

CANADA / JUDGMENT

Negarchi v. Saadati

2024 BCSC 2164

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Supreme Court of British Columbia

DECIDED

27 November 2024

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2024 BCSC 2164 Negarchi v. Saadati

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Negarchi v. Saadati,

2024 BCSC 2164

Date: 20241127

Docket: E200146

Registry: Vancouver

Between:

Valentin Yersian Negarchi

Claimant

And

Ebrahim Saadati

Respondent

Before: The Honourable Justice Kirchner

Reasons for Judgment

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Place and Dates of Trial:

New Westminster, B.C.

June 24-28, 2024

October 21, 2024

Place and Date of Judgment:

Vancouver, B.C.

November 27, 2024

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I. Introduction

- [1] This is a family law dispute in which property division and spousal support are at issue. The parties' 18-year relationship ended in 2018. The claimant, Valentin Negarchi, ran her own hairdressing business during much of the relationship and continues to do so today. That business is only marginally profitable. The respondent, Ebrahim Saadati, is the sole shareholder in his business, Third Eye Martial Arts, which offers Taekwondo instruction from two studios and in two community centres.
- [2] A central part of the dispute is the extent to which Mr. Saadati and, to a much lesser extent, Ms. Negarchi, run personal expenses through their respective business and how that affects their income for spousal support purposes. Also in issue is what, if any, value Third Eye has as family property, how other family property and debt should be divided, and whether Ms. Negarchi is entitled to spousal support and if so, how much.

II. Background

A. The Relationship

- [3] Ms. Negarchi was born in Tehran in 1964. She is 60 years old. After living for a time in Spain where she worked as a hairdresser, she came to Canada in 1998 seeking refugee status. She lived on social assistance for the first six months in Canada but then found work as a caregiver for an elderly woman at \$10 per hour. She said she worked six days a week and earned approximately \$40,000 per year.
- [4] Mr. Saadati is also from Tehran. He was born there in 1972 and is now 52 years old. He came to Canada in 1995 and has lived in the Vancouver area ever since. He completed high school in Tehran and a computer software programming course in Vancouver but has never worked in that field. He is a highly accomplished Taekwondo athlete - a Grand Master 8th Degree - who has won several national and international titles competing for both Iran and later Canada. However, in 1998 he tore his ACL and that ended his competitive career. He switched to teaching, initially part-time in community centres and later in his own studios.
- [5] Ms. Negarchi met Mr. Saadati on her first night in Canada. Mr. Saadati was asked by a relative to pick Ms. Negarchi up on her arrival in Canada so his family could help her settle into a new life. The two became friends and later started seeing each other romantically. At the time, Mr. Saadati was living in his parents' home in Coquitlam. He was working as a pizza delivery driver and later as a courier.
- [6] Ms. Negarchi soon found a place to live with a roommate and after another year or so she rented her own one-bedroom condominium on Burrard Street. Her application for refugee status was rejected and Mr. Saadati wanted to help her stay in Canada so they married in 2000. Mr. Saadati continued to live with his parents but often stayed at Ms. Negarchi's place since it was close to the college he attended. In 2004 Mr. Saadati bought a condominium for himself in the Metrotown area with some help with a loan from Ms. Negarchi for the down payment, which he repaid. Though living in separate places, they still saw each other every day.
- [7] In 2005, Ms. Negarchi received her permanent residence status in Canada. She then enrolled in a cosmetology program at a college in Vancouver to certify as a hairdresser. She started work at a hair salon on Dunbar Street in Vancouver in 2010.
- [8] In 2006, six years after they were legally married, the parties celebrated their wedding and began living together. Mr. Saadati sold the Metrotown condominium and he and Ms. Negarchi bought a house on West 49th Avenue in Vancouver for approximately \$645,000. The house required some renovations and updates. Ms. Negarchi says she did much of that work, including demolition, painting, tiling, laminating floors, and sewing curtain, but Mr. Saadati claims this overstates her contribution. He says they hired contractors for the work but both helped with painting.

