

CANADA / JUDGMENT

Kulkarni v. Pachori

2025 BCSC 9

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Supreme Court of British Columbia

DECIDED

6 January 2025

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2025 BCSC 9 Kulkarni v. Pachori

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Kulkarni v. Pachori,

2025 BCSC 9

Date: 20250106

Docket: E67500

Registry: New Westminster

Between:

Jayesh Suhas Kulkarni

Claimant

And

Khushbu Pachori, Jayant Kumar Pachori and Kiran Pachori

Respondents

And

Vaibhavi Suhas Kulkarni, Sovrun Consulting Inc., Trailblazer Immigration Inc., and New West Nutraceuticals Inc.

Respondents by Counterclaim

Before: The Honourable Justice Hamilton

Reasons for Judgment

Counsel for the Claimant:

G.S. Gabri

Counsel for the Respondent, K. Pachori:

K.K. Brar

Counsel for the Respondents by Counterclaim:

G.S. Gabri

No other appearances

Place and Dates of Trial:

New Westminster, B.C.

December 2-5, 2024

Place and Date of Judgment:

New Westminster, B.C.

January 6, 2025

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Introduction

- [1] This is a family law case involving parties in their 30's who were married after being introduced by a mutual acquaintance. The husband is from British Columbia and the wife is from India. They married in India and the husband sponsored the wife to come to Canada. The couple resided with the husband's parents in British Columbia but separated after a 2.5-year marriage. After separation, the wife initially returned to India but then came back to Canada unannounced and lived with the husband's parents even though the husband no longer lived there. The issues involve property division and whether unequal division is appropriate given the short duration of the relationship as well as the wife's claim for spousal support. Each of the spouses claims that certain property owned by the other's parents forms part of the family property.

Credibility

- [2] The claimant husband Jayesh Suhas Kulkarni ("Mr. Kulkarni"), the respondent wife Khushbu Pachori ("Ms. Pachori") and the respondent by counterclaim Vaibhavi Suhas Kulkarni ("Mrs. Kulkarni Sr.") who is Mr. Kulkarni's mother/Ms. Pachori's ex-mother-in-law were the only people to testify. Ms. Pachori's parents were also named as respondents in these proceedings but did not participate in the litigation or appear at trial. I will make some general comments about Mr. Kulkarni's credibility first before addressing Ms. Pachori's credibility and finally Mrs. Kulkarni Sr.'s credibility.
- [3] Mr. Kulkarni appeared calm and generally reasonable during his examination in chief. However, he became defensive and argumentative at times during cross-examination. I had to remind him to answer Ms. Pachori's counsel's questions as asked and not ask counsel questions during cross-examination. Mr. Kulkarni is clearly frustrated by Ms. Pachori and the litigation and this affected a portion of his answers/evidence. As such, I have approached Mr. Kulkarni's evidence with some caution where it is not corroborated by other evidence or where it does not make objective sense overall. However, much of Mr. Kulkarni's evidence is consistent with Mrs. Kulkarni Sr.'s evidence and/or documentary evidence. As well, I observed Mr. Kulkarni trying to be accurate in his testimony even when the evidence was embarrassing to him. I did not get the impression that he was intentionally trying to mislead the court during any of his testimony.
- [4] As for Ms. Pachori, I have significant concerns regarding her credibility and reliability based on her evidence. During her examination in chief, she often made bold, extreme claims that did not withstand cross-examination. She was defensive, evasive and argumentative during much of her cross-examination. As well, as I will address in more detail below under the section addressing background facts, Ms. Pachori's ongoing anger and resentment toward her ex-mother-in-law Mrs. Kulkarni permeated her evidence. Throughout her testimony, Ms. Pachori (in my view unreasonably) blames Mrs. Kulkarni Sr. for her arguments with Mr. Kulkarni and for the breakdown of their marriage. Her intense focus on blaming Mrs. Kulkarni Sr. tainted much of Ms. Pachori's testimony and caused me to question the

reliability of her evidence. I have additional concerns which together cause me to approach Ms. Pachori's testimony with great caution.

- [5] Ms. Pachori appeared unable to resist the temptation to exaggerate her evidence to try to help her case. For example, during her examination in chief, she made bold claims regarding significant contributions she made to Mr. Kulkarni's career including his IT business, his IT qualifications, his immigration business and as a realtor. Even before her evidence was tested under cross examination, her testimony seemed unlikely given:
- a) The parties were only married for a total of 2.5 years and only lived together one year during which they argued constantly;
 - b) In terms of IT work, Mr. Kulkarni was already fully trained and experienced in a niche area of IT before ever meeting Ms. Pachori;
 - c) Ms. Pachori's own background and experience did not include Mr. Kulkarni's particular IT niche area despite her claims that she helped him with IT work;
 - d) In terms of immigration work, Mr. Kulkarni was fully certified as an immigration consultant before the parties' marriage and did not earn significant/any income in this line of work during the parties' marriage;
 - e) In terms of work as a realtor, Mr. Kulkarni was fully trained as a realtor before the relationship but documentary evidence confirmed Mr. Kulkarni's evidence that he has not earned any income as a realtor to date.
- [6] My concerns regarding Ms. Pachori's claims of making significant contributions to Mr. Kulkarni's career/businesses were amplified during her cross-examination. Ms. Pachori was ultimately not able to offer any specific examples of how she significantly assisted Mr. Kulkarni. For example, she initially testified that she assisted Mr. Kulkarni's immigration business because as a teacher in India, she had contact with many students who may be interested in immigrating to Canada. Yet, when pressed, she admitted that she did not actually provide Mr. Kulkarni with a single prospective immigration client. She also claimed she contributed to Mr. Kulkarni's IT business, implying that she actually did some of the niche IT work for Mr. Kulkarni and had the experience to do so. However, when pressed, it became clear that she did not have the training or experience required in Mr. Kulkarni's IT work. She then changed her testimony and claimed that she helped Mr. Kulkarni by typing some documents for him because she was a good typist. However, she could not point to any documents that she prepared for Mr. Kulkarni. In the end, I found that Ms. Pachori's claims that she significantly assisted Mr. Kulkarni's career lacked credibility and that Ms. Pachori was attempting to craft her evidence to bolster her case. This is another reason why I approach Ms. Pachori's evidence with significant caution.
- [7] Finally, while I have mentioned that I have concerns regarding many of Ms. Pachori's statements in her testimony, certain of her behaviours have also been extreme and unreasonable. For example, despite separating from Mr. Kulkarni and returning to India in

April 2023, Ms. Pachori decided to return to Canada two months later unannounced and move back in with her ex-in-laws' living room/recreational room despite their objections in what she herself describes as intolerable living conditions. She testified that she did so in order to try to reconcile with Mr. Kulkarni. I will address this in more detail below but her explanation is not credible. Mr. Kulkarni does not even live there anymore. He offered to pay for rental accommodations for her elsewhere. It makes no sense that she would go stay with the Sr. Kulkarni's, when she claims to be scared of them, blames Mrs. Kulkarni Sr. for the marital breakdown and did not even want to live with them right before the separation in April 2023 when she and Mr. Kulkarni lived there together. Yet Ms. Pachori has stayed with the Sr. Kulkarni's to date. I do not believe that Ms. Pachori stayed in the Giffard property in order to reconcile with Mr. Kulkarni. Instead, I am left with the impression that Ms. Pachori is either staying for strategic reasons and/or in an attempt to garner sympathy from the court.

- [8] For all of these reasons, I approach Ms. Pachori's evidence with a great deal of caution.
- [9] By contrast, I found Mr. Kulkarni's mother, Mrs. Kulkarni Sr. to be credible and reliable. Her testimony was balanced and fair. Unlike Mr. Kulkarni or Ms. Pachori, she was not defensive or evasive during cross-examination. She testified in a refreshingly calm, straightforward, even manner during both examination in chief and cross-examination. I observed her face light up as she recalled how happy she was to hear that her son had met someone to marry. She also genuinely smiled when she was relaying her first impressions of Ms. Pachori. She seemed genuinely disappointed in her son for giving up on the marriage and not speaking to the respondent after April 2023. She appeared to resist crafting her evidence to help her case. Overall, Mrs. Kulkarni Sr. readily admitted when she could not recall details and was careful to take the initiative to correct herself if she misspoke. She also had documentary evidence to corroborate her evidence of how she and her husband paid for the down payment for the Giffard Property and paid the mortgage for the Giffard Property.
- [10] Overall, where they disagree, I prefer Mrs. Kulkarni Sr.'s evidence and Mr. Kulkarni's evidence over Ms. Pachori's evidence, except where otherwise noted. The only topic in the evidence on which I preferred Ms. Pachori's evidence is her detailed testimony about the specific gifts and jewelry that were exchanged between the parties/families for the wedding. Both Ms. Pachori and Mr. Kulkarni seemed better able to provide detailed testimony on this aspect than Mrs. Kulkarni Sr. which in my view is understandable as it was their wedding. In any event, the parties reached terms of a consent order that deals with those items.

