

CANADA / JUDGMENT

Kaur v. Khurana

2022 BCSC 1613

COURT

Supreme Court of British Columbia

DECIDED

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2022 BCSC 1613 Kaur v. Khurana

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Kaur v. Khurana,

2022 BCSC 1613

Date: 20220914

Docket: E054664

Registry: New Westminster

Between:

Rupamjeet Kaur also known as Rupamjeet Sodhi

Claimant

And

Harmandeep Singh Khurana also known as Harmandeep Singh

Respondent

Before: The Honourable Mr. Justice Blok

Reasons for Judgment

The Claimant, appearing on her own behalf:

R. Kaur

The Respondent, appearing on his own behalf:

H. Khurana

Place and Dates of Trial:

December 6 - 10, 2021

New Westminster, B.C.

Place and Date of Judgment:

New Westminster, B.C.

September 14, 2022

I. Introduction

- [1] This is a family case where, at the outset of trial, there were many areas of dispute between the parties. By the end of trial the issues were much fewer. The issues that remain are the incomes of the parties, Mr. Khurana's claim of undue financial hardship, alleged loans from the respondent's parents, a tax-free savings account (TFSA) withdrawal by the respondent, a variety of smaller adjustments or claims involving section 7 expenses, and a claim by each of the parties for a fine against the other under the provisions of the Family Law Act, S.B.C. 2011, c. 25 [FLA]. Somewhat unusually for these sorts of cases, they largely agree on issues relating to the children, they agree on an equal division of property (though subject to various claimed adjustments), and during trial they agreed to sell the family home.
- [2] Both parties sought a divorce. With all of the prerequisites having been met, I pronounced an order of divorce on the last day of trial.
- [3] As with many self-represented litigants, these parties presented their cases with a mix of factual testimony and advocacy and so, to some extent, my evidence summary also contains a mix of both. I do not fault either party in this. Both parties were respectful in court and presented their cases to the best of their abilities.

II. Background

- [4] Both parties were born in India and studied in the United States, which is where they were introduced to one another in a traditional Indian manner. They married in India on October 15, 2009. It was a second marriage for both. At trial, Ms. Kaur was 38 years old; Mr. Khurana was 43. They have two children, a daughter and a son, who were 10 and 7 years old, respectively, at the time of trial.
- [5] Both parties are well-educated. Ms. Kaur obtained a bachelor's degree in accounting and finance in 2006 and Mr. Khurana obtained a doctorate degree in soil sciences in 2005.
- [6] They lived in India for about 18 months after the marriage, at which time they secured permanent residence status in Canada. Their first child was born in India.

- [7] Mr. Khurana, who was employed in India by a plant nutrition institution, secured a position with that same employer in Saskatchewan, and the family moved to Saskatoon, Saskatchewan, in August 2011. They bought a house in Saskatoon in December 2013. That residential property is at issue in this proceeding.
- [8] Mr. Khurana was laid off from his employment near the end of 2014. He then embarked on some different jobs, was unemployed for a further time, and then found long-term work as a bus driver for the City of Saskatoon.
- [9] The parties separated on January 24, 2017. The circumstances surrounding the separation are disputed, but there is no dispute that the parties separated then. Briefly on that point, Ms. Kaur said the parties agreed to move to the Vancouver area. Ms. Kaur then moved with the children to Surrey to look for accommodation and employment, the idea being that Mr. Khurana would join them there shortly. Mr. Khurana stayed with them for six days but then returned to Saskatoon.
- [10] Mr. Khurana asserts that the move to the Vancouver area was against his wishes as he had steady work in Saskatoon and there were problems with his getting similar employment in British Columbia.
- [11] As already noted, it is not necessary that I resolve this conflicting evidence as it is clear and undisputed that the parties separated in January 2017.

III. Evidence

A. Ms. Kaur

- [12] After providing some of the background evidence already reviewed, Ms. Kaur reviewed her work and family history.
- [13] Although from India, Ms. Kaur attended university in Wisconsin, where she obtained a bachelor's degree in finance and accounting in December 2006. Her earlier marriage took place in January 2007, but that relationship lasted only a few months. She returned to Wisconsin, where she found work as a bookkeeper or administrator at a hotel.
- [14] Ms. Kaur did not work from the date of her marriage to Mr. Khurana (October 15, 2009) until January 2017. Following the birth of their first child in February 2011 she was a stay-at-home mother. Their second child was born in February 2014.
- [15] Ms. Kaur said they were looking for opportunities to move to the Vancouver area, and in January 2017 she moved with the children, and her mother, and secured work at a Surrey accounting firm. She referred to a number of documents which indicate the parties discussed the move between themselves and were looking for jobs in British Columbia.
- [16] Ms. Kaur said that she had none of the family documents or valuables, as these stayed in a safe located in their Saskatoon residence.

- [17] Her job at the accounting firm was only for the tax season and so that job ended in May 2017. She then found work as a junior accountant at a company located in downtown Vancouver. Her salary there was \$37,000 per year. Initially it was a long commute for her, but this was moderated in August 2017 when she moved to a residence in Vancouver.
- [18] Ms. Kaur said Mr. Khurana visited them in July 2017, September 2017 and November 2017.
- [19] Ms. Kaur said working and raising the children was difficult. While her parents have lived with her since the separation, there were times when they were not available as her mother had to return to Saskatoon to help her sister at one point, and her father had to return to India for surgery. Ms. Kaur then needed help with child care and pressed Mr. Khurana about moving to Vancouver, but he said he could not or would not move. Instead, he said his parents (who lived with him in Saskatoon) might be able to help. Ms. Kaur said this was no help as Mr. Khurana's parents were infirm and needed care themselves. She told Mr. Khurana to come to Vancouver and he refused.
- [20] Ms. Kaur set up her own bank account in June 2017. Until that point, her pay had been deposited to the parties' joint account. She looked after all the day to day expenses of herself and the children as Mr. Khurana did not pay any support.
- [21] Ms. Kaur said that around October 2017 Mr. Khurana withdrew \$13,500 from her TFSA account, which prompted an argument between the two of them.

The Parties' Relationship

- [22] Ms. Kaur said the relationship of the parties was "not as a husband and wife". She said there was "no bond, no relationship" and the only marital relations they had were organized around her menses "like a lab test" and took place a mere "handful of times" over seven years. At one point she asked Mr. Khurana if he was gay. She said she "shed tears" and cried over this situation, and Mr. Khurana never gave a reason for it. She said this caused her mental trauma.

The Family Home

- [23] As already noted, the family home in Saskatoon was purchased in December 2013. Both parties are on title. It is a three-bedroom, 1,100 square foot home with a finished basement and a big yard.
- [24] Ms. Kaur said the home was purchased with "family money" and a mortgage. The purchase price was \$390,000 and they paid \$168,000 down and took out a \$222,000 mortgage.

Employment Disruptions

- [25] Ms. Kaur said Mr. Khurana lost his job as a soil scientist in November 2014, when he was laid off. He was given six months' severance. Around that same time, his father fell ill and so his parents had to return to India, where they were put up by her own parents for a full year.

- [26] Mr. Khurana looked for work, but also studied to obtain a commercial driver's licence. He obtained that licence in December 2014, but worked for just three weeks. He then got a job delivering pizzas and did some other basic or minimum-pay jobs. He applied for some academic jobs in the United States, but was unsuccessful. He then took a professional management course, but did not take that any further. He then applied for EI benefits. Finally, in July 2016 Mr. Khurana was hired as a City of Saskatoon bus driver.
- [27] Mr. Khurana's disrupted employment prompted Ms. Kaur to look for work, and to look at moving to other areas of Canada in order to get work. Later, she described this as "we started making inquiries" about working elsewhere. It was through this process that she obtained the tax preparation work in Surrey. She suggested to Mr. Khurana that he apply to be a transit driver in Vancouver but he did not pursue that.