- [9] The house had a basement suite which the parties initially rented out but they later allowed Mr. Saadati's nephews to live there after they had moved to Canada from Iran. The nephews did not pay rent but Mr. Saadati said they helped with his business in exchange.
- [10] Ms. Negarchi says she did most of the household work in the 49th Avenue home, including cooking, cleaning, shopping, entertaining, and care for their two (later three) dogs. In cross-examination she agreed that Mr. Saadati mopped and vacuumed the floors, loaded the dishwasher and cleaned up after the dogs. She said they both did yardwork. Mr. Saadati said the housework was more equal than Ms. Negarchi suggested, although he acknowledged that Ms. Negarchi did all the cooking since he cannot cook.
- [11] Around 2006, Mr. Saadati started teaching Taekwondo in community centres but soon opened his own studio on West 8th Avenue in Vancouver called Third Eye Martial Arts. He later incorporated under that name. Ms. Negarchi helped the business in its early stages by organizing receipts, attending at community centres in early days to register students and helping to organize and host events such as tournaments, Christmas parties, and barbecues. While there is agreement that Ms. Negarchi provided some assistance to the business as it started to grow, the parties disagree on the extent and value of her contributions.
- [12] In 2012, Ms. Negarchi bought the Dunbar Street salon where she was working from her employer for \$12,000 and started her own hairstyling business called Valentin Salon. Since then, she has operated the salon as a sole proprietor without incorporating.
- [13] In 2013 Mr. Saadati expanded Third Eye Marital Arts to a second location on Dunbar Street next to Ms. Negarchi's salon. He later took over Ms. Negarchi's space and she moved to another location on Dunbar.
- [14] In 2016 the parties sold their home on West 49th for \$2.85 million. At some point before this they had refinanced the mortgage to pay down credit card debt so they cleared around \$2 million on the sale. They bought another home on West 46th Avenue for around \$3.8 million. It had four bedrooms and a basement suite that they rented out. Given the parties' incomes around this time, this was an ambitious purchase.
- [15] Ms. Negarchi says that the parties' life together changed after the nephews moved in. They began arguing, including over whether the nephews should be self-sufficient in buying their own groceries and doing their own cooking. The relationship came to an end in 2018 following an argument. They agree they separated as of June 15, 2018. Despite the separation, they both continued living in the West 46th home with separate bedrooms and keeping to their own schedules. Ms. Negarchi began looking for a place of her own but this was challenging because of her limited finances and many places would not allow the dogs. In February 2021, she finally found a place to rent near UBC for \$2,000 per month plus \$35 in insurance. The parties agreed it would be better for her to move there with the dogs so they could keep the West 46th Avenue home clean and free from dog hair to show it for sale. Mr. Saadati did not pay any support to Ms. Negarchi after she left the home and she did not ask for any. The parties sold the West 46th home in August 2021, three years after separation, for

\$4.35 million.

B. The Parties' Businesses

1. Third Eye Martial Arts

- [16] Third Eye Martial Arts has around 380 students registered in the two studio locations. The company employs instructors who also teach another 40 students at two different community centres in Vancouver.
- [17] Mr. Saadati employs approximately 18 people in the business plus himself. Several of the employees are his relatives. His nephew, Mehdi Saadati-Raad, is the Program Director and provides managerial support for the business. He also teaches students. Mr. Saadati teaches some adult classes and a high-performance team. He also manages the employees and staff, deals with the rent and landlords, and does overall programming work.
- [18] Four of the employees are drivers. The business has an after-school program and the drivers pick up students from their schools and take them to the studios for the afternoon. The company has five vans for this program, one large 12-passenger van and four standard minivans. It owns the large passenger van and one minivan but leases the rest.
- [19] While Third Eye operated at a profit of \$122,116 and \$25,110 in the fiscal years ending February 28, 2017 and 2018, it had debt in both years: (\$82,325) for 2017 and (\$57,215) in 2018. This was because the company owed Mr. Saadati money under a shareholder loan. For the fiscal year ending February 28, 2017, the company's financial statements show a shareholder loan from Mr. Saadati of \$260,798 but also cash in the company of \$137,859. It appears that Mr. Saadati withdrew most of that cash (tax free) by drawing down the shareholder loan in the following fiscal year. It dropped by \$135,359 to \$125,439 and the cash in the company also dropped to \$52,015. Over the next five years, the shareholder loan went up and down by significant margins. By February 28, 2019 it rose to \$232,275 and up again the following year to \$296,196. It dipped to \$213,918 by February 28, 2021 but went back up to \$261,108 by February 28, 2022 and back down again to \$161,754 as at February 28, 2023 which is the last financial statement in evidence.
- [20] Mr. Saadati is not careful to separate his business and personal expenses. He uses the same credit cards for both and leaves it to his accountant to sort out what charges should be attributed to the company and what is personal. He was unable to explain how his personal expenses are separated from his business expenses except to say he trusts his accountant to do that. He also acknowledged that he often takes money out of the company, in addition to his own salary, to pay personal debts and expenses on the credit cards.
- [21] Mr. Saadati draws a salary from Third Eye that is recorded as an expense along with the other salaries. His salary fluctuates from year to year from a low of \$36,750 in 2017 (coinciding with the \$135,359 drawdown from the shareholder loan) to a high of \$104,000 in 2020 (coinciding a drawdown of \$82,278 from the shareholder loan). In other years he took a similar or smaller salary and also put money into the company adding to the shareholder