Facts

- [11] Mr. Kulkarni and Ms. Pachori are age 38 and age 34 respectively. In 2020, they each wanted to get married. At the time, Ms. Pachori was a math and physics teacher in Indoore, India. Mr. Kulkarni lived in British Columbia and worked as an IT consultant though he was also trained/certified as an immigration specialist and a realtor.

- [12] A mutual colleague/acquaintance suggested they connect. As such, Mr. Kulkarni and Ms. Pachori spoke on the phone. Mr. Kulkarni then flew to India to meet Ms. Pachori and her father in October 2020. Initial discussions were positive and the parties married in Delhi on November 2, 2020. Only Ms. Pachori's father and Mr. Kulkarni's friend were present for the wedding due to Covid-19 travel and event restrictions. After the wedding, Mr. Kulkarni invited Ms. Pachori to travel to Mumbai to visit his long-time friends for a few days but Ms. Pachori declined. She preferred to avoid Mumbai during the pandemic so she returned to Indoore two days after the wedding to await Mr. Kulkarni securing her Canadian visa.
- [13] Mr. Kulkarni initially applied for a visitor visa for Ms. Pachori which was denied. He then applied to sponsor Ms. Pachori as a spouse. In December 2021, over a year after the wedding, immigration authorities informed Mr. Kulkarni by letter that documents previously submitted were insufficient to prove the parties' marriage and cohabitation. I accept Mr. Kulkarni's evidence that questions arose due to the small size of the November 2020 wedding and the parties only spending two days with each other after the wedding. The letter gave the parties 30 days to provide satisfactory proof such as photos that the parties were actually married and had cohabitated together.
- [14] As such, the parties held a second, bigger wedding in early January 2022 in Indoore. This time, approximately 25 people from Mr. Kulkarni's family/friends travelled to India for the wedding and approximately 75 family and friends from Ms. Pachori's side attended. This time the couple honeymooned in Goa and visited Indoore together before Mr. Kulkarni returned to Canada.
- [15] Mr. Kulkarni submitted pictures of the January 2022 wedding, honeymoon and their stay in Indoore and the sponsorship application was approved in February 2022. Ms. Pachori moved to British Columbia in April 2022.
- [16] Once Ms. Pachori arrived in Canada, the couple lived in a two-bedroom basement suite at a property located at 238 Giffard Street, New Westminster, British Columbia (the "Giffard Property"), which property is registered jointly to Mr. Kulkarni and his mother Mrs. Kulkarni Sr.
- [17] Mr. Kulkarni and Mrs. Kulkarni Sr. each testified that the Giffard Property was purchased by Mr. Kulkarni's parents in 2017 and is beneficially owned 100% by Mr. Kulkarni's parents. They testified that the only reason that Mr. Kulkarni's name is on title is due to a problem with his father's credit rating caused by a previous investment made using a line of credit. Ms. Pachori disagrees and claims that Mr. Kulkarni owns 50% of the Giffard Property legally and beneficially as reflected by the title.
- [18] Mr. Kulkarni and Mrs. Kulkarni Sr. gave detailed, credible evidence corroborated by documents that the down payment came entirely from the Sr. Kulkarni's, not Mr. Kulkarni. I also accept the evidence of Mr. Kulkarni and Mrs. Kulkarni Sr. that the Sr. Kulkarni's have paid the mortgage payments for the Giffard Property and 90-95% of the other the expenses. Mr. Kulkarni and Mrs. Kulkarni admit that Mr. Kulkarni contributed to a relatively small

portion of the expenses for the one-year period in which he and Ms. Pachori resided in one of the downstairs suites. I accept that these expenses amounted to less than what rent would have been had the Sr. Kulkarni's rented out the suite as they did before and after the year their son and Ms. Pachori resided there.

- [19] When Ms. Pachori arrived in Canada the couple initially travelled so Mr. Kulkarni could show Ms. Pachori some places in British Columbia. Everything was new to Ms. Pachori. With some help from Mr. Kulkarni Sr., by June 2022, Ms. Pachori secured part time employment with Staples. She was not qualified to teach in Canada without significant retraining.
- [20] When Ms. Pachori arrived in Canada, and the parties actually started cohabitating, the couple began to argue. I accept Mr. Kulkarni's evidence that their relationship soured quickly and they argued constantly about nearly everything.
- [21] Ms. Pachori blames Mr. Kulkarni's mother for their arguments and the ultimate failure of the relationship. She claims Mr. Kulkarni's mother was overinvolved in the couple's relationship. Ms. Pachori's disdain and resentment towards Mrs. Kulkarni was palpable in the tone and content of her testimony.
- [22] Ms. Pachori claims that Mr. Kulkarni would not make any decisions without his mother's input, yet the examples she offered as particularly egregious examples of Mrs. Kulkarni's overinvolvement were in my view relatively minor examples of little consequence. For example, she testified that when she first arrived in Canada, she and Mr. Kulkarni discussed travelling to Jasper/Banff; however, Mrs. Kulkarni suggested they see Tofino, so they went there instead. Ms. Pachori also testified that Mr. Kulkarni seemed to value his mother's advice over her own regarding his career. This too Ms. Pachori seemed to think was obviously abhorrent, however, I do not find that to be the case, particularly since Ms. Pachori and Mr. Kulkarni's relationship was relatively new when she was offering career advice.
- [23] Mr. Kulkarni denies that his mother interfered in their relationship. Instead, Mr. Kulkarni testified and I accept that he and Ms. Pachori are just very different people who disagreed on nearly everything and he was not able to continue to live together in the circumstances.
- [24] Mrs. Kulkarni Sr. also denies interfering with her son's relationship. She testified, credibly in my view, that she was very happy with the relationship initially and that she wanted the relationship to work out. In fact, she and her husband wanted her son to work harder on the relationship with Ms. Pachori and talk things through even after the couple separated.
- [25] The reasons for the couple's conflicts are ultimately not relevant to the issues of property division and spousal support. However, I have addressed this because: (1) it provides some background; and (2) Ms. Pachori's negative feelings toward Mrs. Kulkarni coloured much of her evidence to the point that it effected the credibility and reliability of her testimony.

- [26] Mr. Kulkarni and Ms. Pachori's final argument was in April 2023 when Ms. Pachori wanted Mr. Kulkarni to move out of the Giffard Property to live with her in a strata unit located at 803 Heffley Street, Coquitlam, British Columbia (the "Heffley Property"), a property also registered in the joint names of Mr. Kulkarni and Mrs. Kulkarni, each as undivided $\frac{1}{2}$ owners. The Heffley Property was purchased by Mr. Kulkarni and his parents in 2016 as a property where he and his future wife would potentially reside. The parties all agree that in the case of the Heffley Property, Mr. Kulkarni owns a $\frac{1}{2}$ interest both legally and beneficially. The Heffley Property was and is rented to a third party. Mr. Kulkarni collects the rent and pays the mortgage for the Heffley Property. Mrs. Kulkarni pays the monthly strata fees for the Heffley Party and provided the down payment.
- [27] I accept Mr. Kulkarni's evidence that by April 2023, he would not agree to move with Ms. Pachori and in fact did not want to live with her at all anymore. I find that after their final argument, Mr. Kulkarni and Ms. Pachori discussed separating.
- [28] Ms. Pachori now claims that she and Mr. Kulkarni agreed that they needed a "break" from each other so she returned to India to spend time with her family. She points to the fact that Mr. Kulkarni purchased return tickets for her to India and maintains that she was supposed to return.
- [29] Mr. Kulkarni on the other hand testified that after the argument he and Ms. Pachori agreed to separate and agreed that Ms. Pachori would return to India and seek a divorce. I accept Mr. Kulkarni's explanation that they purchased a return ticket instead of a one-way ticket for Ms. Pachori so she would have more time to break the news of the separation to her father because they anticipated that he would be upset. I accept Mr. Kulkarni's evidence that the plan was to cancel the return flight. Mr. Kulkarni then cancelled the return ticket after Ms. Pachori returned to India. I prefer Mr. Kulkarni's evidence on the issue that the parties agreed to separate in April 2023 and divorce later. I find that the parties separated on April 17, 2023, when Ms. Pachori flew back to India.
- [30] After Ms. Pachori arrived in India, she appeared to have a change of heart and tried repeatedly to call Mr. Kulkarni to discuss the possibility of reconciling. I accept Mr. Kulkarni's evidence that shortly after Ms. Pachori returned to India, Ms. Pachori's father also called him and threatened that until he had permission from all 150 of Ms. Pachori's family members to divorce, there would be no divorce. However, other than one brief call in late April 2023, Mr. Kulkarni refused to accept or return Ms. Pachori's calls. Ms. Pachori tried reaching Mr. Kulkarni through his parents at the Giffard Property.
- [31] Mr. Kulkarni testified and I accept that he moved out of the Giffard Property shortly after separation because: (1) Ms. Pachori was calling the home repeatedly and he was trying to avoid conflict with her; and (2) his parents were pressuring him to speak to/reconcile with Ms. Pachori and he was trying to avoid conflict with them. Mrs. Kulkarni Sr. testified that she was upset with her son for avoiding Ms. Pachori's calls and not working harder on the relationship. Mr. Kulkarni put his parents in an awkward position whereby Ms. Pachori was

