal distribution. It is necessary to find that the unfairness is compelling or meaningful having regard to the factors set out in s. 95(2).
- [57] Further, the court may make an order that excluded property be divided if it determines that it would be significantly unfair not to do so, having regard to the factors set forth in s. 96(b). In *Andermatt v. Tahmasebpour*, 2015 BCSC 1743, Justice Pearlman applied the same principles set out in *L.G. and Remmem* for s. 95 and found:
- [59] I conclude that the "significant unfairness" warranting the division of excluded property under s. 96 must be compelling or meaningful, on a consideration of the factors set out s. 96(b)(i) and (ii). Division will be justified where the court finds that the consequences of not dividing excluded property would be so weighty as to produce an unjust or unreasonable result.

- [58] Once the court has determined whether family property and/or excluded property ought to be divided, equally or unequally, under Part 5 of the FLA, it must go on to consider the mechanism by which the division of property is to be achieved, pursuant to s. 97. Generally, property division is to be determined before considering spousal support: *Hartshorne v. Hartshorne*, 2004 SCC 22 at para. 86; *Foster v. Foster*, 2007 BCCA 83 at para. 50; *A.M.D. v. K.R.J.*, 2015 BCSC 1539 at para. 47.

Excluded Property

- [59] Property that is excluded from family property includes property acquired before the relationship between the spouses began, inheritances to a spouse, and property derived from excluded property: FLA, s. 85(1)(a), (b), and (g). However, the amount by which the value of excluded property has increased since the relationship between the spouses began, or the date the excluded property was acquired, whichever is later, is considered family property: FLA, s. 84(2)(g).
- [60] A spouse who advances a claim that property is excluded property is responsible for demonstrating, on a balance of probabilities, that the property is excluded property: FLA, s. 85(2); *Shih v. Shih*, 2017 BCCA 37 at paras. 42-43. The Court emphasized in *Shih* that "precision" or "mathematical certainty" is not required. Rather, to discharge his or her burden, the spouse seeking to prove property is excluded property must do so with "clear and cogent evidence": *Shih* at paras. 40, 43. In balancing the evidence as a whole, a trial judge is permitted to draw reasonable inferences from evidence that is less than certain or precise in order to do justice between the parties: *Shih* at para. 44.
- [61] To establish an exclusion, a party must prove the value of the exclusion and, if property is derived from that exclusion, that the exclusion can be traced into property that existed at the date of separation: FLA, s. 85(1)(g).
- [62] Where a spouse seeks to have any increase in the value of the excluded property included in family property, however, they have the onus of establishing the value of the increase: *J.S.F. v. W.W.F.*, 2015 BCSC 2375 at para. 161; *Kumagai v. Campbell Estate*, 2016 BCSC 450 at para. 70, rev'd on other grounds, 2018 BCCA 24. The approach involves determining the fair market value of the property at the time the spouses' relationship began or the time the property was otherwise acquired, as well as determining the fair market value at the date of trial, and then subtracting the former from the latter: *S.L.M.W. v. M.R.G.W.*, 2016 BCSC 272 at paras. 67-71.

Determination and Division of Family Property

- [63] For each of the assets claimed as family property, I will consider whether it is family property or excluded property, determine its value, and decide how it should be divided.

Welsley Property

- [64] It is agreed that the Welsley Property is family property. It was purchased by Paul in March 2002 for \$315,000. As of the date of marriage, it had an appraised value of \$605,000 and had a mortgage of \$336,806. Paul is seeking an excluded property claim of \$268,194, being the value at the time of the marriage after deducting the mortgage owed. There is no dispute that the Welsley Property is family property.
- [65] A joint appraisal of the Welsley Property has its value at \$1,750,000 as of January 28, 2025.
- [66] Currently the Welsley Property has the following encumbrances registered against title:
- a Bank of Nova Scotia mortgage bearing registration number BA484680 ("BNS Mortgage");
 - a mortgage in the name of Nyblad, Deer Lake, Plume Investment Inc., and Ansatz Investment Inc. bearing registration number CA4286334 (the "Deer Lake Mortgage");
 - a certificate of pending litigation registered by Kuljeet;
 - a judgment registered by G.K. Thomas Law Corporation bearing registration number CB420533 on January 9, 2023, which was renewed by CB1801180 on January 7, 2025 (this judgment was for legal fees Paul owed his former family law lawyer);
 - a certificate of pending litigation registered by Nybald on January 3, 2024 ("Nybald CPL"); and
 - a judgment registered by Vancouver City Savings Credit Union under registration number CB1163125 on February 4, 2024, for a debt.
- [67] In addition, two Scotiabank lines of credit are secured against the Welsley Property. The first line of credit is an account ending in 5944 and existed at the date of marriage ("First LOC"). As of the date of marriage, \$45,027 was owed on it. As of the date of separation, the amount owing was \$133,263. The current amount owing is \$151,064.
- [68] The second line of credit is an account ending in 018/019. As of the date of separation, the amount owing was \$12,595. Currently the amount owing is \$20,405 ("Second LOC").
- [69] I will address how the two LOCs will be dealt with as part of the family debt analysis. Paul agrees that the Deer Lake Mortgage and the two judgments registered against title are his sole responsibility and he needs to take steps to have them cleared from the title.
- [70] Paul submits that the value of \$1,481,806 should be attributed to the Welsley Property after deducting his excluded property claim of \$268,194. If the parties cannot reach an agreement to purchase it within 60 days, then it should be listed for sale. He says that the net sale proceeds, less the BNS Mortgage, the lines of credit and usual encumbrances, be equally divided between the parties.
- [71] The claimant has had exclusive occupancy of the Welsley Property since separation. She wishes to retain the Welsley Property in the division of family assets. She agrees that if she retains the property, then she would be solely responsible for the BNS Mortgage, which has

a current value of \$206,460. She disputes that she should be responsible for the LOCs secured against it on the basis that Paul used the lines of credit for his personal benefit without transparency and outside the family's shared interest. She further disputes that the primary respondent is entitled to an excluded property claim. She argues that his "modest exclusion at the relationship's outset" was forfeited due to his "repeated withdrawals from the mortgages and lines of credit over the years".

- [72] The claimant argues that there should be an unequal division of the Welsley Property on the basis that the primary respondent maintained financial secrecy and controlled assets to exclude the claimant from ownership, while she shouldered domestic responsibilities and contributed financially. She argues that this financial imbalance justifies an unequal division in her favour, saying that her situation mirrors that in *Rotzetter v. Rotzetter*, 2003 BCCA 633.
- [73] Paul's position is that there should be an equal distribution because the threshold of significant unfairness has not been met to support an unequal division of the family home.

Analysis

- [74] I am not persuaded that the evidence in this case meets the threshold of significant unfairness. In *Rotzetter*, the trial judge decided that justice could be achieved by the matrimonial home being transferred to the wife while Mr. Rotzetter would be credited with the three RRSPs, and the various assets he had taken and sold. He was also given additional assets, namely the unvalued construction company and a van, as well as any tax refunds. The wife was a stay-at-home mother of five children ranging in ages from 4 to 14 years as of the date of trial. I am not persuaded that this case mirrors the circumstances here.
- [75] The Welsley Property was purchased prior to the marriage with Gurmel's financial assistance. The evidence supports that there were extensive renovations done to create the rental accommodation in the basement. These renovations were paid for by the primary respondent's father. There were further renovations done prior to the claimant and primary respondent moving into the house, which the claimant did not pay for.
- [76] As far as I can discern, the only financial contribution made by the claimant to the Welsley Property was the payment of the tax penalty to the City of Burnaby during the relationship. I will account for this payment later in these reasons. Kuljeet testified that Paul paid for all the mortgage payments, property taxes, and utilities on the Welsley Property during the relationship.
- [77] I find that the primary respondent is entitled to the excluded property claim and one half of the value of the Welsley Property. Both parties are responsible for the BNS Mortgage. I will deal with the lines of credit later in these reasons.
- [78] If the parties can work out a purchase of the Welsley Property by the claimant after the reconciliation of the amounts owed as between the parties are made, then she is entitled to do so. If not, the property shall be listed for sale within 60 days of the release of these

reasons. The parties will have joint conduct of sale. The BNS Mortgage and the usual closing costs will be paid out from the net proceeds of sale. The payment of the Deer Lake Mortgage and the judgments registered against title are the sole responsibility of the primary respondent. He must clear those encumbrances from the title of the Welsley Property.