Court Proceedings

- [28] I interrupt my summary of Ms. Kaur's evidence to provide a chronology of the court proceedings in this case. Ms. Kaur referred to this chronology at about this point in her testimony and I have augmented it by summarizing the pleadings and orders made in greater detail.
- [29] Ms. Kaur filed a notice of family claim on February 5, 2018. Mr. Khurana filed a response to family claim on April 26, 2018 and a counterclaim on May 24, 2018.
- [30] They attended a judicial case conference on May 15, 2018, which resulted in an order restraining both parties from disposing of family assets.
- [31] A chambers application on August 16, 2018 resulted in orders that: (1) the children continue to reside with Ms. Kaur; (2) that Ms. Kaur have day to day parental responsibilities for the children; (3) both parties have the responsibility over certain larger issues relating to the children; (4) Mr. Khurana not remove the children from the Lower Mainland; and (5) Mr. Khurana pay monthly child support of \$923 based on a Guidelines income of \$66,449.
- [32] A further chambers application that took place before Mr. Justice Masuhara on November 1 and December 13, 2018, resulted in orders: (1) allowing Ms. Kaur to travel with the children outside of British Columbia and to obtain passports for the children without Mr. Khurana's consent; (2) dismissing Mr. Khurana's claim of undue financial hardship; (3) setting the amount of child support at \$923, based on the same income figure as before; (4) setting the proportionate sharing of section 7 expenses at 59.6 percent for Mr. Khurana and 40.4 percent for Ms. Kaur, based on his Guidelines income of \$66,449 and her income of \$45,000; and (5) addressing other aspects of section 7 expenses and the payment of support arrears.

- [33] The matter again came before Masuhara J. on three hearing dates in November 2020 and January 2021, resulting in reasons for judgment dated February 24, 2021. It does not appear that there was an order drawn and entered to reflect those reasons. The hearing focused primarily on an undue hardship application by Mr. Khurana for changes and adjustments to amounts he was ordered to pay and for relief from attachment proceedings.
- [34] Mr. Justice Masuhara left many of the issues to be dealt with at trial, and he reaffirmed the interim child support payable at \$923 per month, but he also ordered that the additional sum of \$100 per month be paid by Mr. Khurana on account of support arrears.

Children

- [35] Ms. Kaur notes that it is only now, at trial, that Mr. Khurana has sought parenting time with the children. He made no effort to see the children prior to that, and despite the court applications brought in 2018 and 2020, he never sought any parenting time on an interim basis.
- [36] Ms. Kaur said she is worried about Mr. Khurana hurting the children psychologically. She said Mr. Khurana asked for photographs of the children, but she refused because she felt this raised security concerns. She offered to arrange video calls with the children, but Mr. Khurana did not respond to that offer.

Child Support

- [37] Ms. Kaur provided a calculation of child support owing, assuming the \$923 ordered as interim support will also apply to the May 2017 to June 2018 timeframe (14 months at \$923 per month = \$12,922). She took into account the monies she withdrew from the joint account (\$11,534) less the Canada Child Benefit monies paid into Mr. Khurana's account and which should have been paid to her (\$5,898). The latter results in a credit of \$5,636 on account of child support.
- [38] The parties agree there is a further adjustment necessary because one of Ms. Kaur's paycheques (\$674.42), was paid into the joint account in May 2017, and so this reduces the credit to Mr. Khurana from \$5,636 to \$4,961.58 or, put another way, reduces the amount that Ms. Kaur withdrew from the joint account. Either way, the total support owed (\$12,922) less the credit (\$4,961.58) to the respondent results in a net amount owing of \$7,960.42. During the course of the trial, Ms. Kaur acknowledged that there should be another credit to Mr. Khurana of \$626.10, representing five payments he made for her automobile insurance.
- [39] Ultimately, the parties agreed on the figure of \$7,334.32 as owing to Ms. Kaur for retroactive child support, although this was subject to Ms. Kaur's argument about unreported income of Mr. Khurana and some other disputed items.

- [40] One of Ms. Kaur's post-separation withdrawals from the parties' joint account was due to an income tax refund of hers (\$3,001.07) that was paid into that account. The same happened with a GST refund of \$291.06. Mr. Khurana does not dispute that the income tax refund was Ms. Kaur's, but he disputes the GST refund. Ms. Kaur said she would not contest that matter given the amount.
- [41] Ms. Kaur said she incurred various expenses for the children's activities (chess, basketball and soccer) but she is not seeking reimbursement for these as she does not want the associated conflict. She is, however, seeking reimbursement for daycare expenses she incurred from February 2018 to June 2018 (totalling \$1,100), which Mr. Khurana has failed to acknowledge or contribute to in any way because he alleges the receipts are forged.
- [42] Ms. Kaur notes that while Mr. Khurana has made elaborate claims concerning the legitimacy of the documents, he has never called the daycare to ask if they are legitimate. In proof of these daycare expenses, Ms. Kaur provided documents showing the daycare cost (which was a net amount after a government subsidy), the monthly daycare receipts and a tax receipt from the daycare society. Ms. Kaur says Mr. Khurana owes her \$655.60, being 59.6 percent of \$1,100.
- [43] Ms. Kaur also made a claim for the cost of extra medical coverage that was provided through her work. She paid \$83.90 by way of payroll deduction every two weeks (\$181.71 monthly, extrapolated) from July 2018 to July 2019. At that point, she got a new job which provided similar coverage as an employment benefit.
- [44] Mr. Khurana's portion of these medical premium deductions were recovered through enforcement measures taken by the Family Maintenance Enforcement Program (FMEP) and its equivalent agency in Saskatchewan. Ms. Kaur noted the garnishment proceedings went on several months too long, but Mr. Khurana was subsequently credited with the resulting overpayment (\$500.65).
- [45] Ms. Kaur said that while pursuant to one of the interim orders Mr. Khurana did not have to pay those medical coverage expenses if he had his own coverage for the children, he did not cooperate in providing proof of his coverage or in providing the coverage cards she needed to make claims.

TFSA

- [46] There is a TFSA in the name of Ms. Kaur. The balance in that account at the end of 2016 was about \$33,500. Ms. Kaur withdrew \$20,000 from the account on January 3, 2017. Ms. Kaur testified that this sum was withdrawn for the move, including the cost of movers, to repair the home and ready it for sale, and to have some extra cash.

- [47] Mr. Khurana withdrew \$13,500 from that TFSA account on September 5, 2017, after their separation. He transferred the money into the joint account, which by that point he was using as his account. An account statement for the joint account shows that Mr. Khurana withdrew that same sum in two withdrawals and transferred the sums to other accounts. When she asked him about it he said "it's my money" and "you never worked, so it's my money and so I withdrew it". She maintains that this must be accounted for.
- [48] Ms. Kaur testified that she had great difficulty getting account statements from Mr. Khurana for the various accounts. She asked for them on multiple occasions and Mr. Khurana either ignored her or obstructed her in various ways.