calling the house for Mr. Kulkarni but they were not permitted to tell Ms. Pachori where he was or why he was not returning her calls.

- [32] After not being able to reach Mr. Kulkarni, in June 2023 Ms. Pachori took it upon herself to return to British Columbia. She did not tell Mr. Kulkarni or his parents in advance. Ms. Pachori tried calling Mr. Kulkarni when her flight landed but, rather predictably by this point, he did not answer. She then made her way to the Giffard Property and unilaterally decided to stay with the Sr. Kulkarni's despite their objection.
- [33] Since June 2023, Ms. Pachori has resided in a living room/recreational room on the main floor of the Giffard Property. Ms. Pachori complained at length in her testimony about her living conditions with the Sr. Kulkarni's. She maintains that she is forced to sleep on a mattress on the floor and live out of a suitcase. She complains that she does not have privacy because the room has glass doors. She testified that she has to buy her own groceries and make her own food (when she is not eating out) but she admits that she is welcome to use the Sr. Kulkarni's spices and oils. She also complains that while she has access to her own washroom, occasionally visitors to the Giffard Property also use her washroom. She also complained at great length that she does not have her own key to the Giffard Property so her ex-in-laws have to be home to let her in. She admits that they let her into the home but on two or three occasions she has been stuck outside the home for up to an hour.
- [34] Overall, Ms. Pachori describes her living situation as intolerable and claims that she is scared of her ex-in-laws and that they "harass" her, though her evidence fell short of describing anything I would consider "harassment". Yet despite: (1) Ms. Pachori describing her living situation as intolerable; (2) the Sr. Kulkarni's asking her repeatedly to leave; and (3) Mr. Kulkarni offering to pay for alternative rental accommodations, Ms. Pachori has stayed at the Giffard Property for the past 1.5 years and wants to continue until March 15, 2025.
- [35] To me it is unfathomable why Ms. Pachori would insist on unilaterally staying with her ex-in-laws all this time. She testified that she stayed with the Sr. Kulkarni's in order to reconcile with Mr. Kulkarni, but this explanation lacks credibility. Ms. Pachori returned to British Columbia two months after separation, knowing that Mr. Kulkarni was not even willing to speak to her never mind reconcile. Yet she chose to return to British Columbia unannounced and move back in with Sr. Kulkarni's over their objections and despite the fact that Mr. Kulkarni was no longer living there. It is also not credible that Ms. Kulkarni moved in with the Sr. Kulkarni's in order to reconcile with Mr. Kulkarni, particularly when she blames Mrs. Kulkarni for the downfall of her marriage. Instead, I find that Ms. Pachori forced her way back into the Giffard Property either for a perceived strategic advantage in the litigation or as an attempt to garner sympathy. However, her behaviour in this regard has done the opposite. Ms. Pachori's extreme behaviour has left me with the impression that she will say or do nearly anything to get what she seeks. As mentioned above, this causes me concerns about the credibility and the reliability of her evidence generally.

- [36] In terms of her employment post-separation, when Ms. Pachori returned from India, she recommenced working part-time for Staples earning approximately \$18-\$19 per hour or \$14,200 gross annually. In addition, to Ms. Pachori's credit, she commenced a cyber security and forensics program at VCC in an effort to increase her income and become financially self-sufficient. She incurred a \$30,000 student loan post-separation but she also received an \$8000 bursary, so she will be left with a \$22,000 student loan net of the bursary.
- [37] By the time of trial, Ms. Pachori had just finished her coursework at VCC and was about to start an unpaid practicum anticipated to run until approximately mid-February 2025. If her employer likes her work during her practicum, they may extend her practicum or offer her employment in the field of cyber security. Once she completes her practicum, Ms. Pachori anticipates earning approximately \$25 to \$30 per hour.

Issues

[38] The issues are as follows:

- a) Should the parties be divorced?
- b) What is the family property to be divided pursuant to the Family Law Act, S.B.C., c. 25 [the "FLA"]?
 - i. Is the Giffard Property family property?
 - ii. Are the properties in India which are registered in the names of Ms. Pachori's parents' family property?
 - iii. What is Mr. Kulkarni's excluded property?
- c) Would it be significantly unfair to divide the family property equally between Mr. Kulkarni and Ms. Pachori?
- d) Is Ms. Pachori entitled to spousal support and if so, how much?

Divorce

- [39] Mr. Kulkarni seeks a divorce. The parties have been separated for more than one year. I accept Mr. Kulkarni's evidence that there is no possibility of reconciliation.
- [40] I am satisfied the divorce should be granted and I hereby do so, such divorce to take effect the 31st day after the date of these reasons for judgment.

Family Property

- [41] Part 5 of the FLA provides the legislative backdrop for property division.
- [42] Section 81 of the FLA provides that on separation, the parties are each presumptively entitled to an undivided half interest in all "family property".

[43] Family property is defined in section 84 of the FLA. The relevant portions of s. 84 are as follows:

84 (1) Subject to section 85 [excluded property], family property is all real property and personal property as follows:

- (a) on the date the spouses separate,
- (i) property that is owned by at least one spouse, or
- (ii) a beneficial interest of at least one spouse in property;
- (g) the amount by which the value of excluded property has increased since the later of the date
- (i) the relationship between the spouses began, or
- (ii) the excluded property was acquired.

[44] Section 84 is subject to s. 85 of the FLA which addresses excluded property which is generally excluded from division. Excluded property is defined in section 85 of the FLA as follows:

Excluded property

85 (1) The following is excluded from family property:

- (a) property acquired by a spouse before the relationship between the spouses began;
- (b) inheritances to a spouse;
- (b.1) gifts to a spouse from a third party;
- (c) a settlement or an award of damages to a spouse as compensation for injury or loss, unless the settlement or award represents compensation for
 - (i) loss to both spouses, or
 - (ii) lost income of a spouse;
- (d) money paid or payable under an insurance policy, other than a policy respecting property, except any portion that represents compensation for
 - (i) loss to both spouses, or
 - (ii) lost income of a spouse;
- (e) property referred to in any of paragraphs (a) to (d) that is held in trust for the benefit of a spouse;
- (f) a spouse's beneficial interest in property held in a discretionary trust
 - (i) to which the spouse did not contribute, and

- (ii) that is settled by a person other than the spouse;
- (g) property derived from property or the disposition of property referred to in any of paragraphs (a) to (f).
- (2) A spouse claiming that property is excluded property is responsible for demonstrating that the property is excluded property.
- (3) If property is excluded from family property under subsection (1), the exclusion applies despite any transfer of legal or beneficial ownership of the property from a spouse to the other spouse.

Which of the Assets Meet the Definition of Family Property?

[45] I will address the assets owned by each party as at the date of separation starting with Ms. Pachori and then turning to Mr. Kulkarni.

Ms. Pachori's Assets at Separation

[46] The assets owned in Ms. Pachori's name as at the date of separation were nominal:

- a) An undivided one-half interest in a joint chequing account with Mr. Kulkarni in British Columbia; and
- b) An interest in a joint bank account in India with her mother.