203-1645 East 5th Avenue, Vancouver

- [79] The East 5th Avenue building was originally built by Deer Lake. Gurmel sold several of the units to third parties. Over time, several of the units were repurchased by Gurmel, Tejwant, Paul's sister Kuljeet, and Paul.
- [80] On March 29, 2004, a contract of purchase and sale was entered into between Tuyen Vo, as vendor, and Paul and Tejwant, as purchasers, for 203-1645 East 5th Avenue, Vancouver ("Unit 203"). Upon completion of the purchase, Paul and Tejwant were registered on title as joint tenants.
- [81] Gurmel and Tejwant explained that Paul's name was placed on title so that Gurmel could more easily obtain financing. However, Gurmel testified that he paid all of the purchase price of \$85,000 by cash. Gurmel's position is that Unit 203 is 100 percent Tejwant's property, and that Paul is holding his share for her.
- [82] Gurmel testified that he has paid all expenses related to Unit 203 since its purchase, including property taxes, maintenance, and utilities.
- [83] Paul testified that he did not pay any money for the purchase of Unit 203 and his parents never gifted him one-half of this condo. There was some documentary evidence that Paul paid for some repairs to Unit 203 and returned some damage deposits. He says that he did not own the condo. Yet, in his application to TD Canada Trust Bank for personal credit, he included it in his list of assets as "50% CONDO EAST 5TH AVE".
- [84] In respect of Unit 203 was a bare trust agreement dated April 16, 2004. The respondents' counsel confirmed that it was created and endorsed on or around January 26, 2018, over two weeks after this action was commenced on January 10, 2018, and the claimant advanced a claim against Unit 203 therein.
- [85] I place no reliance on the bare trust agreement. It was created and endorsed after the claimant had commenced a claim for Unit 203. The explanation that Paul was on title so that financing could be obtained makes no sense when Gurmel purchased the property with a cash payment.
- [86] Since Unit 203 was purchased in 2004, there have been no steps taken to change the title to it. At the time of the marriage, Paul owned 50 percent of Unit 203.
- [87] I find that Paul's 50 percent interest in Unit 203 is family property. The claimant is entitled to any increase in the value of Paul's half interest in Unit 203 from the date of marriage to date.

[88] The current appraised value of Unit 203 as set out in the Campbell & Pound appraisal as of February 3, 2025, is \$561,000. Half of the assessed value of the property as of the date of marriage was \$128,000 and is now \$280,500. Both of these values are in respect of Paul's 50 percent interest. This results in an increase in value of \$152,500. I find that Kuljeet is entitled to a 50 percent interest in this value, being \$76,250.

Assets of 6634

- [89] The claimant says that the assets of 6634 are family assets because Paul and Gurmel were equal shareholders when the company was initially incorporated on February 6, 2003.
- [90] On February 13, 2006, 48 additional shares were allotted to Gurmel. On April 7, 2009, Gurmel transferred Paul's single share into his name, without any compensation being paid.
- [91] The claimant submits that Paul played a key role in the financial management, investment acquisition, and revenue generation of 6634.
- [92] Based on the totality of the evidence, I am not persuaded that Paul was an equal shareholder in 6634, nor that the assets of this company should be considered family property. Although Paul may have assisted his father in running 6634, this does not create an ownership interest in the company nor an entitlement to the assets of 6634.
- [93] The evidence does not support the proposition asserted by the claimant that Paul continues to hold a 50 percent interest in 6634. I accept the evidence that Paul made no contribution to 6634 at the outset and that, by April 2009, the single share issued to Paul was transferred to Gurmel.
- [94] The main asset of 6634 is a property located at 414 East Columbia (the "East Columbia Property"). The East Columbia Property was purchased prior to Paul and Kuljeet's marriage. There is no evidence that Paul contributed any funds to the purchase of the East Columbia Property.
- [95] The evidence supports that Paul was involved in administrative tasks for the East Columbia Property while Gurmel was travelling. Gurmel paid Paul approximately \$1,000 per month for several years for the assistance he provided. This arrangement does not give Paul any proprietary rights to the East Columbia Property.
- [96] In addition, Paul manages three storage lockers in the East Columbia Property and keeps the rental income from them.
- [97] I am not persuaded that the claimant is entitled to any of the value of 6634. I find that 6634 is not family property.

Vehicles

- [98] There are five vehicles which the claimant claims as family property:

- a) 1991 Mercedes 500SL;
- b) 2008 Smart Car;
- c) 2018 Nissan Frontier;
- d) 1992 Mercedes 400E; and
- e) 1967 Pontiac Firebird.

[99] The primary respondent agrees that the 1967 Pontiac Firebird, the 1991 Mercedes 500SL, and the 2008 Smart Car (the "Family Vehicles") are family property and were all purchased during the relationship.

[100] He asserts that the 1992 Mercedes 400E was gifted to him by his father in 2006 for his 26th birthday, prior to his marriage to Kuljeet. Paul was not challenged in cross-examination on this evidence. I accept that the 1992 Mercedes 400E was a gift to Paul by his father and he is entitled to keep it. I find that this vehicle is not family property.

[101] During the closing submissions, claimant's counsel agreed that the 2018 Nissan Frontier was purchased after the separation and no claim is being made that it is family property.

[102] There were no appraisals of the vehicles tendered at the trial. I agree with Paul's submission that 30 days after the pronouncement of these reasons the parties shall agree to the value of the Family Vehicles and the division of them. If the parties cannot agree, then the Family Vehicles will be listed for sale and sold. The net sale proceeds, less any costs of sale, shall be divided equally between the parties.

Bank Accounts and Pensions

[103] Paul and Kuljeet agree that they should each keep the various bank accounts in their names as of the date of separation.

[104] There are certain accounts that the parties differ in how the account should be allocated. I have attached to these reasons a spreadsheet entitled "Appendix A" that includes both the accounts the parties agreed to as well as my findings on the various disputed accounts discussed below. I have not included any account or shares that had a value of less than \$10.

Scotiabank RRSP Account Ending 4728

[105] The claimant says the value as of the date of separation for this account was \$1,026.45, which should be attributed to the primary respondent.

[106] Paul claims that prior to 2010, these funds were in his RRSP account ending in 7788. He agrees that the value as of the date of separation was \$1,026.45. He argues that this account should be excluded since, as of the date of separation, the account is less than the \$1,522.89 which the primary respondent held in this account at the time of marriage. There was no explanation given on the depletion of the RRSP from the date of marriage to the date of separation. I accept that this is family property and I have accounted for it in Appendix A.

Industrial Alliance Pacific Account

[107] The primary respondent argues that the account value was \$3,306.21 as of the date of marriage and that the account was closed in or around August 26, 2011, as set out in the Agreed Statement of Facts. In light of the agreement that this account was closed during the marriage, there was no value in it as of the date of separation and I have not included it in Appendix A.