Alleged Loans From Respondent's Parents

- [49] Ms. Kaur responded to Mr. Khurana's allegation that he owes \$168,000 arising from a loan from his parents in December 2013. She notes he has relied on that allegation as part of his argument that he should have relief due to undue financial hardship.
- [50] In the course of referencing Mr. Khurana's claim that the downpayment money came from his parents, Ms. Kaur noted there is a "gift letter" dated October 25, 2013, which indicates that Mr. Khurana's parents gifted \$39,767 to Mr. Khurana toward the purchase of the property.
- [51] Ms. Kaur testified that in December 2013 Mr. Khurana told her that the money used for the downpayment was "his money". He only mentioned it being a "loan" after she served him with the notice of family claim.
- [52] Ms. Kaur also responded to Mr. Khurana's allegation that his parents helped them financially after Mr. Khurana lost his job. She prepared a detailed summary of their income from all sources for the years 2015 and 2016, including the \$24,150 in severance monies Mr. Khurana received on November 28, 2014. In 2015, the total amount received by the family was \$55,153. In 2016, it was \$34,512. Ms. Kaur argued that this shows the family had enough money to get by without outside financial assistance.
- [53] Ms. Kaur acknowledges that there was a transfer of \$76,500 on April 23, 2015 from Mr. Khurana's parents, but she said this money was used to pay the significant medical bills of his parents, who had serious health issues. She referred to a hospital bill of \$35,678, which arose from the father's hospitalization in October 2014, as well as a statement from the Saskatchewan Health Authority, showing various payments made on that account from November 2021 until the final payment on September 26, 2017.
- [54] Ms. Kaur testified that Mr. Khurana used the parties' family funds for the initial payments, his parents then repaid some of that, and they then transferred \$76,500 to make the larger payments and to meet the ongoing medical expenses that both of them were incurring. She maintained that these funds were not a loan to the parties.

Personal Items, Photographs and Papers

- [55] Jewellery was kept in a safety deposit box in Saskatoon and Mr. Khurana was supposed to bring it with him when he visited the family in Vancouver. She told him to give it to her mother. Mr. Khurana did not return three of the items, saying that the descriptions were not clear enough. Ms. Kaur notes that now he claims for the return of jewellery she received at their wedding, yet at the same time he does not mention the jewellery he received. She testified that she did not take any jewellery as all of it remained in the safety deposit box in Saskatoon.
- [56] Ms. Kaur asked Mr. Khurana for copies of family photographs, but few were provided. Mr. Khurana said he provided all the photos he had, and others were lost when his computer hard drive crashed. Ultimately, Ms. Kaur seemed to accept the futility of pursuing this further.
- [57] Ms. Kaur also noted she had to pay \$150 for new citizenship certificates for herself and her daughter because Mr. Khurana refused to provide them to her.

Incomes

- [58] On June 21, 2021, Ms. Kaur's annual salary was increased from \$58,000 to \$65,000. She also received a one-time incentive payment of \$2,500, which she said was intended as a bonus as she had not had any raises in two years.
- [59] She has the opportunity for further advancement with her employer but she will have to enhance her accounting qualifications first. She said she will not be able to do that until this litigation is over.
- [60] Ms. Kaur acknowledges she does some accounting "subcontract work" for another accountant, but her income from that source was nowhere near the \$25,000 Mr. Khurana argued she could be making. The invoices she produced show billings totalling \$3,856 in 2021.

Spousal Support

- [61] Ms. Kaur addressed spousal support. She said she was a stay-at-home mother and was unable to advance her career, unlike Mr. Khurana, as she was not working between 2009 and 2017. She lost all those years in terms of professional experience and has had to work her way back up. Yet despite all that, she said she waives spousal support as she wishes to bring an end to the matter.

Occupation Rent

[62] Ms. Kaur seeks occupation rent from Mr. Khurana. She was permitted to amend her pleadings to add this claim. She notes Mr. Khurana has lived in the house since separation, while she has had to pay rent. She said monthly rent of \$1,800 to \$2,000 would be reasonable in that market.

Alleged Failures to Disclose

[63] Ms. Kaur seeks a fine for what she asserts are Mr. Khurana's various failures and obstructive behaviour concerning document disclosure and related matters. She referred to his lack of cooperation concerning the jewellery, his refusal to send requested citizenship certificates for herself and her daughter, causing her an expense of \$150 for duplicates, and his failure to produce his bank statements showing the income he was receiving (including cash income) from his pizza delivery work. Even though he was ordered to do so at the judicial case conference, he failed to disclose statements for the RESPs, RRSPs, TFSA and his pension plan. At one point, he responded to her request by asking her what order she was relying on in asking for documents. She also asked him for details and coverage cards for his medical coverage that also covered the children, but he deflected her request by maintaining that the plan was being "restructured". Later, he simply failed to respond to her requests.

[64] Ms. Kaur had also sought a joint appraisal of their residential property, but Mr. Khurana flatly refused.

Cross-Examination

[65] I will not review the cross-examination in detail, given that some of it was not relevant (for example, whether the move to Vancouver was a mutual decision). Some of the more important points are as follows:

- a) Ms. Kaur acknowledged that all the household goods (that is, furniture and kitchen items) moved with her in January 2017, except family documents and jewellery;
- b) Mr. Khurana only gave her certain documents in a folder at that time. Starting around May 2017 she asked for the remainder of the documents. Mr. Khurana initially claimed not to have them but then said she would have to pay the mailing costs;
- c) she agreed that if Mr. Khurana paid \$125 for her automobile insurance over several months that would be another credit in his favour;
- d) Ms. Kaur said daycare receipts do not require a social insurance number of the parent. She doubted that the facility would have a social insurance number. The receipts also do not require a registered business number and she did not know whether the Canada Revenue Agency (CRA) requires that they show a tax number;

- e) there are no receipts for her medical coverage premiums, only pay information (which has been disclosed), as these premiums were deducted from her pay;
- f) there was no segregation of the premiums as between herself and the children;
- g) when she obtained employment with medical coverage included (and no premiums deducted), FMEP continued to deduct the amounts for a time, despite Ms. Kaur having notified them of the change. Mr. Khurana was later credited back for those garnishments;
- h) Mr. Khurana refused to sign the order she drafted to reflect the dismissal of his undue hardship application;
- i) she ran out of money to pay a lawyer due to the numerous affidavits and "hassles" Mr. Khurana created;
- j) she agreed that no rent from any properties in India came to them during the time they were together;
- k) she agreed she has not paid the mortgage or property taxes for the family property;
- l) although she sought joint custody in her pleadings, she now seeks sole custody of the children because things have changed. She reflected this in her trial brief, although she did not formally amend her pleadings;
- m) she maintained she knew nothing of any loans from his parents; and
- n) she was not sure of any limits for cash being brought into or taken out of Canada. She brought back \$20,000 in cash when she went to India with her daughter in 2013.

B. Mr. Khurana

- [66] Mr. Khurana repeated some of the background information already summarized, but he also provided some additional details of his later work history.
- [67] After he was laid off in late 2014 he trained for and obtained a truck driver's licence, and then worked as a driver for three weeks. He then worked with a company called Manpower, which provided labour to the City of Saskatoon on a contract basis. This was for the summer months in 2015 only. Simultaneously, he worked as a pizza delivery driver, later moving to the "front of house" at the pizza outlet. This lasted until October 2015.
- [68] He was on EI from December 2015 to May 2016, and in June 2016 he secured full-time work as a bus driver with the City of Saskatoon transit department.

Children

- [69] Mr. Khurana testified that he did not see the children because Ms. Kaur threatened to call the police, and "she was always doing that". She expressed concerns about internet security with the children. He said this was a pattern of threats by her to keep him from the children.

- [70] He said that for the six months or so following the separation he engaged with the children through video calls, but these ended when his computer failed and he had it in a repair shop. He tried to resume calls using his cell phone but the children lost interest. He added that the "negativity increased" - which I took to mean the conflict between the parties - and so he stopped contact altogether. He has had no contact with the children since April 2020.
- [71] He agrees that a gradual reintroduction would be appropriate here, and that it could start with telephone contact.
- [72] He feels he should be kept informed of issues relating to the children. As an example, one of the daughters has been diagnosed with a thyroid condition, a condition that he once had, and he feels this is something he should know about.