[47] During their relationship, Mr. Kulkarni and Ms. Pachori deposited their pay in a Canadian joint chequing account and paid their bills from this account. After separation, Ms. Pachori opened a new account to deposit her pay and pay her bills. Mr. Kulkarni and Ms. Pachori's Canadian joint chequing account should be closed, with any funds still remaining in the account to be divided between Mr. Kulkarni and Ms. Pachori equally or otherwise by agreement.

[48] Ms. Pachori also has a joint bank account with her mother in India. I accept Ms. Pachori's evidence that her mother's income as a seamstress is deposited to this account. I also accept Ms. Pachori's evidence that the account had a pre-marriage balance of approximately \$18,000 to \$20,000 and that it was in part used by her parents to pay for some of the wedding expenses for the couple's January 2022 wedding. None of this evidence was seriously challenged. The balance of this account at the time of the marriage, or specifically Ms. Pachori's interest in the balance at the time of the marriage, is Ms. Pachori's excluded property which is not subject to division. There is evidence of a decrease in value in this bank account since the date of the marriage given Ms. Pachori's evidence that some of the funds were used for the January 2022 wedding. As such, I find that Ms. Pachori's interest in the joint bank account in India remains her excluded property and not subject to division.

[49] In addition to the two bank accounts, Mr. Kulkarni claims that Ms. Pachori also owns beneficial interests in two properties in India. One property is registered in the names of her parents, the Sr. Pachori's, in which her parents reside (the "Respondent's Parent's

Home"). The second property is agricultural land registered in Ms. Pachori's father's name (the "Agricultural Land"). Mr. Kulkarni maintains that Ms. Pachori owned a beneficial interest in these two real properties at the time of the marriage and that the value of her interests in these properties has increased in value since the marriage. He claims that the increase in value in Ms. Pachori's beneficial interests in each of these properties is family property which should be divided equally with him.

- [50] I accept Ms. Pachori's evidence that she paid no moneys towards the purchase of either the Respondent's Parent's Home or the Agricultural Land. I also accept that she has not paid any moneys towards the expenses or upkeep of the two properties. Ms. Pachori denies that she owns or ever owned a beneficial interest in either of these properties.
- [51] In support of his assertion that Ms. Pachori owns a beneficial interest in the real property Mr. Kulkarni relies on coparcenary law in India. However, he did not provide any expert evidence as to foreign law at trial. During closing submissions, Mr. Kulkarni's counsel handed me a copy of the Hindu Succession Act and a printout of a blog purporting to discuss Hindu property law. Ms. Pachori's counsel objected to him raising foreign law without having provided expert evidence or notice. I agree with Ms. Pachori's counsel that expert evidence on foreign law should have been provided and served in accordance with the Supreme Court Family Rules, B.C. Reg. 169/2009 (the "Rules"). However, in case I am wrong and should consider the Hindu Succession Act based on Mr. Kulkarni's closing submissions alone, I will address these arguments in further detail. The result however is the same, that I do not find on the evidence that Ms. Pachori has an interest in either of the two properties in India that could somehow be considered family property or otherwise affect the division.
- [52] Based on the Hindu Succession Act, Mr. Kulkarni submits that Ms. Pachori is a "coparcener" in her family's ancestral property by virtue of birth. He notes that Amendments to the Hindu Succession Act in 2005 ensured that females have the same coparcenary rights as males on birth.
- [53] Mr. Kulkarni submits that coparcenary property is property that is passed down through successive generations within a Hindu Undivided Family ("HUF"). He further submits that each member of the HUF is entitled to an undivided equal right to inherit and receive a share of the ancestral property, with the share to be determined at the time of partition. Mr. Kulkarni claims that a coparcenary can demand partition and, in some cases, transfer her interest to another. If the interest is not partitioned or transferred, he maintains that the coparcenary continues to own an undivided interest and upon the death of one coparcenary, the deceased coparcenary's share is passed on to the remaining coparcenary.
- [54] I do not purport to understand the laws of India. However, even if I were to accept Mr. Kulkarni's argument that Ms. Pachori has an interest in the Respondent's Parent's Residence and/or the Agricultural Land which I specifically do not, I am not satisfied that Ms. Pachori's alleged interests, which would have pre-dated the marriage, have actually increased in value since the parties' marriage. There is no reliable evidence of the value of her alleged interests

either as at the date of marriage or currently. There was no plausible evidence at trial to address any of the following:

- a) How many other potential coparcenaries share in the land (i.e. in addition to Ms. Pachori, her parents and her sister- coparcenaries appear to include multi-generations);
 - b) Whether any of the coparcenaries including Ms. Pachori are entitled to demand partition of their interests, what conditions if any apply and whether they have demanded partition of their interests;
 - c) In the event Ms. Pachori has or will demand partition, when and how much she would receive for her share--there is no evidence of how this would be calculated, what conditions or timeline might apply, how expenses for coparcenary property are accounted for (i.e. because her parents appear to cover all the expenses not her), etc.;
 - d) Whether there has been any increase in value of Ms. Pachori's own (alleged) undivided share in coparcenary property from the date of the marriage November 2, 2020, to date (as compared to valuing the entire property which may be entirely inappropriate if a coparcenary owns only a minority and/or contingent interest).
- [55] In terms of valuing Ms. Pachori's alleged interest in the two properties in India, Mr. Kulkarni did not produce joint expert evidence. He hired someone unilaterally to value the whole of the Respondent's Parent's Residence and the Agricultural Land. There are several problems with Mr. Kulkarni's actions. First, valuations of assets in family law actions need to be joint retainers pursuant to the Rules unless otherwise agreed or ordered.
- [56] Second, no expert report was produced or served. Mr. Kulkarni instead tries to rely on his valuations not as expert evidence but as some evidence of the value of the property in India. However, such evidence is not at all reliable as does not specifically address the value of Ms. Pachori's alleged interest in the Indian properties. In the event that Ms. Pachori actually owned an interest in either of the real properties in India, which again I do not find is supported by the evidence, at best it would be an undivided minority interest. I disagree with Mr. Kulkarni that the documents regarding valuation are akin to using BC Tax Assessment Authority values as some evidence of value. In the cases where BC Tax Assessment Authority values are used the valuation issues are generally straightforward and not involving a contested valuation of an alleged undivided minority interest property with an unknown number of others. In fact, the documents that Mr. Kulkarni purports to rely on state that they are not intended for use in court. The documents are not helpful or reliable in this case and as such, I accede to Ms. Pachori's objection to the admissibility of these documents and reject them as evidence.

- [57] Overall, I cannot find on the evidence that Ms. Pachori owns any interest in either of the properties in India. Her parents appear to have paid for and/or paid to maintain the Respondent's Parent's Property and the Agricultural Land. I accept Ms. Pachori's evidence that to the best of her understanding, she does not own an interest in either property yet. I accept her evidence that she may in the future at some point inherit a portion of the properties. However, that does not make them divisible as property in this proceeding.
- [58] In the event that I am wrong and she owns an undivided interest as a coparcenary of either or both properties, there is no plausible evidence before me that there has been any increase in value in any such interest.
- [59] Overall, I find that the only assets that Ms. Pachori owned as of the date of separation are her nominal interests in the two joint bank accounts already addressed above.

Mr. Kulkarni's Assets at Separation

- [60] I will now turn to the assets owned by Mr. Kulkarni. Mr. Kulkarni owned the following assets as of the date of separation April 17, 2023:
- a) A one-half interest in the Heffley Property;
 - b) A registered undivided one-half interest in the Giffard Property, but subject to Mr. Kulkarni's parent's claims that Mr. Kulkarni holds his interest in the Giffard Property in trust for his parents as the sole beneficial owners of the Giffard Property;
 - c) The shares of Trailblazer Immigration Inc. ("Trailblazer") which company owns a bank account with a balance of approximately \$80,000;
 - d) The shares of Sovrun Consulting Inc. ("Sovrun") which company owns a bank account with a balance of approximately \$200,000;
 - e) A Registered Retirement Savings Plan worth approximately \$10,300;
 - f) A Honda CRV estimated to be worth \$5000-10,000.
- [61] In addition to the above, Ms. Pachori alleges that Mr. Kulkarni owns an interest in New West Nutraceuticals Inc. ("Nutraceuticals").
- [62] Mr. Kulkarni and Ms. Pachori agree that Mr. Kulkarni owns a one-half interest in the Heffley Property which was purchased by Mr. Kulkarni and his mother in 2016 before the marriage. The parties also agree that Mr. Kulkarni's one-half interest in the Heffley Property has increased in value by \$50,000 (1/2 of the total increase of \$100,000 based on the joint appraiser's report). As such, both parties agree that the family property portion of the Heffley Property that is subject to division between Mr. Kulkarni and Ms. Pachori is \$50,000. Mr. Kulkarni seeks an unequal division of this sum which argument I will address below under the division of property section.