Partners in Planning/Investment Planning Counsel Account Ending in 4625

[108] For Paul's Partner in Planning/Investment Planning Counsel account ending in 4625 ("4625 Account"), the claimant asserts the value as of the date of separation at \$3,885.07 and it's current value at \$532.47. She associates a value to the primary respondent of -\$817.50.

[109] The primary respondent says that the value of this account as of the date of separation was \$402.67 and as of the date of marriage \$151.48. He says the divisible value is \$267.48. He relies on paragraphs 81 and 82 of the Agreed Statement of Facts. I note that para. 81 of the Agreed Statement of Facts refers to an account ending in 4626. I believe that this is a typo since in no other documents is there a reference to a Partners in Planning/Investment Counsel Account for Paul ending in that number.

[110] Based on the Agreed Statement of Facts, I accept that as of the date of separation, the 4625 Account had a value of \$418.96. Deducting from that the amount of that account as of the date of marriage being \$151.48, the divisible value is \$267.48. This account and this amount have been included in Appendix A.

CI Investment Policy Account Ending in 1477

[111] This is a joint account between the primary respondent and Gurmel. As of the date of marriage, it had a value of \$613.71. As of the date of separation, the primary respondent says it had a value of \$3,885.07. After deducting the amount in the account as of the date of marriage, the primary respondent says the amount to be divided is 50 percent of \$1,635, being \$817.50.

[112] The claimant agrees to the value as of the date of marriage but has the current value at \$4,700.76.

[113] I accept the approach taken by the primary respondent and find that the amount of the account is \$1,635. This is the amount included in Appendix A.

TD Everyday Business Chequing Account (1275506 B.C. Ltd.) Ending 8044

[114] The claimant says that this account has a current value of \$2,801.34 which should be attributed to the primary respondent.

[115] The primary respondent has not addressed this account in his Schedule A.

[116] The Agreed Statement of Facts makes no reference to this account.

[117] I reviewed the evidence of the claimant and primary respondent, and I was unable to find any reference to this account. As such, I cannot include this account in Appendix A.

Pension and RBC Pension

[118] The claimant lists in her Schedule B a "Pension" with a current value of \$34,098.07. There is no other information provided about this pension. Since it is not listed in the primary respondent's Schedule A, I have not included it in Appendix A.

[119] The claimant also lists in her Schedule B an RBC Pension with a current value of \$6,753.66. There is no reference to this pension in the primary respondent's Schedule A. I could not find any evidence given about this pension. I have not included it in Appendix A.

Reconciliation of Bank Accounts and Pensions

[120] Appendix A supports that as of the date of separation the amount of financial assets the claimant had in her possession was \$49,040, and the amount the primary respondent had in his possession was \$18,364. Since the order is that each of the parties keep the financial accounts and pensions that were in their names as of the date of separation, there is an equalization payment needed. The claimant owes the primary respondent the sum of \$15,338.

Safety Deposit Box

[121] There was a safety deposit box bearing no. 00066A at the CIBC located on Kingsway ("CIBC Box"). Kuljeet has been paying the costs for the CIBC Box. As of the date of trial, neither Paul nor Kuljeet had knowledge of the contents of the CIBC Box.

[122] On January 27, 2025, I granted an order allowing them access to the CIBC Box. I order that 30 days after the pronouncement of these reasons, the parties will divide equally the contents of the CIBC Box. If the parties cannot agree on the division of the CIBC Box contents, then the contents will be listed for sale. The net sale proceeds, less any costs of sale, will be divided equally between the parties.

Rental Income Earned from the Welsley Property

- [123] The claimant has had exclusive occupancy of the Welsley Property since separation. There is a rental unit in the basement of the Welsley Property that has been rented since separation. The claimant has received all of the rental income from this unit.
- [124] Paul claims that he is entitled to 50 percent of the rental income received minus the expenses incurred by the claimant. He accepts that a total of \$2,977 of expenses were incurred by the claimant. These expenses were supported by the testimony of the claimant and the invoices that were tendered at trial. I accept that these expenses were incurred by the claimant.
- [125] The claimant testified that she started receiving rent of \$1,650 a month in September 2019 and the rent was increased to \$1,850 in September 2022. The total rent collected by the claimant as at the date of trial, February 2025, was \$115,500. Between the date of trial to the date of these reasons (March to July 2025), four additional months of rent would have been collected in the amount of \$9,250. Thus, the total rent collected by the claimant is \$124,750 which less expenses, is \$121,772, which I will round down to \$121,770.
- [126] The claimant argues that she has paid no less than \$156,609.09 in costs towards the Welsley Property since separation. Much of this was used to pay for the lines of credit that the primary respondent continued to use for his personal and business purposes after separation. The claimant takes the position that the amounts she has paid offsets any claim by the primary respondent for occupational rent or rent from the tenants.
- [127] I see no rational basis for finding that Paul should not share in this rental income. He is entitled to \$60,885. I will consider the payments made by the claimant under the further amounts paid by the claimant and they will be used as part of the offsets that will be attributed.

Issue 3: Family Debts

- [128] There are several family debts that the parties do not dispute. Those are listed in Appendix B. I have not included debts for under \$10.00 as of the date of separation.
- [129] Appendix B shows that the claimant incurred agreed-to family debt of \$5,997 and the primary respondent incurred \$38,815. To equalize this, the claimant owes the primary respondent the sum of \$16,409.
- [130] The next issue to address is the First LOC and the Second LOC, collectively the "Lines of Credit". The primary respondent claims that the value of the First LOC at the date of separation was \$133,263. The current value is \$151,064.53. His position is that the divisible value is calculated using the current value minus the differences between new charges by the primary respondent post-separation and the total payments made by the primary respondent post-separation with this figure amounting to \$154,151.73.

[131] The claimant agrees the value as of the date of separation was \$133,263 and the current value is \$151,064.53. She seeks to have the primary respondent solely responsible for the payment of the Lines of Credit on the basis that the Lines of Credit were not used for maintaining the family residence, or to maintain any other family asset. She asserts that the Lines of Credit were used to maintain the lavish lifestyle of the primary respondent and to invest in assets not disclosed to the Court. She provides the following examples:

- Louis Vuitton - \$3,572;
- Leone purchases - \$4,054.97;
- Trips to Las Vegas - amount unclear;
- Private healthcare - \$2,567.25;
- Luxury massages - \$929.25; and
- Terminal City Club 2019 yearly total - \$9,561.29.

[132] The claimant asserts that these receipts are only a "snapshot of the full picture of the excess". She argues that it would be grossly unfair for her to share the burden of the primary respondent's excess.

[133] The claimant relies on the case of *Mallen v. Mallen*, [1992] B.C.J. No. 648, 1992 CanLII 4034 (C.A.), which provides:

[7] The proper focus for the examination of a debt should be a focus on the nature and purpose of the borrowing and on the expenditure of the borrowed funds. If the funds were used to acquire a family asset, to maintain a family asset, to discharge a family burden, or to maintain the family members, then it is likely that equality and fairness will require an equal sharing of the debt or liability and its adjustment in the division of the assets in such a way to carry out the principles of equality and fairness. If the funds were used entirely for personal purposes of the spouse who borrowed them it is likely that equality and fairness will require that spouse to bear the whole burden of the debt after the triggering event.

[134] In the alternative, she argues that the amount owing on the First LOC at the time of the marriage should not be her responsibility.

[135] The primary respondent claims that the value of the Second LOC as at the date of separation was \$8,940.34. The current value is \$20,405.40. He uses the current value minus the difference between the new charges by the primary respondent post-separation and the total payments made by the primary respondent post-separation to come up with a figure of \$12,595.03 as the divisible value.