loan. In 2019 he drew a salary of \$102,000 and increased his loan to the company by \$63,921. In 2021 he took a salary of \$70,000 and increased his loan to the company by \$47,190. With the exception of two years around the COVID-19 pandemic, the revenues and expenses for the company were relatively consistent and I am not able to make sense of the fluctuations in Mr. Saadati's salary and loan draws and advances on the shareholder loan, other than to infer it is related to how he mixes his business and personal expenses. Unfortunately, his accountant did not testify.

- [22] Third Eye had to close its operations during the first few months of the COVID-19 pandemic starting in March 2020. It reopened with online classes and later resumed in-person classes but with fewer students to maintain social distancing. Enrollment dropped to 50 or 80 students and revenues fell from \$714,990 in the company's previous fiscal year (ending February 29, 2020) to \$355,383 in the first year of COVID. The business received some government financial support for both salaries and rent and Mr. Saadati did not lay off any instructors but he did lay off the drivers since the after-school program was suspended.
- [23] Mr. Saadati testified that he had to use his own money to prop up the company during this challenging time. He says he incurred significant credit card debt in excess of \$100,000 and took out a business line of credit of almost \$25,000 plus two government business loans of \$40,000 and \$20,000 which he has not yet been able to pay back. As I discuss later, however, Mr. Saadati's assertion that Third Eye's current financial challenges (and by extension, his own financial difficulties) are the result of the pandemic is not born out on Third Eye's financial statements.

2. Valentin's Salon

- [24] Ms. Negarchi's salon business has never been especially profitable. She leases a retail space on Dunbar Street and rents out chairs to other hairstylists who operate independently. She has her own loyal client base and her revenue is a mix of paying customers and chair rentals. There is no evidence of what she earned as a hairdresser before she started her own business in 2012 and there is no evidence of what the business earned before 2017. The business was not incorporated so its revenues and expenses are reflected in Ms. Negarchi's personal tax returns. Its best year was 2021 when Ms. Negarchi cleared \$18,803 (before tax) on gross revenues of \$75,887. Her next best year was 2017 when she cleared \$13,389 on gross revenues of \$85,368.

C. The Parties' Finances

- [25] During the marriage, the parties kept their finances somewhat separate in that they had their own bank accounts and credit cards. They had one joint account but did not use it. However, they did not share equally in the expenses. Ms. Negarchi paid for groceries and care for the dogs out of the money she earned or by accumulating personal debt while Mr. Saadati paid the mortgage, utilities, home insurance, and home maintenance through his earnings from Third Eye and by accumulating his own credit card debt. He also paid for

both parties' vehicles through his company. If they went out for meals or ordered food in, Mr. Saadati paid most of the time.

- [26] Mr. Saadati also paid property taxes on the two homes, although he stopped paying the taxes on the West 46th Avenue home in 2018. The accumulated arrears were eventually paid from the proceeds of the sale of the property in 2021.
- [27] It is apparent that the parties' lifestyle was supported by significant consumer debt. At some point prior to selling the West 49th Avenue home in 2016 they had refinanced their mortgage to pay off credit card debt with some of the accumulated equity. By 2018 both had once again run up significant credit card debt.
- [28] By the Spring of 2018, Ms. Negarchi's credit card and bank debt reached \$48,000. In August 2018 she made a consumer proposal through Sands and Associates to pay \$215 per month towards this debt. Once she received her interim distribution from the sale of the West 46th house, she paid off all her debt and bought a small townhouse in East Vancouver for \$645,000 without a mortgage. She has been debt-free ever since but has used the capital from the proceeds of the home to live on. She says that is now gone.
- [29] Mr. Saadati accumulated over \$89,000 in credit card debt by the time of separation in June 2018. This appears to have been a mix of business and personal debt but the evidence does not show a clear line between the two. In the fall of 2018 he sold a condominium in Coquitlam that he had bought for his parents and used some of the proceeds to pay off his credit cards but his personal debt has gone back up since then. Today it sits close to \$80,000, not including his mortgage and Third Eye's debts.
- [30] After the sale of the West 46th family home, Mr. Saadati bought a house in Lion's Bay for \$2.15 million where he lives with his new partner and their daughter who was born in October 2023. He has a mortgage of around \$1.3 million with a monthly payment of around \$7,000. He says the mortgage payment was \$4,500 when he bought the house in 2021 but the interest rate climbed from 1.9% to 7%. As of trial it stood at 6%.
- [31] Mr. Saadati's present financial circumstances are not good. As mentioned he has credit card debt of approximately \$60,000 and personal lines of credit totalling approximately \$17,000. Third Eye Martial Arts has debt of around \$85,000. He has a mortgage of \$1.3 million but the value of his home is assessed at \$2.231 million so there is about \$1 million in equity in his home.