- [63] In terms of the Giffard Property, both Mr. Kulkarni and Mrs. Kulkarni gave detailed, compelling testimony. They corroborated each other's evidence and their evidence was corroborated by documentary evidence.
- [64] Mrs. Kulkarni and her husband immigrated to Canada from India in 2007. They owned a condominium in India which they sold in 2010. They used the proceeds to purchase their first residence in Canada on Barker Avenue in Burnaby. The Barker property was registered to the Sr. Kulkarni's jointly. In 2017, the Sr. Kulkarni's sold their Barker Avenue residence to purchase another residence, the Giffard Property. The Giffard Property had/has two rental suites downstairs and living quarters for the Sr. Kulkarni's upstairs.
- [65] The Sr. Kulkarni's purchased the Giffard Property for \$1.2 million in 2017 with their Barker Avenue sale proceeds of \$152,000, an additional \$110,000 of their own moneys towards and they required a mortgage in the approximate amount of \$960,000 for the balance. I accept Mrs. Kulkarni's evidence that although Mr. Kulkarni Sr. was a realtor and the primary breadwinner of the couple with an approximate annual income of \$150,000, he could not qualify for the mortgage because he had previously taken out a line of credit of \$100,000 in his name to buy securities as an investment, which securities then decreased in value by 30%. While Mrs. Kulkarni earned gross annual income of \$70,000 as a quality control person in the food industry at the time, they needed their son to go onto the title and the mortgage with Mrs. Kulkarni in order to qualify. As such, the mortgage and registered title contained the mother and son's names instead of the Sr. Kulkarni's names even though it was beneficially 100% the Sr. Kulkarni's property. Consistent with ownership, the Sr. Kulkarni's paid the mortgage and other expenses of the Giffard Property (with a couple minor exceptions) and collected all the rent for suites in the Giffard Property.
- [66] Mr. Kulkarni was cross-examined at length regarding his bank records and specific transfers that he had made to his mother in an effort to challenge his statement that he had not contributed to the expenses of the Giffard Property. Mr. Kulkarni's evidence withstood cross examination. I accept both Mr. Kulkarni and his mother's evidence that the entire funds for the purchase of the Giffard Property came from the Sr. Kulkarni's and almost all of the expenses were paid by the Sr. Kulkarni's.
- [67] While Mr. Kulkarni contributed to some of the expenses of the Giffard Property including during the year he and Ms. Pachori occupied one of the downstairs rental suites, I find that this was in lieu of rent or to reimburse his parents for paying other expenses and not due to any ownership in the Giffard Property. Mr. Kulkarni transferred funds at times to his mother but I find that he had plausible explanations for each transfer, several of which transfer were had to reimburse his parents for expenses that related to the wedding/wedding-related travel and the post-wedding reception for the parties in Canada.

- [68] Overall, I am satisfied that despite s. 23 of the Land Title Act, R.S.B.C. 1996, c. 250, Mr. Kulkarni and Mrs. Kulkarni Sr. have established that the claimant Mr. Kulkarni has no beneficial ownership in the Giffard Property and that he holds his legal interest pursuant to a resulting in trust for his father/parents. I am satisfied that the Giffard Property belongs solely to the Sr. Kulkarni's and is not family property that is subject to division. I dismiss all Ms. Pachori's claims against the Giffard Property.
- [69] I will now turn to the companies. None of the companies were valued by an expert valuator. However, based on the nature of the companies, I find that there is sufficient evidence before me to address the values.
- [70] Trailblazer was incorporated before the parties' relationship. The company has been inactive since the parties' relationship. The only value of the company appears to be its bank account balance. I accept Mr. Kulkarni's testimony which was supported by documentary evidence that the \$80,000 in Trailblazer's bank account was accumulated before the parties married. Property acquired before the parties' relationship is excluded property. Only an increase in value of excluded property counts as family property and here there was no increase in value so there is no family property to divide with respect to Trailblazer.
- [71] Sovrun was incorporated by Mr. Kulkarni just after the marriage. Mr. Kulkarni was and is the sole shareholder. As the shares were acquired during the marriage, the shares are family property which is subject to division. The evidence is that as of the date of separation, Sovrun's bank account (its sole asset) had a balance of \$198,000 which represented self-employment income Mr. Kulkarni earned via Sovrun during the parties' relationship. I accept Mr. Kulkarni's evidence that the funds are subject to distributive taxes if removed from Sovrun and both counsel agree that the net value of Sovrun is \$160,000 after deduction for tax, which seems reasonable to me. As such, I find that the Sovrun shares are family property worth \$160,000 which is the appropriate sum to use in the division of assets between the parties. Ms. Pachori seeks an equal division of family assets. Mr. Kulkarni seeks unequal division in his favour which I will address below.
- [72] I find that Nutraceuticals is not family property. The shares are in Mr. Kulkarni Sr.'s name. I also accept the evidence of Mr. Kulkarni and Mrs. Kulkarni that Nutraceuticals is Mr. Kulkarni Sr.'s company which he set up because of his passion for pharmaceuticals and belongs 100% to him. I find that the claimant Mr. Kulkarni owns no interest in Nutraceuticals.
- [73] The Honda CRV was acquired by Mr. Kulkarni and his mother jointly before the relationship. Mr. Kulkarni's interest in the CRV is excluded property. As is the case with most vehicles, I am satisfied that the CRV in this case is a depreciating asset. Since there is no increase in its value, it is entirely excluded from division.

- [74] Mr. Kulkarni owned an RRSP worth approximately \$10,000 before the commencement of the relationship. As such the RRSP is Mr. Kulkarni's excluded asset. The RRSP is still worth approximately \$10,000. As its increase in value is nominal, I order that the RRSP remain Mr. Kulkarni's property and not be divided. In addition, Mr. Kulkarni owned a TFSA prior to marriage worth \$2100 which has not increased significantly or at all which he shall also retain as his excluded property.
- [75] Finally, I am satisfied on the evidence that the BMW proceeds belonged entirely to Mr. Kulkarni's mother and are not family property. Similarly, the financed Tesla vehicle is not family property as I find that Mrs. Kulkarni is the sole beneficial owner of the vehicle.

Division Pursuant to Part 5 of the FLA

Mr. Kulkarni's Claim for Unequal Division

- [76] Mr. Kulkarni submits that it would be significantly unfair to divide the family property equally, and instead seeks an unequal division of the \$50,000 increase in the value of the Heffley Property and the \$160,000 net value of Sovrun pursuant to Section 95 of the FLA. Mr. Kulkarni states that the short duration of the relationship and Ms. Pachori's lack of contributions to the family property warrant at the very least a 75%/25% unequal division in his favour.
- [77] In her pleadings, Ms. Pachori also sought an unequal division of family property in her favour but in her submissions at trial she confirmed that she was seeking a compensation order based on an equal division of family property. In effect, based on what I have determined to be family property (the increase in Mr. Kulkarni's interest in the Heffley Property and the agreed net value of Sovrun) this would mean that she seeks a compensation order of \$105,000 from Mr. Kulkarni.
- [78] Section 95(1) of the FLA provides that family property may be divided unequally if it would be significantly unfair to divide family property equally considering the factors set out in s. 95(2):

Unequal division by order

95 (2) For the purposes of subsection (1), the Supreme Court may consider one or more of the following:

- (a) the duration of the relationship between the spouses;
- (b) the terms of any agreement between the spouses, other than an agreement described in section 93 (1) [setting aside agreements respecting property division];
- (c) a spouse's contribution to the career or career potential of the other spouse;
- (d) whether family debt was incurred in the normal course of the relationship between the spouses;

- (e) if the amount of family debt exceeds the value of family property, the ability of each spouse to pay a share of the family debt;
 - (f) whether a spouse, after the date of separation, caused a significant decrease or increase in the value of family property or family debt beyond market trends;
 - (g) the fact that a spouse, other than a spouse acting in good faith,
 - (i) substantially reduced the value of family property, or
 - (ii) disposed of, transferred or converted property that is or would have been family property, or exchanged property that is or would have been family property into another form, causing the other spouse's interest in the property or family property to be defeated or adversely affected;
 - (h) a tax liability that may be incurred by a spouse as a result of a transfer or sale of property or as a result of an order;
 - (i) any other factor, other than the consideration referred to in subsection (3), that may lead to significant unfairness.
- (3) The Supreme Court may consider also the extent to which the financial means and earning capacity of a spouse have been affected by the responsibilities and other circumstances of the relationship between the spouses if, on making a determination respecting spousal support, the objectives of spousal support under section 161 [objectives of spousal support] have not been met.