[136] The claimant says that this LOC had a value as of the date of separation of \$12,595.03.

- [137] The primary respondent objects to being solely responsible for the Lines of Credit on the basis that, pursuant to s. 86 of the FLA, family debts include all financial obligations incurred by a spouse during the relationship. In support, the primary respondent relies on the principles set out in *Morgan v. Morgan*, 2018 BCSC 1992 at para. 74, that the "family debt" incurred during the currency of the relationship is not defined or limited by use or contribution". He further submits that the FLA does not contemplate a forensic accounting of expenditures during the relationship: *Banh v. Chrysler*, 2022 BCCA 74 at para. 51, leave to appeal to SCC ref'd, [2022] S.C.C.A. No. 122.
- [138] The primary respondent argues that all the cases relied on by the claimant are distinguishable on their facts.
- [139] In *C.Y.J. v. R.J.*, 2022 BCSC 1901 at para. 163, the Court found that the balance owing on the original line of credit as of the separation date was a family debt because it was incurred during the relationship for the purpose of improving the family home.
- [140] In *Yerbury v. Yerbury*, 2019 BCSC 271, the Court found that Ms. Yerbury had dissipated approximately \$300,000 from the parties' joint account in the eight months prior to separation. Relying on s. 95(2)(g) of the FLA, the Court considered whether there had been a dissipation of family property by Ms. Yerbury and, if there had, whether she acted in good faith. The Court found that Ms. Yerbury went on a "sustained spending spree", preferring to spend the funds rather than using them to reduce the family debts: para. 80. The Court concluded that \$240,000 was dissipated by Ms. Yerbury in bad faith and this resulted in significant unfairness, since Ms. Yerbury had dissipated much of the equity left of the parties. The Court allowed Mr. Yerbury a \$120,000 credit against the amount he otherwise had to pay to Ms. Yerbury on an equal distribution of the family property and debt.
- [141] In *Lopez v. Romanova*, 2023 BCSC 1825, the parties were married for 36 years prior to separation. Ms. Romanova sought unequal division on the basis that Mr. Lopez had secretly siphoned funds from the family's bank account to send to his girlfriend in Columbia. The Court found that since approximately 2017, Mr. Lopez had sent approximately \$100,000 in money orders to Columbia and the actual amount of family property sent to Columbia was likely more. The Court ordered reapportion of \$50,000 from Mr. Lopez to Ms. Romanova.

Analysis

- [142] There was some evidence lead that some of the spending on the lines of credit were for personal expenditures made by the primary respondent for his exclusive use.
- [143] There were also extensive expenditures on meals that the claimant did not participate in. However, the primary respondent's evidence was that some of the meals were for business reasons and others he paid for but was later reimbursed in cash by those attending the meal.

- [144] I accept that the primary respondent likes to spend money on himself and for his own activities, whereas the claimant is a much more conservative and fiscally responsible individual.
- [145] However, I am not persuaded that the circumstance of this case is akin to the one in Lopez, where there was evidence that Mr. Lopez had sent family money to his girlfriend. I do not have a full review of all of the expenditures made out of the Lines of Credit and what amounted to expenditures solely for the benefit of the primary respondent. I am unable to find that the circumstances of this case amount to significant unfairness such that the primary respondent should be solely responsible for the entirety of the Lines of Credit.
- [146] In the alternative, the claimant argues that the amount owing on the First LOC at the time of the marriage should not be her responsibility. She says that amount was \$45,207. The primary respondent argues that one cannot seek a reapportionment of the debt, and the Court is not here to conduct some type of forensic accounting.
- [147] I am unable to conclude on the evidence before me if any line of credit debt that was owed at the commencement of the marriage was paid off during the marriage or not. I am not prepared to remove from the amount owed by the claimant the line of credit debt existing at the time of the marriage.
- [148] As such, there will be an equal division of the Lines of Credit owed in the following amounts, being the amounts owed as of the date of separation:
- First LOC - \$133,262; and
 - Second LOC - \$12,595.
- [149] Since separation, the claimant has made payments of \$11,985.95 to the First LOC and \$1,703.78 to the Second LOC, for a total of \$13,690. She is entitled to be reimbursed for the total of those amounts by the primary respondent.

Issue 4: Spousal Support

Applicable Legal Principles

- [150] The factors and objectives of a spousal support order are set out in ss. 15.2(4) and 15.2(6) of the DA. They read as follows:

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.

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.

[151] The objectives of spousal support under the DA are analogous to the objectives of spousal support set out in s. 161 of the FLA: *Namdarpour v. Vahman*, 2019 BCCA 153 at para. 136.

[152] In determining the ongoing application for spousal support, the law recognizes three models of spousal support as described in *Bracklow v. Bracklow*, [1999] 1 S.C.R. 420 at para. 15, 1999 CanLII 715, namely: compensatory, contractual, and non-compensatory (needs-based). In this case, only the compensatory basis comes into play.

[153] In *Chutter v. Chutter*, 2008 BCCA 507, leave to appeal to SCC ref'd, [2009] S.C.C.A. No. 41, Justice Rowles described the purpose and rationale underlying the compensatory grounds for spousal support as follows:

[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.

[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] In *W. v. W.*, 2005 BCSC 1010, 19 R.F.L. (6th) 453, a frequently cited decision in trial decisions in British Columbia, Justice Martinson made the following helpful observation about the interpretation in this province of the emphasized portion in *Moge*:

[11] In British Columbia this comment in *Moge* has been interpreted to mean that in long marriages the result will likely be a rough equivalency of standards of living. Doing so recognizes that the longer a marriage lasts, the more intertwined the economic and non-economic lives of the spouses become.

[12] Throughout the marriage, each spouse makes decisions that accommodate the economic and non-economic needs of the other. The decisions include the way in which child care and other family responsibilities will be handled and the way careers will develop. These decisions can have a significant impact upon the income earning ability of each at the time of separation. Yet it is not easy to determine exactly the relationship between these decisions and the consequent benefits and detriments to each spouse. The rough equivalency of standard of living approach has operated as a workable substitute to assess compensatory claims. See for example, *Dithurbide v. Dithurbide* (1996), 23 R.F.L. (4th) 127 (B.C.S.C.); *Rattenbury v. Rattenbury*, 2000 BCSC 722; *Rinfret v. Rinfret*, [1999] B.C.J. No. 2945 (S.C.); *O'Neill v. Wolfe* (2001), 14 R.F.L. (5th) 155 (B.C.S.C.); *Walton v. Walton*, [1997] B.C.J. No. 1089 (S.C.); *Ulrich v. Ulrich*, 2003 BCSC 192; and *Carr v. Carr* (1993), 46 R.F.L. (3d) 326 (B.C.S.C.).

[Emphasis added.]

[Bold and emphasis in original.]

[154] In determining whether a party has been economically disadvantaged as a result of the marriage, Justice Rowles noted that the fact that a woman worked outside the home does not necessitate preclusion from an award for spousal support:

[71] ... [T]he fact that the support-seeking spouse was employed outside the marriage, or engaged in the same career at the end of the marriage as at its start, does not necessarily preclude entitlement to spousal support on compensatory grounds. What was said by McLachlin J. (as she then was) in concurring reasons in *Moge*, at 882, is apposite:

Even women who have worked outside the home during the marriage may find that their career advancement has been permanently reduced by the effort which they devoted to home and family instead of their jobs, whether the woman be a janitor like Mrs. *Moge* or a well-trained professional.

[Emphasis in original.]