III. Divorce

- [32] The parties both seek a divorce. They have been living separate and apart for more than a year and neither has colluded in seeking a divorce. There are no children of the marriage. I will make the order in the usual form that the parties be divorced.

IV. Family Property and Debt Division

A. The Parties' Positions

[33] Ms. Negarchi seeks a division of the following family property:

- a) the proceeds of the sale of the family home;
- b) the shares in Third Eye Martial Arts, valued at the date of separation;
- c) the proceeds from the sale of the Coquitlam condominium; and
- d) an RRSP that Mr. Saadati cashed in.

[34] With respect to debts, Ms. Negarchi argues each party should assume responsibility for their own debts as at the date of separation because the evidence does not disclose what is personal and what is company debt.

[35] Mr. Saadati argues for an equal division of family property with the shares in Third Eye valued at the date of trial (at which time it had no value apart from providing an income stream for Mr. Saadati). He argues the proceeds of the sale of the Coquitlam condominium were used to pay down family debt so there should be no distribution for that. He argues Ms. Negarchi is equally responsible for the debt that Third Eye has accumulated since separation because it was incurred to maintain family property, namely the shares in Third Eye.

B. General Legal Principles

[36] Family property includes all real and personal property owned by at least one spouse on the date of separation and property acquired by a spouse that is derived from family property: Family Law Act, S.B.C. 2011, c. 25, s. 84(1) [FLA]. It also includes the increase in value during the marriage of any excluded property but there is no excluded property claimed in this case. Family debt includes all financial obligations incurred by a spouse during the relationship before separation, and debt incurred after separation if it was incurred to maintain family property: FLA, s. 85(2).

[37] As a starting point, spouses are entitled to equal division of family property and are equally responsible for family debt as at the time of separation, regardless of their relative contributions to the acquisition of the property or the debt: FLA, s. 81; *Zilic v. Zilic*, 2021 BCCA 107 at para. 13 ["*Zilic BCCA*"]; *Jaszczewska v. Kostanski*, 2016 BCCA 286 at para. 38. Where an equal division of family property would be significantly unfair, the court may order an unequal division of family property. Significant unfairness requires something objectively unjust, unreasonable, or unfair in some important or substantial sense: *Singh v. Singh*, 2020 BCCA 21 at para. 34.

C. Family Property

1. The 46th Avenue Family Home

- [38] The former family home was sold in August 2021 and the net proceeds of \$2,278,906 were paid in equal parts (\$1,139,453.15 each) to the parties on a without prejudice basis, save for \$100,000 of Mr. Saadati's share that was held back in his lawyer's trust account pending the completion of this proceeding.
- [39] Mr. Saadati argues there should be an unequal division of the proceeds of the sale of the family home. He argues that since he paid all the costs of maintaining the family home after separation, including the mortgage, insurance, and utilities, he should be credited with one half of those amounts from Ms. Negarchi's notional half share. He relies on *Hagman v. Yasmina*, 2024 BCSC 807 at para. 102-103 where Justice Blake held payments of this kind made by one spouse after separation while both parties continued living in the former family home were properly classified as family debt under s. 87 of the FLA because they were incurred to maintain family property.
- [40] However, in *Yip v. Yip*, 2016 BCSC 1595 Justice Smith held that the family property and family debt in that case should be divided equally despite the husband's post-separation contributions to RRSPs and post-separation withdrawals both parties made from lines of credit. The husband had argued an equal division would be significantly unfair because of his post-separation contributions and because the wife and their children had benefited disproportionately from his income after separation beyond what they would have received through a child and spousal support order. In that case, both parties had continued living in the former family home post-separation and did not disentangle their financial lives until well after separation.
- [41] Justice Smith observed at paras. 17 and 18 that the FLA presumptively fixes the date of trial for the valuation of family property and does not provide for an automatic accounting for post-separation contributions, even though the legislature clearly anticipated changes in value of family property and debt between separation and trial. He observed that post-separation contributions that affect the value of the property could be considered in an unequal division of family property but noted the high standard of "significant unfairness" governs that assessment. He also noted the Court of Appeal's statement in *Jaszczewska* at para. 39 that the entitlement to share equally in the value of family property valued at the date of trial "exists independent of the parties' respective contribution to the post-separation increase in value."
- [42] Ultimately, Justice Smith then found it would not be significantly unfair to value the property in that case as at the date of trial despite the husband's contributions in part because the parties had not disentangled their financial affairs post-separation. He said at para. 20:

- [20] Equal division of post-separation RRSP contributions may be significantly unfair in some cases where parties have separated their affairs and gone on with their independent financial lives. It is not significantly unfair in a case like this, where the husband has borrowed money to make the contributions from lines of credit that were secured against the family home and were also being used to pay ongoing family expenses.
- [43] I would add that there is no established principle that unequal contributions to family property after separation should result in an unequal division of property. In *Jean Louis v. Jean Louis*, 2020 BCCA 220 at para. 35, the Court of Appeal called that suggestion is "misguided".
- [44] In this case, the parties' financial affairs prior to separation were a mix of independent and blended. Each had their own bank accounts and credit cards but expenses were not divided equally or at all. Mr. Saadati, who had the substantially larger income, paid the mortgage and house expenses while Ms. Saadati bought groceries. As best as I can tell on the evidence, this did not change until Ms. Negarchi moved out of the former family home. For that reason, I am not persuaded it would be significantly unfair to divide the proceeds of the former family home equally as of the date of trial without crediting Mr. Saadati with post-separation contributions to the mortgage, at least until Ms. Negarchi moved out in 2021. For the same reason, as I will discuss later, I also find that Mr. Saadati is not be responsible for paying spousal support before 2021.
- [45] Once Ms. Negarchi moved out in February 2021, the parties separated their financial lives and I find that at that point it would be significantly unfair not to credit Mr. Saadati with some amount he was paying to maintain the former family home while also recognizing that he was benefiting from living there. I find there should be an accounting for his mortgage and other expenses above that which he would have paid if he had also moved into his own place sooner. That is, the extra amount he paid each month to maintain the former family home should be shared equally by the parties, subject to accounting for the rental income Mr. Saadati collected for the basement suite in the house.
- [46] Mr. Saadati paid the \$8,995 per month for the mortgage. There was also some expense for yard maintenance but since there is no evidence of that cost I do not include it. His monthly mortgage payment on the Lions Bay home was \$4,500 when he moved in. I consider the cost of utilities were similar to the West 46th Avenue home. Thus, he paid an additional \$4,500 per month for seven months to maintain the former family home while it was being readied for sale. That totals \$31,500.
- [47] Mr. Saadati says he had to spend another \$10,000 on repairs to the house to complete the sale but he did not provide receipts to document this expense. An addendum to the contract of purchase and sale lists a number of repairs that the buyer required be fixed before completion. The list of required repairs is quite lengthy and I accept there was likely some significant cost to it but in the absence of receipts, and recognizing that Ms. Negarchi cleaned the carpets in the house before completion, I will credit Mr. Saadati for \$7,500 for

the repairs. I therefore assess his contribution to maintaining the family home after the parties separated their expenses but before sale at \$39,000.

- [48] This amount should be offset by the rent that Mr. Saadati collected for the basement suite. The rental income shows on Mr. Saadati's tax returns where it was reduced to an insignificant amount because Mr. Saadati claimed a portion of the mortgage and utilities as an expense. However, since I have already credited him for that expense, the gross rental income should be offset against his contributions to maintaining the home. He collected \$21,600 per year which is \$1,800 per month. For 7 months that is \$12,600. That offsets the \$39,000 that Mr. Saadati paid for mortgage and utilities which I reduce accordingly to \$26,400. I consider this to be the net amount Mr. Saadati paid over and above what he would have paid for his own living costs to maintain the former family home starting in 2021 when Ms. Negarchi moved out. That cost should be born equally by the parties and Mr. Saadati is to be credited \$13,200 from the proceeds of the sale of the former family home.