[79] In *Singh v. Singh*, 2020 BCCA 21, the Court of Appeal addresses the meaning of "significant unfairness" in section 95 of the FLA:

[129] First is the question of the meaning of the term "significant unfairness."

[130] In *Jaszczewska v. Kostanski*, 2016 BCCA 286, Justice Harris, for the Court, engaged in an extensive analysis of s. 95. He first noted that the Legislature sought to increase certainty, fairness, and predictability in property division matters with the FLA by reducing the discretion of the courts to depart from equal division: at para. 36. The test in the previous legislation (Family Relations Act, R.S.B.C. 1996, c. 128) only required unfairness, whereas the FLA requires "significant unfairness." In addition, the legislature more precisely specified the factors to be considered in applying this threshold.

...

[133] In *V.J.F. v. S.K.W.*, 2016 BCCA 186, Justice Newbury described s. 95 as requiring a high threshold of "significant unfairness" to depart from equal division: at para. 81. Other cases have reached similar conclusions about the high threshold necessary to reapportion assets under s. 95. In *Khan v. Gilbert*, 2019 BCCA 80, for example, Justice Fenlon noted that cases in which unequal contribution was found to reach the significantly unfair threshold have involved marked, prolonged, and intentional or unexplained disparities in contribution to family burdens: at para. 32.

- [134] In summary, it is clear that the Legislature intended the general rule of equal division to prevail unless persuasive reasons can be shown for a different result: *Jaszczewska* at para. 41. Reapportionment will require something objectively unjust, unreasonable, or unfair in some important or substantial sense. This is in contrast to the previous legislation where courts had discretion under s. 65 to reapportion property or debt where it would be simply "unfair" not to do so. The threshold for "significant unfairness" is high. There must be a real sense of injustice that would permeate the result if the court did not deviate from the presumptive equal division.
- [80] I will now consider whether Mr. Kulkarni has met the onus of demonstrating that an unequal division of family property is justified.
- [81] The first step in assessing whether or not it would be significantly unfair to divide family property equally is to notionally divide the family property taking into account any excluded property: *Chang v. Chang*, 2020 BCSC 1783 at para. 105.
- [82] If family property were to be divided equally, Ms. Pachori would receive a compensation order of \$105,000. She does not have significant excluded property. She has a post separation debt relating to her VCC program which will be \$22,000 net of the bursary she received. By contrast, Mr. Kulkarni's excluded property is significant. In an equal division, Mr. Kulkarni would retain the following (not including the CRV vehicle or his TFSA which are both of nominal value):
- a) \$80,000 in Trailblazer;
 - b) \$10,000 in RRSP's;
 - c) His own \$80,000 net value in Sovrun;
 - d) A $\frac{1}{2}$ interest in the Heffley Property which is worth \$175,500 (\$645,000 less current mortgage balance of \$294,000 = \$351,000 divided by 2 = \$175,500),
- which total \$345,500 less \$105,000 payable to Ms. Pachori equals \$240,500. To summarize, on an equal division of family property, Ms. Pachori would receive \$105,000 and Mr. Kulkarni would be left with \$240,500 including his excluded property.
- [83] The next step is to compare the equal division scenario with a scenario in which Mr. Kulkarni receives an unequal division in his favour. Specifically, Mr. Kulkarni submits that Ms. Pachori should receive no more than 25% of Mr. Kulkarni's share of the increase in the Heffley Property, namely \$12,500 instead of \$25,000. Using the same percentage as with the Heffley Property, Ms. Pachori would receive \$40,000 net from Sovrun (25% of \$160,000, the agreed after-tax value for Sovrun) instead of \$80,000. Correspondingly, Mr. Kulkarni would receive \$120,000 instead of \$80,000 if Sovrun was divided 75%/25% in his favour.

- [84] Overall, in a 75%/25% division, Mr. Kulkarni would retain \$157,500 of family property (\$37,500 from the Heffley Property increase and \$120,000 from Sovrun). Ms. Pachori would receive only \$52,500. Taking into account Mr. Kulkarni's excluded property in a 75%/25% division of family property scenario as I have done above for an equal division scenario, Mr. Kulkarni would have assets of \$293,000 (total assets of \$345,500 less compensation payment to Ms. Pachori of \$52,500) and Ms. Pachori would have a total of \$52,500.
- [85] In terms of case law, Ms. Pachori relies on the Court of Appeal decision of *Banh v. Chrysler*, 2022 BCCA 74 in which case a short relationship of two years did not warrant an unequal division of the increase in value of two rental properties. The Court of Appeal in *Banh* found that the duration of the relationship alone was not enough to make an equal division of the family property significantly unfair.
- [86] Mr. Kulkarni distinguishes *Banh* on its facts. He submits that in *Banh*, the parties had a child which caused their lives to be intertwined to a greater degree. Mr. Kulkarni relies instead on cases where unequal division was granted in relatively short relationships. Some of the cases he relies on pre-date the *Banh* decision. In my view, caution is warranted in relying on such cases.
- [87] However, one of the cases that Mr. Kulkarni relies on is *Boldo v. Horobin*, 2023 BCSC 360 in which case Justice Groves considers and distinguishes *Banh*. In *Boldo*, Justice Groves ordered 90%/10% unequal division of family property after a 20-month relationship without children.
- [88] The facts in *Boldo* are unique, as they are in many of the cases involving section 95 and short relationships. In *Boldo*, parties had a short but conflict-filled relationship like the case at hand. In *Boldo*, as in this case, the husband brought significant property into the relationship and the wife made no contributions to the property. As in the case at hand, the parties in *Boldo* did not have children. However, unlike the case at hand, the parties in *Boldo* kept their finances separate and did not have a joint account or any joint financial ties.
- [89] Also unique to *Boldo*, the only family property was the increase in value of one piece of real property which only marginally increased in value during the relationship by \$27,000 to the date of the parties' separation. In fact, the wife in *Boldo* initially did not make any claims to divide family property. Then, post-separation, the value of the property in *Boldo* increased dramatically and the wife amended her pleadings to seek 50% of the increase in value. By the time of trial, 6.5 years had passed since the separation date and the property had increased by \$378,000. Justice Groves considered s. 95(2) factors and concluded it would be "grossly unfair" and "verging on outrageous" in that case to divide the \$378,000 equally. Instead, he granted the wife \$37,800 which was 10% of the overall increase (still larger than 50% of the \$27,000 increase or \$12,500 she would have received had the matter been brought earlier).

- [90] I will now turn to the facts of the case before me. First, I will address the duration of the parties' relationship which is the first factor in section 95(2) and one of the main focuses here. I agree that Mr. Kulkarni and Ms. Pachori's relationship was short in duration at 2.5 years. Furthermore, like Justice Groves in *Boldo*, I do not read *Banh* to mean that a 2 or so year relationship is never short enough to justify an unequal division of family property.
- [91] I note that there is no particular duration of relationship specified in s. 95(2) as short enough to justify an unequal division. Presumably, the drafters recognized that there are differences in individual relationships even when they are of the same duration. I also note that there is no specific mention in s. 95(2), as to what difference if any it makes when a couple has children or does not have children. In my view, s. 95(2)(a) invites the court to consider the unique characteristics of the particular relationship in deciding whether the duration is enough to justify unequal division/make equal division significantly unfair. In addition, the court must consider the other factors specifically listed in s. 95(2) and also consider (3) as relevant/applicable. Section 95(2)(i) is notably open-ended, which makes the enumerated factors in s. 95(2) a non-exhaustive list. However, the court must be mindful of the comments made in *Banh* that other factors can be considered under s. 95(2)(i) if they are within the scope of the FLA, which I take to mean consistent with the rest of the FLA and its objectives. In *Banh*, for example, the court found, among other factors, the following two factors to be outside of the scope of the FLA: (1) the wife's lack of contributions to the property; and (2) market increases in value between the date of separation and a trial 3.5 years later.
- [92] Turning to the specifics of the duration of the relationship in this case, the marriage was 2.5 years from the date of the marriage to the date of the separation. While the parties in this case only lived together for one year in Canada, that was not through any fault or plan of their own. The immigration process took 1.5 years. However, there is no doubt that Mr. Kulkarni and Ms. Pachori (and both of their families) were seriously invested in the relationship. They were married twice in India and had a wedding reception in Canada, clearly demonstrating a commitment to blend each other's lives, families and friends.
- [93] Further, despite the relationship being short, unlike the parties in *Boldo*, Mr. Kulkarni and Ms. Pachori's finances quickly became intertwined. During the relationship, Ms. Pachori made significant personal and financial sacrifices to move from India to Canada to be with her husband. She left her career as a teacher and left her family and part of her culture behind. Mr. Kulkarni also made significant decisions and financial sacrifices based on the relationship which most notably included sponsoring Ms. Pachori to come to Canada as his wife. Mr. Kulkarni also knew he would be the primary financial support for the couple because Ms. Pachori would not be qualified to teach in Canada or support herself financially without significant retraining. He specifically undertook to be responsible to support her financially for three years as part of the immigration process (through April 2025). While I agree with Mr. Kulkarni that the relationship was short and they did not have children, their lives were certainly financially and otherwise intertwined and entangled as a result of their