[155] A compensatory award should continue until compensation is achieved, even if the spouse has achieved self-sufficiency: *Chutter* at para. 79; *Tedham v. Tedham*, 2005 BCCA 502 at para. 60; *Morigeau v. Moorey*, 2015 BCCA 160 at para. 37.

[156] The principles of imputation of income were canvassed by Justice Willcock in *Willms v. Willms*, 2020 BCCA 51 at para. 41, where he quoted extensively from the earlier decision of *Marquez v. Zapiola*, 2013 BCCA 433:

[41] In the course of submissions to the judge, the appellant's counsel acknowledged the leading case in British Columbia on imputation of income, *Marquez v. Zapiola*, 2013 BCCA 433, confirms the party seeking to have income imputed to the other spouse has the burden of establishing an evidentiary basis for such a finding. He cited propositions drawn from *Marquez*, which are found at paras. 36-38 of the judgment of Madam Justice Smith in that case:

[36] For the purposes of both child and spousal support, there is a broad judicial discretion to impute income to either or both spouses. However, the party seeking to have income imputed to the other spouse has the burden of establishing an evidentiary basis for such a finding.

[37] The test for imputing income for intentional under-employment or unemployment is one of reasonableness, having regard to the parties' capacity to earn income in light of their age, education, health, work history and work availability. A spouse's capacity to earn income will include that person's ability to work or to be trained to work. See *Van Gool v. Van Gool* (1998), 113 B.C.A.C. 200, 44 R.F.L. (4th) 314 at paras. 28-31, *Barker v. Barker*, 2005 BCCA 177, 45 B.C.L.R. (4th) 43 at para. 19, and *McCaffrey v. Paleolog*, 2011 BCCA 378, 24 B.C.L.R. (5th) 62 at para. 46.

[38] Although the legal foundation for awarding spousal support is different from that of child support (see *Kerr v. Baranow*, 2011 SCC 10, [2011] 1 S.C.R. 269 at para. 208), the test for imputing income for the purpose of fixing the quantum of support is similar. Again, the test is one of reasonableness, having regard to the same factors to be considered in imputing income for child support. However, the concept of "needs" for non-compensatory support also includes a consideration of the marital standard of living: *Myers v. Myers* (1995), 65

B.C.A.C. 226, 17 R.F.L. (4th) 298 at para. 10, Moge at 870, Bracklow at para. 36. "Means" has been interpreted to include all capital and other sources of income (Leskun v. Leskun, [2006] 1 S.C.R. 920 at para. 29).

Position of the Parties

Claimant's Position

- [157] The claimant asserts that she is entitled to spousal support based on the primary respondent's income, earning capacity, and the sacrifices she made for their marriage. She argues that given the economic disparity between the parties, the claimant has suffered financial hardship post-separation, while the primary respondent has enjoyed a lavish lifestyle.
- [158] The claimant points to the evidence that upon marrying the primary respondent, she gave up her entire life to move to Canada, where Paul was able to carry on his business and amass assets that remain undisclosed and hidden from her reach. She gave up her family, friends, and homeland to live in Canada. As a result of the move, she gave up her career at IBM and sacrificed the standing she had earned in her management role. She had to start new in a country where she had no friends and had to pursue a different career path.
- [159] The claimant seeks lump-sum spousal support on the basis that it is appropriate given the circumstances of this case.
- [160] The claimant seeks to impute income to the primary respondent on the basis that his true income is not reflected in his filed tax returns. The primary respondent's lifestyle supports that he has income far exceeding what he has declared. The presence of large cash reserves in the primary respondent's possession suggests undeclared income sources that should be included in the imputation analysis.
- [161] The claimant seeks to impute an income to the primary respondent of at least \$250,000 per year based on his real estate development and investment activities, corporate dividends, and rental income - which were not fully disclosed - and evidence of a lifestyle inconsistent with reported earnings. She submits that her income should be set at \$53,804, being her Line 15000 income for 2017, for the purpose of the calculation. She seeks an award of lump sum income at \$148,985.
- [162] In the DivorceMate calculations provided by the claimant, the lump sum support amount is based on an estimated duration of 90 months, being equivalent to seven and-a-half years.

Primary Respondent's Position

- [163] The primary respondent submits that when considering an award of spousal support, the Court must first determine whether there is an entitlement to spousal support, and, if so, the appropriate quantum and duration: *Hopson v. Hannon*, 2020 BCSC 794 at para. 233, aff'd 2022 BCCA 314.
- [164] The primary respondent argues that the claimant has not established an entitlement to spousal support because she has been self-sufficient, and her income has increased, since separation. He argues that the claimant does not meet any of the objectives of spousal support as she suffered no economic disadvantage from the breakdown of the marriage. He points out that spousal support cannot be awarded on the basis of income disparity alone.
- [165] During closing submissions, I asked counsel what the primary respondent's submission was on his income. Counsel submitted that the income taxes do not support the capacity that the primary respondent has to bring in income. The submission was that the primary respondent could earn a minimum of \$60,000 and a maximum of \$120,000.
- [166] The primary respondent agrees that there be a clean break between the parties and that any award of spousal support should be made on a lump sum basis. He disputes that the claimant's income should be set at her income in 2017 and that her current income should be used.

Analysis

Entitlement to Spousal Support

- [167] I find that the claimant was economically disadvantaged by the marriage. She had a very successful career in India and was working towards a management position at IBM. All of that was abandoned when she married Paul and moved to Canada. She lost all her connections in her chosen career. She arrived in Canada and was required to do domestic work for the Kainth family for several years. She did not start full-time employment until July 2010. Once the couple moved out of the Buckingham Home into the Welsley Property in September 2019, she took on the job as the full-time housewife doing the cooking, cleaning, and laundry.
- [168] To her credit, the claimant was able to start a new career in banking. She started at an entry level position and, as of the date of separation, she had been promoted to a Relationship Manager at Coast Capital Savings.

[169] In the circumstances of this case, I find that the claimant is entitled to spousal support and that she was not advantaged by the financial support from the primary respondent. I accept that, during the relationship, the primary respondent lived an "excessive and lavish" lifestyle while the claimant, once she obtained work, would go to work and come home. As a result of the primary respondent's lifestyle, the Lines of Credit were not paid down. I find that the claimant is entitled to spousal support on a compensatory basis.

Guideline Income

Income of the Claimant

[170] I accept that the income set out in the tax returns of the claimant reflects her income for calculation of spousal support. The claimant's T1 Line 15000 income between 2014 and 2022 was:

- 2014 - \$38,161;
- 2015 - \$47,905;
- 2016 - \$37,615;
- 2017 - \$53,804;
- 2018 - \$69,405;
- 2019 - \$70,988;
- 2020 - \$76,646;
- 2021 - \$82,661; and
- 2022 - \$84,518.

[171] In 2023, the claimant's income was \$87,855.

Income of the Primary Respondent

[172] The primary respondent's T1 Line 15000 income between 2014 and 2022, except for 2019, was:

- 2014 - \$5,293.18;
- 2015 - \$3,019.96;
- 2016 - \$14,464.51;
- 2017 - \$13,986.66;
- 2018 - \$15,994.80;
- 2019 - missing;

- 2020 - \$24,499.53;
- 2021 - \$18,348.87; and
- 2022 - \$16,500.

[173] I find that the income reported by the primary respondent in his tax returns does not reflect his true income, as was essentially conceded by his counsel in oral submissions. I note that, for many years, the income reported by the primary respondent in his tax returns would be an income commensurate with the poverty level and even well below.