Incomes

- [73] Mr. Khurana's line 150 income for 2019 and 2020 is \$67,009 and \$71,583, respectively, although union dues would reduce those figures by \$1,524 and \$1,456, respectively. He noted that he was claiming undue financial hardship.
- [74] Mr. Khurana said he cannot work more than he does because he has back issues. He has to wear a belt to compensate for those issues. He also confirmed that he does not get any rental income from the family property in India.
- [75] As for Ms. Kaur's income, Mr. Khurana believes that Ms. Kaur earns income "on the side" that she has not disclosed. He tied this belief to the fact that her brother-in-law also provides tax preparation services. He suggests her additional income would be in the range of \$850 per month, or \$10,200 per year, which is more than the \$3,856 she has disclosed.
- [76] He asserted that Ms. Kaur did not disclose any documents which related to her self-employment. I pause to add that this is incorrect as Ms. Kaur disclosed her actual billing documents for her outside work. It may be that Mr. Khurana meant that she did not disclose all of those billings.

Spousal Support

- [77] Mr. Khurana claims spousal support. He did not elaborate on that claim other than to say he had to take lower-paying jobs in order to feed the family.

Retroactive Child Support

- [78] Mr. Khurana did not dispute Ms. Kaur's calculations other than to argue that there were five months of automobile insurance payments (\$125.22 per month) that came out of the account post-separation, and so a total of \$626.10 was removed from the joint account to pay this expense of Ms. Kaur's. This was accepted by Ms. Kaur, resulting in the agreed figure of \$7,334.32, although I understand this was subject to argument on some other disputed items.

Daycare Expenses

- [79] Mr. Khurana maintains that the daycare receipts Ms. Kaur provided were false because they did not have a social insurance number or business number on them. He asserted that the CRA requires these numbers. He also questioned the signatures that appear on the receipts. He conceded he did not call the daycare to check on the validity of the receipts.

Medical Premiums

- [80] Mr. Khurana noted that the order of Masuhara J. of December 13, 2018, provided that he could "resume payment" of medical premiums if he demonstrated through documentation that this would cover the children's medical and dental expenses. Otherwise, medical expenses were to be dealt with by Ms. Kaur providing him with proof of paying an expense.
- [81] He said his coverage for the children commenced in August 2017, as evidenced by a statement from Saskatchewan Blue Cross that shows expenses paid for one of his daughters in July 2017. He said he provided "plan terms" for his coverage in March 2019 by providing a booklet to Ms. Kaur.

Return of Items

- [82] Ms. Kaur has the original papers for the property in India. Mr. Khurana said she has acknowledged that to him.
- [83] At the time of marriage, Ms. Kaur's family gave him jewellery and also gave jewellery to his parents. Mr. Khurana says some of this jewellery is jewellery he gave to her after they separated, but now he wants that jewellery back.
- [84] He said he has returned all the documents he had, including photographs. He said he loaded other photographs onto her computer, which is the computer that she took with her. As for his own computer, his hard drive crashed and he could no longer access any photographs on it.

Occupation Rent

- [85] Mr. Khurana opposes the claim for occupation rent as he has paid all the mortgage payments, taxes, utilities and upkeep. He said the mortgage payment is about \$1,000 per month.

Fine

- [86] Mr. Khurana asks that an FLA fine be imposed on Ms. Kaur because: (1) she did not provide a financial statement within 30 days "after the JCC"; (2) she did not tell him of her employment change; and (3) she never disclosed documents showing when her self-employment began or any receipts relating to that employment.

Investments

- [87] Mr. Khurana provided the balances at separation for the following accounts: (1) TFSA: \$32,090.82; (2) RRSP: \$9,971.81; and (3) RESP: \$47,338.71. He said there is a homebuyers loan (current balance: \$5,280) associated with the RRSP, which they have to pay back within 15 years. He argues the loan should be repaid from the RRSP funds and the balance equally divided.
- [88] Mr. Khurana also has a company pension, which began accruing on June 29, 2016. He says this should be divided according to the legislation.

Loans from Parents

- [89] Mr. Khurana testified that there are two loans from his parents, as shown in a loan agreement signed in June 2016.
- [90] The first loan was for \$168,000. This money was used for the downpayment on the family home, which was purchased in December 2013. He says this amount should be paid out of the net sale proceeds and then the balance of the proceeds divided equally. He acknowledged that the family home ought to be sold.
- [91] The second loan from his parents was made in 2015, at a time when he was earning just \$2,000 per month. He said the loan of \$80,000 was made in two forms: the sum of \$76,500 was paid into the parties' joint bank account via a bank transfer, and \$3,500 came in cash that his parents brought here from India.
- [92] He testified that he paid \$36,868 for medical expenses incurred by his father for the latter's hospital treatment, and another \$1,200 for other medical expenses relating to his parents. He paid the amounts as shown in the Saskatchewan Health Authority statement. He said his parents had no other medical expenses of note.

Household Items

- [93] Mr. Khurana said \$20,000 in household items were taken by Ms. Kaur when she moved to British Columbia. This included furniture worth \$10,000, a computer and other electronics worth \$3,500 and kitchen items worth \$5,500.

Cross-Examination

- [94] I note the following from Mr. Khurana's cross-examination:
- although he complained that he had never been provided any medical records for the children, he did not ask for them either;
 - he did not do anything in court about the alleged threats by Ms. Kaur because "it is not in my nature to do so". He did not raise the matter before Masuhara J. in 2018 because "custody was not the issue then";

- c) he did not make any efforts to call the children after a certain point and he "stayed away from the children". He agreed Ms. Kaur gave him opportunities to video chat with the children but he did not do so because he knew Ms. Kaur was trying to "bait" him and "collect evidence". He did not visit the children when in Vancouver on three occasions in 2018 and 2020 because he did not want to engage with Ms. Kaur;
- d) he did not call the children on their birthdays in 2021, but sent presents. He agreed the presents consisted of underwear purchased by his parents, some mugs with their photos on them, and some paper cuttings;
- e) his daughter called him [and left a message] to ask for baby photos. He called back, stating he "needed an invitation" as he wanted to have something in writing. He agreed this upset their daughter, and she cried;
- f) his telephone time with the children decreased and he became concerned, so he insisted the children be given a mental health assessment;
- g) when asked if he read the performance letters and report cards from teachers, he said "I read some, yes";
- h) Mr. Khurana was asked various questions about jewellery. He said he could not find the three items of jewellery Ms. Kaur had requested. Ultimately, he said "I don't believe in jewellery and have no interest in it";
- i) he agreed the furniture she took consisted of two beds, some dressers, a computer and some kitchen items. He agreed the children needed beds;
- j) he said did not refuse Ms. Kaur access to the family home so she could examine it, but he conceded he demanded that her inspection be conditional on her providing a signed document committing to specific arrival and departure times;
- k) he tried to look for the old India passports Ms. Kaur requested, but he could not find them. He did not know how it was that the India property documents came to be in Ms. Kaur's possession ("I left them, I guess");
- l) he acknowledged that while he sent information relating to his health coverage to Ms. Kaur, he never sent any coverage cards for the children. He said Ms. Kaur could have sent the expense receipts to him;
- m) he agreed that the loan document was only produced after the family lawsuit was commenced. He said Ms. Kaur never signed the document because she "looked after the kids" and never went to Ontario where the document was signed. He agreed that other than that time, all the parties were living in Saskatoon. He then added that the document was signed in India, and Ms. Kaur was not there, as his parents wanted to sign the document "where they felt comfortable";

- n) later, Mr. Khurana said "we'd signed all these in India, and friends suggested we re-sign these in Ontario. We wanted a document signed here". He said there had been separate agreements in India so they combined them. He said the documents signed in India are still in India. He said he had shown Ms. Kaur the India documents;
- o) he agreed that he did not tell the bank about that loan when they bought the house, despite their written assurance to the bank that there was no "secondary financing taken out on the property". He said he did not know that statement was part of the mortgage documents;
- p) he acknowledged that he has not paid anything to his parents since the hospital payments ended in September 2017. His parents were okay with that, but the amounts are still due to them; and
- q) the loan agreement was signed before an Ontario notary. Mr. Khurana did not know him. When asked why the agreement, allegedly made in June 2016, was "backdated" for a 2013 loan, he said "because I wasn't a Canadian citizen then".