actions and decisions during their short relationship.

- [94] Having addressed the duration of the relationship, I will now turn to the other factors in s. 95(2). Sub-sections 95(2)(a) through (h) are not relevant in this case in my view. That leaves subsection 95(2)(i) which directs the court to consider any other factor (apart from s. 95(3) which is addressed separately) that may lead to significant unfairness. For example, in *Boldo*, Justice Groves considered the wife's strategic/opportunistic 6.5 years delay in claiming what was almost entirely post-separation increase in value. Although, the court must be mindful of the wording of s. 95(2)(f) requires post-separation changes in value to be due to something other than market trends in order to consider unequal division of property. Furthermore, as mentioned, in *Banh*, the Court of Appeal found that a 3.5-year delay between the date of separation and the trial during which the property had increased in value was not an appropriate factor to consider under s. 95.
- [95] In any event, in my view, the case at hand is distinguishable from *Boldo*. Ms. Pachori intended from the outset to claim division of family property and the trial was heard approximately 20 months after separation. Furthermore, most of the value of the family property accrued during Mr. Kulkarni and Ms. Pachori's relationship. *Sovrun* was incorporated during the relationship and all of the \$160,000 net moneys were savings from Mr. Kulkarni's income earned during the marriage.
- [96] As well, the *Heffley Property* increased in value by \$90,000 from the date of the marriage November 2, 2020 to the date of the separation April 17, 2023 (based on the joint appraisal as at May 2023). The *Heffley Property* only increased a further \$10,000 from the date of separation to the date of trial (based on the joint appraisal as at November 2024).
- [97] Furthermore, Ms. Pachori only sought \$25,000 for the *Heffley Property* increase. In my view this is most reasonable as she leaves Mr. Kulkarni with the benefit of a few more thousand dollars for the pay down of the mortgage during the relationship.
- [98] Finally, in my view, s. 95(3) is a significant consideration in this case. I address spousal support in detail below under the spousal support section. Ms. Pachori requested and I have ordered lump sum spousal support. While the parties differ in terms of their calculations of spousal support as set out below, both parties' calculations produce what are in my view modest sums, primarily due to the short duration of the relationship. In my view, s. 95(3) is engaged because Ms. Pachori's financial means have been affected by the marriage and continue to be. Ms. Pachori gave up her teaching job in India and was not qualified to teach in Canada. She earned minimal income at *Staples*.
- [99] To her credit, after separation, Ms. Pachori enrolled in and completed program at VCC and will soon complete her unpaid practicum. She has taken significant positive steps to re-establish her earning capacity. However, she will have to repay her \$22,000 student loan (\$30,000 less a bursary of approximately \$8,000) herself because it is not family debt/post-separation debt. The quantum of spousal support produced by either party's calculations is less than the balance of Ms. Pachori's outstanding student loan incurred by her in an effort

to attain self-sufficiency. In my view, an equal division of the family property in this case is required in order to recognize the economic disadvantage to Ms. Pachori arising from the marriage and relieve any economic hardship suffered by her on the marital breakdown above and beyond what the spousal support covers.

[100] In all of the circumstances, I find that Mr. Kulkarni has not satisfied the onus of establishing that it would be significantly unfair to divide the family property equally.

[101] Mr. Kulkarni shall pay a compensation payment to Ms. Pachori of \$105,000 in full and final satisfaction of all property claims which shall be paid into trust within 30 days of the release of these reasons for judgment, such funds to be released to Ms. Pachori immediately upon her vacating the Giffard Property. Ms. Pachori shall vacate the Giffard Property no later than March 15, 2025; however, if she vacates earlier, she will receive the funds earlier.

Spousal Support

[102] Ms. Pachori seeks spousal support on compensatory and non-compensatory grounds. Mr. Kulkarni's position is that Ms. Pachori is not entitled to spousal support. In the alternative, Mr. Kulkarni submits that any spousal support should be minimal and take into account that Ms. Pachori has stayed rent-free in his parent's home since separation in 2023, has finished her course at VCC and is able to work full time shortly after her practicum is complete in February 2025.

[103] Section 15.2 of the Divorce Act, R.S.C., 1985, c. 3 (2nd Supp.) sets out the objectives and factors to consider in making an award of spousal support. Specifically,

Section 15.2:

Spousal Support Orders

15.2 (1) A court of competent jurisdiction may, on application by either or both spouses, make an order requiring a spouse to secure or pay, or to secure and pay, such lump sum or periodic sums, or such lump sum and periodic sums, as the court thinks reasonable for the support of the other spouse.

..

Factors

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

- (c) any order, agreement or arrangement relating to support of either spouse.

Spousal misconduct

- (5) In making an order under subsection (1) or an interim order under subsection (2), the court shall not take into consideration any misconduct of a spouse in relation to the marriage.

Objectives of spousal support order

- (6) An order made under subsection (1) or an interim order under subsection (2) that provides for the support of a spouse should
 - (a) recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown;
 - ..
 - (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.

[104] In *R.J.L. v. T.G.S.*, 2023 BCSC 3 at paras. 170-174, Madam Justice Norell outlined the legal principles and law and approach to spousal support:

[170] In determining whether there is entitlement to support, the Court must consider the objectives of spousal support in s. 161 of the FLA. Those are:

- (a) to recognize any economic advantages or disadvantages to the spouses arising from the relationship between the spouses or the breakdown of that relationship;
- (b) to apportion between the spouses any financial consequences arising from the care of their child, beyond the duty to provide support for the child;
- (c) to relieve any economic hardship of the spouses arising from the breakdown of the relationship between the spouses;
- (d) as far as practicable, to promote the economic self-sufficiency of each spouse within a reasonable period of time.

[171] If entitlement is established, in determining the amount and duration of support, the Court must consider the factors in s. 162:

162 The amount and duration of spousal support, if any, must be determined on consideration of the conditions, means, needs and other circumstances of each spouse, including the following:

- (a) the length of time the spouses lived together;
- (b) the functions performed by each spouse during the period they lived together;

(c) an agreement between the spouses, or an order, relating to the support of either spouse.

[172] There are three bases upon which a spousal support award may be made: compensatory (economic advantage and/or disadvantage); non-compensatory (needs-based); and contractual: *Bracklow v. Bracklow*, 1999 CanLII 715 (SCC), [1999] 1 S.C.R. 420 at paras. 15, 49, 1999 CanLII 715. There is no contractual basis alleged here. In determining if there is entitlement to support, the Court begins with the objectives of spousal support. No objective is paramount and all must be considered: *Bracklow* at paras. 35-37; *Moge v. Moge*, [1992] 3 S.C.R. 813 at 850-852, 1992 CanLII 25.

[173] Compensatory support is intended to provide for an equitable sharing of the economic consequences of the relationship or its breakdown. Both economic advantage and disadvantage are considered. The longer the relationship, the greater the presumptive claim to an equal standard of living upon its breakdown: *Chutter v. Chutter*, 2008 BCCA 507 at paras. 50-52, leave to appeal to SCC ref'd, 33002 (28 May 2009); *Bracklow* at paras. 34, 39; *Moge* at 861-863, 870.