[174] I accept the claimant's submissions that the primary respondent's account deposits and lifestyle are a true indicator of his income. Some examples of that are:

- His expensive trips to Las Vegas, New York, Japan and Dubai.
- His expensive purchases from Louis Vuitton at Holt Renfrew for \$3,572.
- His purchase of private health care which cost \$4,500 in August of 2017 and which he testified he was a member of for three to four years.
- In 2017, the primary respondent spent over \$8,000 at the Terminal City Club.
- Spending lavishly on restaurants. For example on May 11, 2017, he spent \$750 at three different restaurants, while on November 17, 2017, he spent \$870 dining at Black and Blue and the Boathouse.
- In 2017, he deposited roughly \$517,000 into his accounts while declaring income of just under \$14,000.
- In 2018, he made just over \$30,000 of payments on the First LOC when reporting an income of just under \$15,000.

[175] Both the claimant and her brother testified to the wads of cash that the primary respondent had on his person and stashed in the house. It is not clear where the primary respondent obtained this cash.

[176] During his testimony, he agreed that he could earn up to \$10,000 a month, although I place little credence in the reliability of this statement. In addition, he has previously received rental income from assisting his father in renting his father's various properties. None of this income, nor the rental income he was receiving from renting out the Welsley Property, appears in his tax returns.

[177] It is difficult to know the truth regarding what the primary respondent has made in the past and his true earning capacity. Based on the evidentiary record before me, I find that an income of \$175,000 should be imputed to him and used as his Spousal Support Advisory Guidelines income.

Lump Sum or Periodic Payments

[178] The claimant and primary respondent both agree that any spousal support award should be made on a lump sum basis. I agree for the following reasons:

- a) the support is being made for retroactive support;
- b) a clean break between these parties would be advantageous; and
- c) the expectation of the primary respondent making any type of periodic payments is low.

Quantification of the Lump Sum Amount

[179] I have imputed an income of \$175,000 for the primary respondent. I accept the income declared by the claimant on her tax returns is accurate.

[180] At issue is what income to use for the claimant to calculate lump sum spousal support. The claimant says her income of \$53,803 as of the date of separation should be used. The primary respondent says that the claimant's most recent income of \$87,855 as set out in her 2023 tax return should be used.

[181] If one uses the amount of \$53,803 for the claimant's income and \$175,000 for the primary respondent, the amount of lump sum spousal support is a low range of \$84,076, a mid-range of \$98,025, and a high range of \$111,974. Using the same income level for the primary respondent but adjusting the claimant's income to \$87,555, the amount is a low range of \$59,633, a mid-range of \$69,494, and a high range of \$79,313.

[182] I accept that the appropriate range should be the mid-range. In my view, the fairest approach would be to take the average between the lump sum values of each. The claimant is therefore awarded a lump sum payment of spousal support of \$83,760.

Issue 5: Are There any Other Funds Owed to the Claimant?

[183] The claimant paid the City of Burnaby the amount owed from the primary respondent's decision to falsely claim the homeowner's grant on the Welsley Property when it was solely a rental. This amount should be the sole responsibility of Paul to pay. The claimant testified that she took a loan to pay the property taxes of \$20,000, some of which was incurred prior to the marriage. She is entitled to be reimbursed for this \$20,000.

[184] The claimant testified that she was told that Paul would reimburse her for the costs of the IVF treatments she took. I accept her evidence. The cost was between \$10,000 to \$14,000. I will award the \$14,000, at the high end of the estimate, since these monies should have been reimbursed to her many years ago.

[185] The claimant says that she has made mortgage payments totalling \$91,173.52 on the BNS Mortgage since August 2019. She seeks contribution from the primary respondent for this amount. Considering the claimant's exclusive occupation of the Welsley Property, I am not persuaded that she should be reimbursed for this amount. As a result of her occupancy of

the Welsley Property, she has not had to rent other accommodation. I note that the monthly mortgage payments were between roughly a low of \$1,239 to a high of \$1,778, which would be far below the fair market rent for a single-family home. I am not prepared to order any reimbursement for this amount.

- [186] The other amounts claimed were for payments made to the First and Second LOCs by the claimant post-separation. I have dealt with those when considering the allocation of family debts.
- [187] The claimant has paid the property tax on the Welsley Property from 2020 to 2023 in the amount of \$33,289.78 based on Schedule C of the claimant's submissions. The primary respondent should be paying for one-half of the property taxes paid for the Welsley Property. The primary respondent shall reimburse the claimant the sum of \$16,645. If the claimant has paid the property taxes in 2025, she is also entitled to one-half of that amount from the primary respondent.
- [188] The claimant has paid utilities while residing at the Welsley Property. As she had exclusive occupation of the Welsley Property, I find that the primary respondent is not responsible for any payment of those utilities.
- [189] The claimant has also paid insurance on the Welsley Property in the amount of \$13,306.92. I find that the primary respondent should pay for 50 percent of the home insurance costs. The primary respondent owes the claimant the sum of \$6,653.

Issue 6: The Contempt Application

- [190] Prior to the commencement of the trial, Kuljeet had filed a notice of application on October 15, 2024 seeking to hold Paul in contempt of court for his non-compliance with para. 2 of the JCC management order made on July 17, 2018. (the "Contempt Application"). At the commencement of the trial, the claimant advised that she would argue this application on the last day of trial. The claimant and primary respondent made submissions on the Contempt Application as part of their closing submissions.

Relevant Facts

- [191] The Welsley Property was solely in the name of the primary respondent.
- [192] On March 17, 2015, a second mortgage was registered against the Welsley Property, to Deer Lake, described as the Deer Lake Mortgage. The claimant testified that she had no knowledge of the Deer Lake Mortgage. I accept the claimant's testimony in that regard. The claimant had raised an interest in Welsley Property in her filed pleadings. She filed a certificate of pending litigation against the Welsley Property on January 11, 2018.
- [193] On June 21, 2018, Associate Judge Taylor ordered that ("Taylor Order"):

Pursuant to section 91 of the Family Law Act, the Respondent, Inderpaul Singh Kaith, born February 12, 1978, is prohibited from disposing of, transferring, converting, or exchanging into another form, property in which the Claimant may have an interest. The above order will expire on July 17, 2018.

[194] Counsel for the primary respondent, Russell S. Tretiak, K.C., was in attendance at the application hearing before Associate Judge Taylor and the Taylor Order was signed by counsel.

[195] On July 17, 2018, at the judicial case conference (which the primary respondent and his counsel, Mr. Tretiak, attended), Justice Gropper ordered in paragraph 2 ("Gropper Order"):

The Financial Restraining Order made on 21 June 2018 by Master Taylor is further extended to the trial date unless the parties agree or by further Order of the Court.

[196] On June 27, 2019, Associate Judge Harper granted the claimant interim exclusive occupancy of the Welsley Property. At para. 7 she ordered:

The Respondent, Inderpaul Singh Kainth, shall continue to make all payments pertaining to the Deer Lake Enterprises Inc. mortgage against the Family Residence, until agreement or further Order of the Court.

[197] The primary respondent was represented by counsel at the June 27, 2019 appearance.

[198] On July 10, 2019, the Deer Lake Mortgage was further subdivided and assigned to various parties: (1) Deer Lake retained 28/50 interest; (2) Nyblad at 1/5 interest; (3) Plume Investments Inc. ("Plume") and Ansatz Investment Inc. ("Ansatz") at 12/50 interest (the "Deer Lake Divided Mortgage").

[199] Ms. Dublanko, as principal of Nyblad, testified at trial that she paid \$100,000 for the 1/5 interest.

[200] Plume and Ansatz paid \$120,000 for the 12/50 interest.

[201] The primary respondent did not make any payments to the new lenders after December 20, 2020. On December 6, 2023, Nyblad commenced a foreclosure petition against the Welsley Property.