IV. Sale of Home

- [95] During the course of the trial it emerged that both parties agreed to sell the family home. They agreed on joint conduct of sale, joint selection of the realtor, the realtor being obliged to communicate with both parties, the sale proceeds to be held in trust after paying the mortgage and usual sale expenses, and with liberty to apply for further orders necessary to complete the sale.

V. Positions of the Parties

A. Claimant

The Alleged Loan Agreement

- [96] Ms. Kaur submits the loan agreement is fabricated, arguing that it is a backdated document that was hidden from her and only emerged after the lawsuit began. Mr. Khurana also failed to disclose the loan to the bank despite being obliged to do so by the lending terms. She emphasized that she was never told about any loan documents made in India and Mr. Khurana never produced those documents.
- [97] Ms. Kaur also noted Mr. Khurana provided no proof of travel to Ontario at the time, emphasizing that the parties were still together then. She said the alleged loans should not factor into any undue hardship aspect of his claims in any event since Mr. Khurana does not make any payments towards them.

- [198] She noted that, at the time they purchased the family home, he told her that the downpayment was from his own money. They also had savings. She maintains there would have been no reason why the entire downpayment would have had to have been borrowed. She submits he never produced any documents showing that the money came from his parents.
- [199] As for the alleged \$80,000 loan, Ms. Kaur acknowledges this sum was transferred, but she noted that her father-in-law was faced with a large medical bill at the time and this was the reason for the transfer.

Children

- [100] Ms. Kaur seeks sole parenting responsibilities, the ability to travel with them without Mr. Khurana's consent, and for Mr. Khurana to have generous parenting time either in person or by video. She notes the children are excelling in all areas. She says the children should have counselling as part of any reintroduction to Mr. Khurana, but at his cost. He should not be permitted to travel with them.
- [101] Ms. Kaur notes Mr. Khurana's allegations about her threatening him were offered without any proof. She says the evidence shows it was his choice to stay away from the children and abandon them. She also notes Mr. Khurana's odd request that the children be assessed psychologically without any reason to do so.
- [102] Ms. Kaur submits that any form of shared parenting would not work as they simply cannot work together.

Jewellery and Household Goods

- [103] Ms. Kaur noted that while Mr. Khurana claimed the items he sought were worth \$20,000, now he says he does not care about the jewellery and is not claiming it. She said jewellery of that value would have to be of substantial weight, and that he "would never let \$20,000 go if it was real".
- [104] Ms. Kaur notes the furniture was purchased in 2013 and consisted of very basic furniture. She said he can have the furniture back. She wants her personal documents returned.

Daycare Expenses

- [105] Ms. Kaur claims daycare expenses incurred from February 2018 to June 2018, inclusive, which total \$1,100. Mr. Khurana's share (59.6 percent) is \$655.60.
- [106] Ms. Kaur notes the excessive conflict over an expense item that could have been resolved if Mr. Khurana had simply called the daycare to verify it.
- [107] She also notes the contrast between Mr. Khurana's assertion that the daycare receipts were forged, and his own actions in "springing the loan documents on me".

Financial Assets

[108] Ms. Kaur submits the following:

- a) RRSP: she asked that any equalization not be done by rollover as she expects this will invite more conflict. Instead, equalization should be adjusted from the equity in the home. She acknowledged the homebuyers' loan should be debited from the RRSP balance;
- b) Pension: this should be divided according to the governing law;
- c) RESP: she should have the sole authority for this account. If there is any unused balance it should be evenly divided. Ms. Kaur said there was a discrepancy between the balances in the statements for this account, but I note that may not matter as these monies are for the education of the children, whatever the balance; and
- d) TFSAs: there were two TFSAs, one with a balance \$32,000 and another which had a pre-litigation balance of \$13,500. Property division should take into account the post-separation withdrawals.

Retroactive Child Support

[109] Ms. Kaur noted that with her concession concerning the automobile insurance payments made out of the joint account, and the consequent credit against the retroactive support arrears, the parties now agree the amount owing to the date of trial is \$7,334.32.

Health Care Premiums

[110] Ms. Kaur submits the health care premiums recovered through garnishment proceedings were properly the responsibility of Mr. Khurana and should not be repaid. She notes she does not claim for contribution to the health care premiums incurred from May 2017 to May 2018.

Occupation Rent

[111] Ms. Kaur claims occupation rent on the grounds that Mr. Khurana could have rented out the house for \$1,800 to \$2,000 per month and could have used that income to pay house costs and maintenance. He did not need a 1,100 square foot house and basement suite for his own accommodation.

Incomes

[112] Ms. Kaur submits that child support should be based on Mr. Khurana's 2020 income of \$71,583. While she believes he can earn more than that, she concedes she cannot prove it.

[113] As for her own income, she said her income is now \$65,000 (as of June 2021), and her self-employed income to the date of trial is \$3,856, for a total of \$68,856.

[114] She agreed the parties should share their income tax returns and assessments on an annual basis.

Fine and Costs

[115] Ms. Kaur said Mr. Khurana did not comply with orders and was uncooperative throughout the litigation. This caused her unnecessary stress and expense.

B. Respondent

The Alleged Loan Agreement

[116] Mr. Khurana said the loan agreement was not fabricated or backdated, and it is a genuine agreement. As for the bank's requirement that other loans be disclosed, he said "I disclosed everything I was asked to". He submits both parties should be liable for paying it back even though he alone is named as the borrower.

[117] Mr. Khurana said there was no evidence the money came from his own savings, and he did not have the capacity to contribute such a sum. He said the money came from the sale of his parents' home in India.

[118] The \$80,000 loan was taken out when he lost his job. He said there was no way to sustain the family without it.

Children

[119] Mr. Khurana agreed Ms. Kaur "should have the children" and that she should have day to day responsibility for the children. He submits that he should still be involved in major decisions, such as religious decisions, but not such things as what schools the children should attend.

[120] He argues that he should be granted "generous parenting time", including contact via video. He expected that he would exercise this "every once in a while". He said there was no need for the children to have counselling "as there are no security issues" and he has no money to pay for a counsellor.

Financial Assets

[121] Mr. Khurana submits the RRSP should be divided after deducting the home buyers' loan. He agrees this should be done through adjustment of the monies obtained on the sale of the family home.

[122] He submits the RESP should be divided equally, as should the TFSA. He said he should not have to account for the \$13,500 he withdrew from another TFSA after the parties separated. He asserted that he used the money on the family property, though I note he gave no evidence to that effect during his testimony.

Incomes

[123] Mr. Khurana made no submissions on his own income other than a claim of undue hardship. He said income of \$15,000 per year should be imputed to Ms. Kaur based on \$10,200 for subcontract work and \$4,800 for work she likely does for cash.

[124] Mr. Khurana's claim of undue hardship is based on his analysis of household income, aided by printouts from a website calculator.

Other Issues

[125] Mr. Khurana made further submissions on the following issues:

- a) Jewellery: Mr. Khurana said he is not claiming these items any more, though he later said he wants the jewellery gifted to him to be returned.
- b) Household items: Mr. Khurana said he is "dropping this claim".
- c) Daycare costs: He claims these are unproven and seeks to be reimbursed for them due to a wrongful garnishment.
- d) Health care premiums: Mr. Khurana submits the children had medical coverage through his own plan and, in any event, the premiums claimed are for insurance that covers Ms. Kaur as well and they do not show the cost of insuring just the children.
- e) Retroactive child support: Mr. Khurana agrees these are properly quantified at \$7,334.32. It is not clear whether this was subject to other arguments affecting that amount, although I assume so.
- f) Pension: Mr. Khurana agreed his pension should be divided in accordance with the legislation.
- g) Spousal support: Mr. Khurana maintains his claim for spousal support on the basis that he had to get temporary work to earn money for the family.
- h) Occupation rent: Mr. Khurana submits this claim by Ms. Kaur should be dismissed as she paid rent and he paid the mortgage.
- i) GST refund: Mr. Khurana claims \$291.06 that was paid to Ms. Kaur instead of to him.