[174] Non-compensatory support is intended to provide needs-based support where compensatory principles do not apply. Its goal is to narrow the gap between the needs and means of spouses upon marital breakdown. Need is a relative concept, and goes beyond the basic necessities of life. It is informed by the circumstances of the parties, including the length of the relationship and the standards of living enjoyed during and after the relationship: *Chutter* at paras. 54-59; *Bracklow* at paras. 36, 41.

[105] I find that Ms. Pachori has established entitlement to spousal support. Although the relationship was short, the parties had expectations that they were marrying each other for the long term and based on this, Ms. Pachori uprooted her life and career in India and relocated to Canada. In India, Ms. Pachori was a full-time teacher. She is unable to teach in Canada without seeking further training and qualifications. Mr. Kulkarni applied to sponsor Ms. Pachori to come to Canada and agreed with immigration officials that he would be financially responsible for her for three years until April 2025.

[106] Mr. Kulkarni was the primary breadwinner in the parties' relationship. Ms. Pachori was initially unemployed on her arrival to Canada and then worked part-time at Staples from June 2022 onward. Her income from Staples is approximately \$14,200 per year. To better her employment prospects in Canada, Ms. Pachori attended an IT course at VCC after the parties separated. In the meantime, she was offered full-time employment at Staples but she was in school at VCC taking her IT course so she could only work part-time. After separation, without the benefit of Mr. Kulkarni's income, Ms. Pachori met her bare financial needs through a combination of her Staples income, a student loan and a bursary. The student loan has a balance of approximately \$22,000 net of the bursary.

[107] Ms. Pachori has established her entitlement to spousal support on both compensatory and non-compensatory grounds. The issue then becomes the quantum of support. Both parties submitted Spousal Support Advisory Guidelines ("SSAG") calculations. They differ in terms

of Mr. Kulkarni's income. Mr. Kulkarni submits that his income is \$90,000 based on full-time employment income as an IT consultant. Ms. Pachori maintains that Mr. Kulkarni's income should be imputed at \$120,000 based on his capacity to earn income based on his training/certification for multiple professions. She also claims that Mr. Kulkarni is actually currently working as a realtor but says that Mr. Kulkarni's father receives the income.

- [108] Mr. Kulkarni is employed full-time as an IT consultant, most recently with Fraser Health. It is true that he is also trained and certified as a realtor and as an immigration consultant. While he has had these additional certifications and training for several years, including before the marriage, Mr. Kulkarni has not actually earned significant income as an immigration consultant or any income as a realtor. Mr. Kulkarni produced documentation that shows he has never earned commission income as a realtor. Instead, he prefers being employed full-time as in the field of IT.
- [109] I accept Mr. Kulkarni's evidence that he obtained training/certification in alternative professions merely as back ups to his IT work. Mr. Kulkarni seemed genuinely concerned/anxious that if he ever lost his employment in IT (as he did for approximately six months during the COVID-19 pandemic) and could not find another IT job, he requires his additional training to ensure he has work/income. I accept his evidence that he worries about being out of work. I also accept his evidence that when he was unemployed for several months during the pandemic, had he not been able to find further IT work, he would have begun to focus on immigration work. I do not however accept that Mr. Kulkarni ever planned to work more than full time or in multiple careers at the same time. There is no evidence that he has done so historically.
- [110] Furthermore, I do not accept that Mr. Kulkarni is currently active as a realtor. Again, he is employed full-time as an IT consultant. He is not underemployed. I do not accept that Mr. Kulkarni is working as a realtor while his father receives the remuneration. That is a far-fetched theory that is not supported by the evidence in my view. I prefer the evidence of both Mr. Kulkarni and Mrs. Kulkarni that Mr. Kulkarni Sr., as a certified realtor, remains actively working in his career as a realtor as he has done for many years.
- [111] I also accept Mr. Kulkarni's evidence that on occasion during the marriage he and Ms. Pachori attended his father's open houses. While Mr. Kulkarni may assist his father occasionally (for example, his father does not drive), the relatively minor assistance he provides does not amount to working as a realtor or even a realtor's assistant. In fact, as Mrs. Kulkarni testified, she is her husband's assistant and is paid for her work.
- [112] For all these reasons, I accept Mr. Kulkarni's submission that \$90,000 is appropriate to use as his income. Using \$90,000 and \$14,200 for Mr. Kulkarni's and respondent's income respectively, for a 2.5-year relationship without children, the SSAG produce a monthly range of support of \$237 (low) - \$276 (mid) - \$316 (high) for a duration of 1.25 to 2.5 years (mid duration being 22 months).

- [113] Ms. Pachori asks me to consider awarding a lump sum. A lump sum award is not tax-deductible to Mr. Kulkarni nor included in Ms. Pachori's income for tax purposes. The lump sum produced using the above-mentioned incomes is less than \$10,000 regardless of whether the low, medium or high amount is chosen.
- [114] I agree with Ms. Pachori that this is an appropriate case for a lump sum in order to encourage both parties to move forward in their separate lives with a "clean break" and to end the conflict once and for all. Further, the range of lump sum awards produced by the SSAG is also modest and will not cause Mr. Kulkarni any hardship.
- [115] I award a lump sum of \$4500 which is close to the low end of the range (\$4,380 is the "midpoint" of the low-end lump sum produced using \$237/month for 22 months). In choosing the low end of the range, I am mindful that Ms. Pachori has resided in the Giffard Property rent-free from June 2023 to date. I am also mindful that Ms. Pachori is in a much better position to earn more income as of March 2025 when her unpaid practicum is finished. Based on her own evidence, she should then be able to secure employment in cyber security/forensics earning \$25 to \$30 per hour full-time, which equates to annual gross income of approximately \$50,000 to \$60,000. No later than February 15, 2025, Mr. Kulkarni will pay Ms. Pachori a one-time lump sum spousal support of \$4500 in full and final satisfaction of Ms. Pachori's spousal support claims.

Summary of Orders

- [116] Mr. Kulkarni and Ms. Pachori shall be divorced from each other, such divorce to take effect 31 days from the date of these reasons.
- [117] Ms. Pachori will vacate the Giffard Property by no later than March 15, 2025.
- [118] Ms. Pachori will forthwith and in any event within 30 days from the date of these reasons for judgment remove her CPLs filed against the Giffard and Heffley properties.
- [119] Within 30 days from the date of these reasons for judgment, Mr. Kulkarni shall pay the compensation payment of \$105,000 into trust for Ms. Pachori in full and final satisfaction for her share of the family assets, and such funds shall be released to Ms. Pachori immediately upon her vacating the Giffard Property.
- [120] Mr. Kulkarni shall pay Ms. Pachori a one-time lump sum spousal support payment of \$4500 no later than February 15, 2025. Upon payment of the lump sum spousal support payment, Ms. Pachori's claims for spousal support are dismissed.
- [121] All other claims of the parties are dismissed except for costs. As I already mentioned during closing submissions, this includes any claim by any of the parties for reimbursement of wedding/travel costs. Each of the families happily paid for wedding/reception/travel costs at the time in a way they obviously considered fair/appropriate and Mr. Kulkarni covered Ms. Pachori's immigration costs. It is not appropriate to do a forensic accounting of expenses during the relationship after the fact nor is this what is contemplated by the FLA.

Consent order of the parties relating to jewelry/gifts

[122] To their credit, Mr. Kulkarni and Ms. Pachori reached the following consent order addressing jewelry and gifts, which should be added to the terms of the order: the Claimant Mr. Kulkarni will return the following items to the respondent Ms. Pachori through counsel:

- a) 3 gold coins;
- b) 1 small gold necklace with black bead;
- c) 1 male gold bangle;
- d) 1 diamond ring (respondent's);
- e) 1 set diamond earrings (given to the respondent);
- f) 1 silver kharchi;
- g) 1 gold chain (given to the claimant);
- h) 1 small gold set with only one earring;
- i) 1 silver plate with a silver tumbler and saucer.

Costs

[123] The parties did not specifically address costs. They may wish to do so, in which case they may within 30 days of these reasons request a brief hearing before me. However, in case it helps the parties to settle costs themselves, overall, success between Mr. Kulkarni and Ms. Pachori was divided so, subject to submissions, I would be inclined to have Mr. Kulkarni and Ms. Pachori each bear their own costs. However, Mrs. Kulkarni was successful in having Ms. Pachori's claim against the Giffard Property dismissed so, subject to submissions, she would normally be entitled to have her costs at Scale B.

"Hamilton J."

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