[202] Ms. Dublanko testified that the primary respondent made some payments on the Deer Lake Divided Mortgage but, as of the date of trial, about \$100,000 was still owed. She further testified that the foreclosure proceeding has gone "nowhere".

Legal Principles

- [203] The court has the inherent jurisdiction to punish for contempt of court. However, this power is also addressed in Rule 21-7 of the Supreme Court Family Rules, B.C. Reg. 188/2024. The power to punish for contempt is essential in order to uphold the rule of law, the court's authority, and the integrity of its process: *Transportation Lease Systems Inc. v. Virdi*, 2009 BCSC 695 at para. 16, citing *United Nurses of Alberta v. Alberta (Attorney General)*, [1992] 1 S.C.R. 901 at 931, 1992 CanLII 99.
- [204] Contempt of court is committed where a person knowingly breaches or fails to comply with an order of the court: *North Vancouver (District) v. Sorrenti*, 2004 BCCA 316 at para. 14 [Sorrenti]; *Slater Vecchio LLP v. Arvanitis*, 2020 BCSC 385 at para. 29 [Arvanitis].
- [205] Civil contempt is quasi-criminal in nature: *Arvanitis* at para. 33. As set out in *Carey v. Laiken*, 2015 SCC 17 at paras. 32-35, it has three elements which must be proven beyond a reasonable doubt:
- a) the existence of a court order that clearly and unequivocally says what should and should not be done;
 - b) actual knowledge of the court order by the alleged contemnor; and
 - c) the intentional commission of an act that the order prohibits, or intentional omission of an act that the order compels.
- [206] With respect to the first element, the Court of Appeal helpfully set out the law in *Gurtins v. Goyert*, 2008 BCCA 196:
- [14] As the chambers judge correctly noted in paragraph 13 of her reasons, in a contempt matter, an order alleged to have been breached must be precise and unambiguous in its direction, and the alleged contemnor is entitled to the most favourable interpretation of it: *Hama v. Werbes*, 2000 BCCA 367, 76 B.C.L.R. (3d) 271 at para. 8. However, in my view, she erred when she looked beyond the four corners of the two orders in deciding what legal obligations they placed on Mr. and Mrs. Goyert. It is apparent from the chambers judge's reasons that, in interpreting the orders, she had regard to the transcripts of various court appearances, and to the reasons given by de Walle P.C.J. and Goepel J. for making their respective orders.
- [15] The rule of law requires that court orders be obeyed. Accordingly, it is of paramount importance that persons who are subject to court orders be able to readily determine their obligations and responsibilities. They do this by having regard to what is on the face of the formal order setting out what they are required to do, or refrain from doing. As stated in *Arlidge, Eady & Smith on Contempt* (London: Sweet & Maxwell, 2005) (at para. 12-55), "[a]n order should be clear in its terms and should not require the person to whom it is addressed to cross-refer to other material in order to ascertain his precise obligation". See also: *Northwest Territories Public Service Association v. Commissioner of the Northwest Territories* (1979), 107 D.L.R. (3d) 458 (N.W.T.C.A.) at 478, 479; *In re A Bankrupt*; *Rudkin-*

Jones v. The Trustee of the Property of the Bankrupt (1965), 109 Sol. Jo. 334 (C.A.).

[16] A concise and most helpful summary of the principles applicable to the interpretation of an order in contempt proceedings is found in R. (Mark Dean Harris) v. The Official Solicitor to the Supreme Court, [2001] EWHC Admin 798 (Q.B.D.), wherein Mr. Justice Munby stated (at para. 68):

(i) No order will be enforced by committal unless it is expressed in clear, certain and unambiguous language. So far as this is possible, the person affected should know with complete precision what it is that he is required to do or to abstain from doing.

(iii) An order should not require the person to whom it is addressed to cross-refer to other material in order to ascertain his precise obligation. Looking only at the order the party enjoined must be able to find out from the four walls of it exactly what it is that he must not do.

(iv) It follows from this that, as Jenkins J said in *Redwing Ltd v Redwing Forest Products Ltd* (1947) 177 LT 387 at p 390,

a Defendant cannot be committed for contempt on the ground that upon one of two possible constructions of an undertaking being given he has broken that undertaking. For the purpose of relief of this character I think the undertaking must be clear and the breach must be clear beyond all question.

[Emphasis added.]

[Bold and emphasis in original.]

[207] With respect to the second element, knowledge may be inferred from the circumstances, or the alleged contemnor may be held liable due to wilful blindness: *Carey* at para. 34.

[208] Finally, conduct constituting disobedience of a court order will only amount to contempt when it was intentional rather than accidental or unintentional. Intention may be inferred from the circumstances. In *Sorrenti*, the Court of Appeal described the requirement as follows:

[14] As this court stated in *Topgro Greenhouses Ltd. v. Houweling*, 2003 BCCA 355, "[t]o knowingly breach a court order is to commit a contempt of the court. All that is necessary to establish the contempt is proof of deliberate conduct that has the effect of contravening the order; an intent to bring the Court into disrepute or to interfere with the due course of justice or with the lawful process of the Court is not an essential element of civil contempt". (Para. 6.) This is consistent with the formulation provided in *Stancomb v. Trowbridge*, quoted above, and with the principle stated in *Sheppard* that the offence of contempt "consists of the intentional doing of an act which is in fact prohibited by the order."

[Bold in original.]

[209] As noted in *Arvanitis*:

- [34] In terms of proving an intentional breach of a court order, the court looks at whether the person had the intention to commit the act itself, not the disobedience. In other words, it is not necessary to make a finding that the person intended to disobey in the sense that they were choosing not to comply. It is enough if a person's action were deliberate and amount to a breach: *United Nurses of Alberta* at 931. The mens rea is simply the intention to do the act which in fact was prohibited by the order, or in this case, the intention not to do an act that was mandatorily ordered: *Carey* at para. 35.

Positions of the Parties

- [210] The claimant submits that the primary respondent was aware of the Gropper Order, its terms were clear and unambiguous, and his actions were willful and deliberate.
- [211] The primary respondent submits that the Taylor Order was neither clear nor unequivocal about what actions he needed to take or avoid. Further, the Taylor Order only restrained the primary respondent from dealing or transferring property in which the claimant may have an interest. The primary respondent did not make any claim in this litigation that the claimant was responsible for the Deer Lake Mortgage post-separation. At trial, the primary respondent agreed to be solely responsible for the Deer Lake Mortgage. Since the claimant is not responsible for the Deer Lake Mortgage, the primary respondent argues that he did not breach the Taylor Order by assigning portions of the mortgage.

Analysis

- [212] In my view, the primary respondent was in breach of the Taylor Order when he sold off portions of the Deer Lake Mortgage. The actions he took fell squarely within the prohibition of "transferring, converting, or exchanging into another form". There is no ambiguity or lack of clarity in the Taylor Order.
- [213] I reject the primary respondent's submission that he was not seeking to have the claimant be responsible for the Deer Lake Mortgage. As part of his case, he presented a spreadsheet setting out what he says were the mortgage draws received from the Deer Lake Mortgage. The primary respondent testified that he had checked each of the withdrawals from mortgage draw sheets that his father had created. It was clear during his cross-examination that many of the amounts claimed as being amounts advanced under the Deer Lake Mortgage were, in fact, not.
- [214] It was only after the primary respondent's evidence had been completed and just prior to the evidence of Tejwant that counsel for the primary respondent advised that the Deer Lake Mortgage was not a family debt and that the primary respondent would have to deal with it.