C. Claimant's Reply

[126] On the matter of Mr. Khurana's claim of undue hardship, Ms. Kaur noted that Mr. Khurana claims to have more expenses for one person, living by himself, than she does with a family of three.

[127] Ms. Kaur essentially repeated her submissions on the RESP and occupational rent issues. On the matter of the loan agreement, Ms. Kaur added that she is not liable under the agreement, and she again noted that the monies transferred in April 2015 were utilised to pay the father's substantial hospital bill.

VI. Discussion

[128] Although these self-represented litigants did their best in preparing and presenting their cases, there were significant gaps in the evidence. This has made findings of fact very challenging.

[129] The shifting positions of the parties also presented challenges. Some issues were the subject of a great deal of evidence, only for the party or parties to withdraw the claim or concede the point.

[130] I will address the issues under the following headings.

A. Children

[131] There was a considerable body of evidence led on issues relating to the children but by the end of the trial the parties were largely in agreement.

[132] Although perhaps unnecessary to do so, I find the allegation by Mr. Khurana that threats made by Ms. Kaur prevented him from seeing the children to be unproven. The only evidence on the subject were the unsupported assertions of Mr. Khurana, and these effectively evaporated when he was pressed in cross-examination. I find that Mr. Khurana has had little or no parenting time with the children, either in person or by video, because that was his choice.

[133] Given the lack of involvement by Mr. Khurana in the children's lives, the absence of any material amount of parental contact for a number of years and the fact that Mr. Khurana lives in Saskatchewan while Ms. Kaur and the children live in British Columbia, I agree that the children should continue to reside with Ms. Kaur and that, with one exception, she should have all the parental responsibilities as set out in section 41 of the FLA.

[134] The one exception relates to requesting and receiving information from third parties. I conclude that on this item, which is set out in s. 41(j) of the FLA, the parties should jointly have those particular responsibilities.

[135] I also conclude that Ms. Kaur should keep Mr. Khurana informed of important developments in the children's lives, such as serious injury or illness and significant achievements, milestones or setbacks, whether academic, social or recreational. Ms. Kaur must also forward copies of the children's report cards to Mr. Khurana.

- [136] As for parenting time, I conclude the most appropriate order is for Mr. Khurana to have reasonable and generous parenting time as agreed to by Ms. Kaur. Parenting time by Mr. Khurana may be exercised in person, by video or by telephone and need not be preceded by mandatory counselling for the children.
- [137] I come to that conclusion because I am satisfied that: (1) Mr. Khurana's exercise of parenting time will, by his own choice, likely be limited (in his words, "once in a while"); (2) despite Mr. Khurana's apparent disinterest in the children, Ms. Kaur has taken reasonable steps to encourage contact between Mr. Khurana and the children, and is likely to do so in future; (3) making counselling a prerequisite to Mr. Khurana's parenting time will invite conflict and likely result in a further barrier to Mr. Khurana's already minimal interaction with the children; and (4) Ms. Kaur appears capable of reintroducing the children to parenting time with Mr. Khurana in a safe and responsible way.
- [138] By giving Ms. Kaur all parenting responsibilities under s. 41, with only one aspect being joint, there should be no need to expressly state that Ms. Kaur may apply for children's passports and travel with the children without the consent or approval of Mr. Khurana but, for the sake of clarity, I confirm that to be the case. As for Mr. Khurana, given his limited contact with the children I conclude it is best that he not travel with the children except with the written permission of Ms. Kaur.

B. Spousal Support

- [139] Ms. Kaur abandoned her claim for spousal support. Mr. Khurana maintained his claim for spousal support to be paid by Ms. Kaur.
- [140] A party claiming spousal support must first establish a basis for entitlement. Mr. Khurana advances his claim on a compensatory basis, that is, he submits he has suffered an economic disadvantage arising from the marriage because he was obliged to take lower-paying jobs to support the family.
- [141] In *Chutter v. Chutter*, 2008 BCCA 507, the Court of Appeal described the principles relating to compensatory support this way:
- [50] Compensatory support is intended to provide redress to the recipient spouse for economic disadvantage arising from the marriage or the conferral of an economic advantage upon the other spouse. The compensatory support principles are rooted in the "independent" model of marriage, in which each spouse is seen to retain economic autonomy in the union, and is entitled to receive compensation for losses caused by the marriage or breakup of the marriage which would not have been suffered otherwise (Bracklow, at paras. 24, 41). The compensatory basis for relief recognizes that sacrifices made by a recipient spouse in assuming primary childcare and household responsibilities often result in a lower earning potential and fewer future prospects of financial success (Moge, at 861-863; Bracklow, at para. 39). In *Moge*, the Supreme Court of Canada observed, at 867-868:

The most significant economic consequence of marriage or marriage breakdown, however, usually arises from the birth of children. This generally requires that the wife cut back on her paid labour force participation in order to care for the children, an arrangement which jeopardizes her ability to ensure her own income security and independent economic well-being. In such situations, spousal support may be a way to compensate such economic disadvantage.

- [51] In addition to acknowledging economic disadvantages suffered by a spouse as a consequence of the marriage or its breakdown, compensatory spousal support may also address economic advantages enjoyed by the other partner as a result of the recipient spouse's efforts. As noted in *Moge* at 864, the doctrine of equitable sharing of the economic consequences of marriage and marriage breakdown underlying compensatory support "seeks to recognize and account for both the economic disadvantages incurred by the spouse who makes such sacrifices and the economic advantages conferred upon the other spouse" (emphasis added).
- [142] Mr. Khurana's argument for compensatory spousal support is a novel one given that he was able to continue his career and perhaps even to advance it while Ms. Kaur put her career on hold and cared for the children as a stay-at-home mother. This would have been a considerable advantage to him. I also note he did not lose his job as a soil scientist by reason of the marriage, he lost it because he was laid off by his employer. The limited evidence on the subject indicates he tried to get other work in his field, but without success. Accordingly, his need to work at lesser jobs was due to the lack of opportunities in his field, not because of the marriage or its breakdown.
- [143] Mr. Khurana has failed to establish that he suffered any economic disadvantage arising from the marriage or its breakdown, or from any conferral of an economic advantage on Ms. Kaur. Accordingly, his claim for spousal support is dismissed.

C. Child Support

Incomes of the Parties

- [144] Both parties allege that the other earned unreported cash income. Ms. Kaur came to realize - correctly - that she could not prove Mr. Khurana earned more than he reported, but Mr. Khurana persisted with the issue in circumstances where his proof was worse than hers.
- [145] Mr. Khurana's assertion that Ms. Kaur earns more than she reports is based on sheer speculation and nothing more. He argued that Ms. Kaur must earn more than she says because her brother-in-law runs a tax service and so she must be earning money by working for him. However, merely stating the argument demonstrates its abject weakness. I reject Mr. Khurana's argument.

[146] At one point in the trial, Mr. Khurana asserted that an income tax refund received by Ms. Kaur is income for the purposes of calculating child support. It is not. An income tax refund does not mean that a taxpayer has earned more, it means that a taxpayer has paid too much income tax. It may result in increased money available to the taxpayer, but it has no effect on income.

[147] I conclude that Ms. Kaur's income is as she has disclosed: \$68,856.

[148] Mr. Khurana's income is also fairly straightforward. In his Form F8 financial statement he reports income of \$71,583, which is reduced to \$70,127 by deducting union dues paid (as per s. 1(g) of Schedule III of the Guidelines).

Undue Hardship

[149] Mr. Khurana spent little time on his claim of undue financial hardship in his testimony and submissions.

[150] Mr. Khurana's argument appears to be based on his analysis of the incomes available to the parties, which he says shows Ms. Kaur has more income available to her than he does.

[151] There are several flaws in Mr. Khurana's argument. First, in making his submissions he relied on an income analysis that attributed several different incomes to Ms. Kaur in its scenarios (as much as \$90,000), all of which were higher than the income she actually receives. Second, in his expenses he included loan payments to his parents that on the evidence he has not made for a number of years and is not currently making. Finally, and critically, he led no evidence that payment of the table amount set out in the Guidelines has caused him, or will cause him, undue hardship.

[152] Section 10 of the Guidelines provides that the court may award a lower amount of child support than that set out in the Guidelines if the court finds that the amount would cause the payor "undue hardship".

[153] In *Kelly v. Kelly*, 2011 BCCA 173, the Court of Appeal summarized the law relating to undue hardship in the child support context:

[33] A claim for undue hardship under s. 10 of the Guidelines encompasses a two-step analysis. First, the parent applying for relief must demonstrate the undue hardship that will be caused by paying Guidelines support. Section 10(2) sets out a non-exhaustive list of factors that may be considered at this stage, including "an unusually high level of debts" incurred prior to the separation or "to earn a living", and "unusually high expenses in exercising access". This first step has a high threshold. The hardship that must be established is described in the authorities as severe, extreme, improper, unreasonable, or unjustified: *Van Gool v. Van Gool* (1998), 59 B.C.L.R. (3d) 395, 44 R.F.L. (4th) 314 at paras. 48-51.

- [34] If, and only if, this first requirement is met, the second step engages a comparison of the standard of living in each parent's household under s. 10(3) of the Guidelines, to ensure the payor of child support will not have a higher standard of living than the recipient if a reduction in Guidelines support is made.
- [35] If the applicant establishes these two requirements, the court has a discretion to order child support in an amount other than that required by the Guidelines. This is a narrow discretion, however, and should be exercised cautiously to avoid thwarting the Guidelines' objectives of predictability and consistency: Julien D. Payne and Marilyn A. Payne, *Child Support Guidelines in Canada* (Irwin Law: Toronto, 2009) at 302.
- [154] Not only did Mr. Khurana not meet the "high threshold" described above, there was no evidence on the point as he did not testify about any undue hardship caused, or that would be caused, by paying Guidelines support.
- [155] He did provide what purports to be an analysis of the relative circumstances of the parties, but that was an analysis that would have been applicable only after he had surmounted the first stage of the analysis. Although it is not necessary that I comment on Mr. Khurana's analysis, I will say that I also find that due to some obvious flaws in his analysis, detailed earlier, he has failed to demonstrate that he does not have a higher standard of living than Ms. Kaur.
- [156] Accordingly, Mr. Khurana's claim for relief from Guidelines support due to undue hardship is dismissed.

Child Support Payable

- [157] Earlier, I found Ms. Kaur's current income to be \$68,856 and Mr. Khurana's income to be \$70,127. The child support payable at Mr. Khurana's level of income (bearing in mind that he is a resident of Saskatchewan) is \$975.88, or \$976 rounded.
- [158] Mr. Khurana is to pay child support of \$976 per month effective December 1, 2021, which is the month in which the trial took place.
- [159] For the purpose of sharing section 7 expenses, the proportions are 49.5 percent to Ms. Kaur and 50.5 percent to Mr. Khurana.
- [160] The parties should review child support annually, so the parties should exchange income information on or before June 30 each year so that they may adjust child support in accordance with current incomes. By "income information" I mean principally income tax returns and notices of assessment, although there may also be other documents that show receipts of income in any given year.

[161] I turn now to retroactive child support. As I understand it, the parties agree on many of the adjustments to be made to Ms. Kaur's calculation, but disagree on: (1) the income figure that is to be used for Mr. Khurana for the period from May 2017 to June 2018; (2) the daycare costs; and (3) the health insurance premiums. I address these as follows:

- a) Mr. Khurana's support obligation should be based on his Line 150 income, less the amount paid for union dues, in each of 2017 and 2018. I have not stated the amounts because I was unable to locate all of those figures in the materials. To be clear, the 2017 support obligation should be set at the 2017 level of income, minus union dues paid, and 2018 support should be set according to the 2018 income amount, again net of union dues.
- b) I conclude that Ms. Kaur incurred the daycare costs she claims and so they are valid s. 7 claims. Mr. Khurana's objection to the legitimacy of the receipts is unfounded. Even if CRA has particular requirements for daycare receipts, which I find to be unproven, this does not mean that the expense was not incurred or that the receipts were not valid as proof for non-income tax purposes. Mr. Khurana could have saved a lot of argument and conflict had he taken the minimal step of contacting the daycare facility directly.
- c) I accept that Mr. Khurana likely had health coverage for the children during the times in question, although it is beyond puzzling why he failed to cooperate in providing children's coverage cards to Ms. Kaur so that expenses could be claimed expeditiously. Ms. Kaur had the option of sending the invoices to Mr. Khurana for payment. Although it is perhaps understandable that she did not want to do so because it would be another point of conflict, I conclude that she cannot claim her own health insurance premiums, which also covered the children, as a s. 7 expense.

[162] As a final adjustment, I note that Ms. Kaur conceded the \$291.06 GST refund issue, so that is an additional adjustment that must be taken into account.

D. Alleged Loans

[163] This is the most difficult issue to address as it is probably the issue on which the evidence was the most unsatisfactory.

[164] I am satisfied that the monies used to pay the downpayment on the family home (about \$168,000) in December 2013 probably came from Mr. Khurana's parents, as he asserted. I come to this conclusion largely based on the parties' likely financial circumstances at the time the house was purchased in 2013. Ms. Kaur had not worked since 2009, so theirs was a one-income family, and Mr. Khurana had only worked in Canada for two years at that point. Accordingly, I conclude it is very unlikely they had managed to save \$168,000 in that relatively short time.

- [165] Ms. Kaur concedes that \$80,000 came from Mr. Khurana's parents in April 2015, with \$76,500 arriving by bank transfer and the rest in cash. Still, as with the \$168,000 transfer, the issue is not whether there were money transfers but on what basis the transfers were made.
- [166] It is notable that Mr. Khurana did not call his parents to testify on that subject. This is a conspicuous omission. Instead, he relies on a document he says is proof of loan agreements between his parents and himself, but that document raises more questions than it answers given that it is dated in June 2016, years after the first transfer took place and well over a year after the second and just six months or so prior to the parties' separation. Mr. Khurana seems to believe this document is proof, in and of itself, of the status of the monies as loans simply because it bears a notary's signature and stamp, but it is not. The fact that the document was notarized (if indeed that was the case) does not make it admissible for the truth of its contents.
- [167] Furthermore, the fact that this loan agreement was drawn and signed in another province, without the knowledge of Ms. Kaur and without her being present, at a time when the signatories were otherwise normally resident in Saskatchewan, is suspicious. I do not accept the reasons given by Mr. Khurana for doing so. He did not stand up well on cross-examination on this point. It is also at least somewhat suspicious that the loan document did not make an appearance until after the litigation commenced.
- [168] Although he asserted that there were loan documents prepared in India at the times of the advances, he did not produce those documents and he gave no reason for that other than saying a replacement document was prepared. His stated reason for preparing a replacement loan document in Canada was not believable.
- [169] In the case of the \$168,000 advance, Mr. Khurana did not explain or address why he told Ms. Kaur that these were his monies, something he did not deny. Also, in his cross-examination he gave an inadequate response when asked why he did not tell the mortgagee bank about this alleged loan. The fact that there was another substantial loan involved in the purchase of the property would have been of critical importance to the bank in its lending decision.
- [170] Mr. Khurana did not say anything in response to the "gift letter" dated October 25, 2013, which indicates his parents provided a gift to him of \$39,767 "for use toward the purchase of" the family home. So, despite there being a document providing expressly for a gift of money (albeit in a lesser amount), Mr. Khurana said nothing about it in his testimony.
- [171] In the case of the \$80,000 advance, Mr. Khurana did not explain why his parents would lend him \$80,000 in April 2015 and then make him responsible for paying his father's nearly \$37,000 medical bill and some other bills. It is not logical that they would do so. It is more logical that the parents would utilize the parties' joint account merely as a means to receive funds they needed to pay their own bills.