[215] In light of the concession made at trial that the primary respondent will be solely responsible for the Deer Lake Mortgage, and the order I am making that he must take steps to have the Deer Lake Mortgage discharged from the title of the Welsley Property, I will not impose any type of sanction on the primary respondent for his breach of the Taylor Order.

Issue 7: What Orders Should be Made Against the Secondary Respondents?

[216] Based on the evidence before me, the claimant was not able to establish any claim against any of the assets held by the secondary respondents. As such, her action against the secondary respondents is dismissed.

Reconciliation of Amounts Owed

[217] The claimant owes the following amounts to the primary respondent:

- the sum of \$60,885 for his share of the rent collected from the Welsley Property;
- the sum of \$15,338 for the equalization of the pension and bank accounts; and
- the sum of \$16,409 for equalization of the amount owned for family debts.

[218] The primary respondent owes the following amounts to the claimant:

- the sum of \$76,250 for the equalization payment for Unit 203;
- the sum of \$83,760 for lump sum spousal support;
- reimbursement for the IVF and property tax penalties paid in the amount of \$14,000 plus \$20,000 for a total of \$34,000;
- the sum of \$13,690 for the payments made by the claimant to the lines of credit post-separation;
- the sum of \$16,645 for the property taxes paid by the claimant on the Welsley Property post-separation; and
- the sum of \$6,653 for the insurance paid by the claimant on the Welsley Property post-separation.

[219] The claimant and primary respondent are equally responsible for the Lines of Credit registered against title to the Welsley Property as provided for in paragraph 148 of these reasons.

Summary of Orders

[220] The following orders are made:

Liability of the Secondary Respondents

- 1) The claims against the secondary respondents are dismissed.

Divorce

- 2) Subject to s. 12 of the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.), the claimant, Kuljeet Kaur Kainth, and the respondent, Inderpaul Singh Kainth, who were married at Chandigarh, India on November 25, 2017, are divorced from each other. The divorce is to take effect on the 31st day after the pronouncement of these reasons.

Spousal Support

- 3) The primary respondent will pay to the claimant a lump sum spousal award of \$83,760, covering all retroactive and prospective spousal support.

Asset Division

- 4) The parties shall retain the bank accounts and pensions as set out in Appendix A to these reasons.
- 5) The claimant will pay to the primary respondent the sum of \$15,338 for the equalization of the pension and bank accounts.
- 6) A 50 percent interest in the property located at 203-1645 East 5th Avenue, Vancouver ("Unit 203") is a family asset.
- 7) The primary respondent will pay to the claimant the sum of \$76,250 as an equalization payment for the 50 percent interest in Unit 203.
- 8) The property located at 7847 Welsley Drive, Burnaby ("Welsley Property") is a family asset.
- 9) The primary respondent has an excluded claim of \$268,194 in the Welsley Property.
- 10) The claimant and the primary respondent, after accounting for the primary respondent's excluded claim, each have a 50/50 interest in the Welsley Property.
- 11) The following vehicles are family property: 1967 Pontiac Firebird, the 1991 Mercedes 500SL, and the 2008 Smart Car (the "Family Vehicles").
- 12) Within 30 days after the pronouncement of these reasons, the parties shall agree to the value of the Family Vehicles and the division of them. If the parties cannot agree, then the Family Vehicles will be listed for sale and sold. The net sale proceeds, less any costs of sale, shall be divided equally between the parties.
- 13) The 1992 Mercedes 400E is the primary respondent's sole property.
- 14) The contents of the safety deposit box bearing No. 00066A at the CIBC located on Kingsway ("CIBC Box") shall be divided equally between the claimant and the primary respondent within 30 days from the pronouncement of these reasons. If the parties cannot agree on the division of the CIBC Box contents, then the contents will be listed for sale. The net sale proceeds, less any costs of sale, will be divided equally between the parties.

Debt Division

- 15) The claimant and the primary respondent are equally liable for the BNS Mortgage on the Welsley Property.
- 16) The claimant and primary respondent are equally liable for the Lines of Credit registered against the Welsley Property with the amounts owed being \$133,262 for the First LOC and \$12,595 for the Second LOC. Any additional amounts owed on the Lines of Credit are the sole responsibility of the primary respondent.
- 17) The primary respondent will pay the claimant the sum of \$13,690 for the payments she made to the First LOC and Second LOC after separation.
- 18) The claimant will pay the sum of \$16,409 to the primary respondent for her share of the family debt, set out in Appendix B to these reasons.
- 19) The Deer Lake Mortgage and the two judgments bearing registration numbers CB1163125 and CB1801180 registered against title to the Welsley Property shall be discharged by the primary respondent at his sole cost. These encumbrances shall be discharged within 90 days of the pronouncement of these reasons and proof of their discharge shall be provided to the claimant.

Other

- 20) The primary respondent shall pay to the claimant the sum of \$34,000 for the expenses she paid for the IVF treatments and for the arrears in property taxes that should have been the sole responsibility of the primary respondent.
- 21) The claimant will pay the sum of \$60,885 to the primary respondent for the share of the rent of the Welsley Property that she collected.
- 22) The primary respondent shall pay to the claimant one-half of the property taxes the claimant has paid for the Welsley Property since separation, including half of any 2025 property tax payment made. The amount owing as of the date of trial by the primary respondent is \$16,645.
- 23) The primary respondent shall pay to the claimant one-half of the home insurance the claimant has paid for the Welsley Property since separation. As of the date of trial, the amount owed by the primary respondent to the claimant is \$6,653.
- 24) The parties have leave to appear before me to address any issues arising out of these orders.

Costs

[221] The parties sought leave to provide submissions respecting costs after the reasons had been pronounced. The parties shall exchange written submissions on costs within 60 days of these reasons. The parties will then submit a request to appear before me within 90 days of these reasons. A date will be set for the parties to make oral submissions on the issue of costs.

"Forth J."

Appendix "A"

Financial Accounts

Value

Credit to Claimant

Credit to Primary Respondent

Primary Respondent - Scotiabank RRSP ending 4728

\$1,026.45

\$1,026.45

Primary Respondent - Vancity shares account ending 3142

\$47.57

\$47.57

Primary Respondent - Partners in Planning / Investment Planning Counsel account ending 4625

\$267.48

\$267.48

Primary Respondent - CI Investment Policy account ending 1477

\$1,635.00

\$1,635.00

Primary Respondent - Scotiabank Gain Plan account ending 9237

\$260.83

\$260.83

Primary Respondent - TD Direct Investing TFSA account W20-J

\$14,003.54

\$14,003.54

Claimant - CIBC account ending 0985

\$233.85

\$233.85

Claimant - Coast Capital chequing account ending 5628

\$295.39

\$295.39

Claimant - Coast Capital chequing account ending 5286

\$405.27

\$405.27

Claimant - Coast Capital TFSA ending 3005

\$5,655.30

\$5,655.30

Claimant - Coast Capital TFSA ending 6268

\$23,559.59

\$23,559.59

Claimant - Coast Capital RRSP ending 0100

\$18,889.20

\$18,889.20

Primary Respondent Terminal City Club account

\$1,122.54

\$1,122.54

Total

\$49,038.60 (rounded to \$49,040)

\$18,363.41 (rounded to \$18,364)

Appendix "B"

Financial Debt

Value

Claimant

Primary Respondent

Primary Respondent - Vancity Line of Credit ending 1074 / 0341

\$38,814.48

\$38,814.48

Claimant - Coast Capital Line of Credit ending 3366

\$2,439.85

\$2,439.85

Claimant - CIBC Visa ending 4982

\$3,557.36

\$3,557.36

\$5,997.21 (rounded to \$5,997)

\$38,814.48 (rounded to \$38,815)

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