[172] In brief, I conclude I cannot rely on the "loan document" of June 16, 2016 as evidencing a genuine loan transaction or transactions. Furthermore, the various matters just reviewed leave substantial doubt that the monies transferred to Mr. Khurana in December 2013 and April 2015 were loaned to him by his parents. Put more conclusively, Mr. Khurana has failed to prove that these monies were provided to him as loans.

E. Division of Property

Financial Assets

[173] I conclude the assets held in financial accounts ought to be divided equally, using the balances referred to earlier. The parties agree that the homebuyers' loan should be paid out of the RRSP funds. In order to minimize conflict, I accept Ms. Kaur's submission (to which Mr. Khurana agreed) that the RRSP funds remaining after repayment of the loan should not be divided by rollover, but instead be accounted for through an adjustment in the division of the home sale proceeds.

[174] The sum of \$13,500 withdrawn by Mr. Khurana from a TFSA account post-separation is to be accounted for as a withdrawal of joint family funds. Mr. Khurana offered no proof that he spent it on family property, as he maintained, and even if he did spend it on the family home, I would consider that expenditure to be a cost of having occupied the family home, as discussed below.

[175] The RESP or RESPs should be transferred to the control of Ms. Kaur as she is the parent who has the responsibility for dealing with the children.

[176] Mr. Khurana's pension will be divided according to the legislation. There was no mention of dividing Canada Pension Plan credits. If this was an oversight, the parties may speak to the issue.

Family Home

[177] The parties are to divide the net sale proceeds equally after taking into account the various other adjustments.

[178] I dismiss Ms. Kaur's claim that Mr. Khurana pay occupation rent. Mr. Khurana paid the mortgage and house-related expenses which, in effect, constitute his occupation cost. Both parties therefore have costs of occupying a residence following their separation and both parties benefit from Mr. Khurana's occupation of the home by sharing in the equity growth.

Jewellery, Household Goods, Photographs and Documents

[179] Both parties abandoned their claims to jewellery, and Mr. Khurana abandoned his claim for compensation for household goods in the possession of Ms. Kaur.

[180] Both parties admitted they possessed documents belonging to the other party. Ms. Kaur has documents relating to property in India and Mr. Khurana has citizenship documents or old passports relating to Ms. Kaur and the children. Any documents of one party in the possession of the other should be returned without delay.

[181] Should any old photographs surface in future, these should be made available to the other party.

F. FLA Fines

[182] Both parties sought FLA fines against the other for failing to comply with financial disclosure obligations. Mr. Khurana's complaints were of a minor nature and do not begin to rise to the level where a fine would be appropriate. Ms. Kaur's case for a FLA fine is far stronger.

[183] The correspondence between the parties shows Mr. Khurana to have been obstructive throughout this litigation, often raising baseless objections to complying with requests or disclosure obligations. At a judicial case conference held May 15, 2018 the parties were ordered to exchange documents including bank statements, mortgage documents and loan documents, and Mr. Khurana was to produce the personal documents (passports, etc.) to Ms. Kaur. Mr. Khurana failed to comply with that order in any reasonable way.

[184] I conclude that Mr. Khurana's non-compliance and obstructive behaviour warrants a fine pursuant to s. 213 of the FLA in the amount of \$2,000.

VII. Conclusion

[185] In summary:

- a) the children shall continue to reside with Ms. Kaur and, with one exception, she shall have all the parental responsibilities as set out in section 41 of the FLA;
- b) the parties shall jointly share the parenting responsibilities set out in s. 41(j) of the FLA;
- c) for greater certainty, Ms. Kaur may apply for children's passports and travel with the children without the consent or approval of Mr. Khurana;
- d) Ms. Kaur shall keep Mr. Khurana informed of important developments in the children's lives, such as serious injury or illness and significant achievements, milestones or setbacks, whether academic, social or recreational. Ms. Kaur must also forward copies of the children's report cards to Mr. Khurana;
- e) Mr. Khurana shall have reasonable and generous parenting time as agreed to by Ms. Kaur. Parenting time by Mr. Khurana may be exercised in person, by video or by telephone and need not be preceded by counselling for the children. He is not to travel with the children except with the written permission of Ms. Kaur;

- f) The respective claims of the parties for spousal support payable by the other are hereby dismissed;
- g) Mr. Khurana's claim for relief from the obligation to pay child support in the Guidelines table amount, based on undue hardship, is hereby dismissed;
- h) As of December 2021, Mr. Khurana's income for child support purposes is \$70,127 and Ms. Kaur's income is \$68,856;
- i) Commencing December 1, 2021, and continuing so long as the children are "children of the marriage" or until further order, Mr. Khurana shall pay to Ms. Kaur monthly child support of \$976, payable on the first day of each month;
- j) Section 7 expenses are to be shared between the parties in proportion to their incomes;
- k) the parties shall exchange income information on or before June 30 each year so that they may adjust child support and s. 7 expenses in accordance with current incomes;
- l) Mr. Khurana shall pay retroactive child support in accordance with the calculations set out in Exhibit 1, Tab 7, with adjustments for the following in accordance with these reasons: (1) child support for the period May 2017 to June 2018 shall be in accordance with Mr. Khurana's line 150 income for those years, respectively, less union dues paid; (2) the daycare expenses that have been allowed to Ms. Kaur; (3) the health care premiums claimed by Ms. Kaur and paid by Mr. Khurana through attachment proceedings; and (4) the \$291.06 GST refund;
- m) Mr. Khurana's claims that the sums of \$168,000 and \$80,000 transferred by his parents are loans that are to be repaid out of family property, are dismissed;
- n) The balances in the financial accounts at separation shall be divided equally, subject to the following:
 - i. The RRSP funds shall first be used to repay the homebuyers' loan. Equal division of the RRSP funds shall be effected through an adjustment from the equity realized on the sale of the family home and not by rollover;
 - ii. The sum of \$13,500 withdrawn by Mr. Khurana from a TFSA account post-separation is to be accounted for as a withdrawal of joint family funds;
 - iii. The RESP or RESPs shall not be divided but will instead be maintained for the benefit of the children. The parties will take all steps necessary to make Ms. Kaur the sole signing authority;
- o) Mr. Khurana's employment pension is to be divided equally according to the governing legislation, with the commencement date being the start of his employment at Saskatoon Transit in or around June 2016 and the end date being the separation date, January 24, 2017;
- p) The parties have leave to speak to the division of Canada Pension Plan credits if these are being divided;

- q) The net sale proceeds from the sale of the family home shall be equally divided after all proper adjustments have been made;
 - r) Ms. Kaur's claim for occupation rent payable by Mr. Khurana is hereby dismissed;
 - s) The parties' claims for return of jewellery or compensation in lieu are dismissed;
 - t) Mr. Khurana's claim for compensation for household goods taken by Ms. Kaur is hereby dismissed;
 - u) Any documents of one party held by the other are to be returned without delay;
 - v) Any old photographs that are subsequently discovered or retrieved by a party shall be made available to the other party; and
 - w) Mr. Khurana shall pay the sum of \$2,000 to Ms. Kaur as a fine under the FLA for his failure to reasonably comply with his disclosure obligations.
- [186] Should the parties be unable to agree on the amounts to be paid or credited, they have leave to speak to the matter.
- [187] As to costs, I conclude that Ms. Kaur has achieved substantial success in the action, and so she shall have costs against Mr. Khurana in accordance with Appendix B of the Supreme Court Family Rules, on the basis of the case being of ordinary difficulty.

"Blok J."

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