2. The Port Coquitlam Condominium

- [49] In October 2018, Mr. Saadati sold a two-bedroom condominium in Coquitlam he had bought for his parents in 2008. After paying off the mortgage and other sale expenses, he received \$304,884 that was deposited to his personal account on October 27, 2018. That income was subject to capital gains tax.
- [50] Although his parents contributed to some of the expenses, no argument is made that any portion of the proceeds of the sale of the condominium is excluded property under s. 85 of the FLA. Thus, the proceeds of the sale are presumptively subject to an equal division. The question is how to value that property.
- [51] According to Schedule 3 to Mr. Saadati's 2018 personal tax return, the condominium sold for \$515,000. The cost base (i.e. the amount Mr. Saadati paid to acquire it in 2008) was \$289,000. With a deduction of \$20,228.51 for the costs of selling, Mr. Saadati's capital gain was \$205,771.49, half of which (\$102,885.75) is subject to tax.
- [52] The taxable portion of the capital gain was added to Mr. Saadati's income for 2018 and this brought his total income for that year to \$205,842. That obviously had significant impact on his taxes for that year. The tax return does not isolate the additional tax that resulted from the capital gain but comparing the total tax payable for that year to 2019 and 2020, it appears he paid approximately \$45,000 in additional taxes because of the capital gain.[1]
- [53] Mr. Saadati claims he spent around \$8,000 or \$9,000 to fix up the condominium before he sold it but he has not produced receipts for this. He also paid the mortgage on the condominium. Prior to separation, the mortgage payments would have been a family expense. After separation, these costs added to Mr. Saadati's debt so I will credit him for the mortgage payments made after separation as payments to maintain a family asset. The monthly payment was \$947 with the last payment made in October 2018. That is five payments since separation of \$947 totalling \$4,735. He also paid the strata fees of \$340.63 a

month for a total of \$1,703 for five months, and the property taxes. The only evidence of property taxes is a \$1,000 payment from his personal account on July 13, 2018 which I infer is for half a year. I would therefore deduct a total of \$7,500 for these costs.

- [54] Thus, deducting the approximately \$45,000 in taxes attributable to the capital gain and \$7,500 for the mortgage, strata fees and taxes, I assess the value of the proceeds from the sale of the Coquitlam condominium as \$252,384 for the purposes of property division. I round this down to \$250,000 to account for some amount of repair costs. In the absence of an excluded property claim, this is to be divided equally at \$125,000 to each party.
- [55] Mr. Saadati argues Ms. Negarchi should not receive any of the proceeds from the sale of the condominium because he used it to pay down family debt, including his credit card debt and the mortgage on the West 46th family home. The evidence shows that he paid down much of his credit card debt but I see no evidence that he paid down the mortgage beyond making regular mortgage payments, some of which I have already credited to him post-separation. Since I deal with the division of family debt below, including the credit card balances that Mr. Saadati paid off with the condominium sale proceeds, it is unnecessary to determine whether these should be deducted from Ms. Negarchi's share of the proceeds of the condominium sale.

3. RRSP

- [56] In 2022, Mr. Saadati cashed in an RRSP so he could to pay the additional capital gains tax on the sale of the condominium. His 2022 tax return shows \$39,335 in income from an RRSP. He claims to have received \$27,000 from the bank with the rest presumably held back for tax purposes. His 2022 tax return indicates that a total of \$17,588 in income tax was deducted from all his slips but he has not produced his T4 slip for 2022 or any of the RRSP documents so I cannot determine whether the \$17,588 included the \$12,335 he suggests was held back by the bank.
- [57] Ms. Negarchi argues she should receive a credit of half the pre-tax value of the \$39,335 because Mr. Saadati's unilateral withdrawal of it deprived her of her entitlement to half the RRSP on a tax-neutral basis through a spousal rollover: *Sea v. He*, 2024 BCCA 161, para. 98. While she acknowledges that receiving half the value now from Mr. Saadati would be tax-free, she argues that she likely could have withdrawn her share without attracting tax because of her low income.
- [58] Mr. Saadati concedes in his closing argument that Ms. Negarchi is entitled to one half of the \$39,335.34 withdrawn in 2022 but argues he should be allowed to re-establish the RRSP and then roll half over to Ms. Negarchi so that the tax consequences are accounted for.

- [59] Mr. Saadati was assessed a total of \$15,515 in taxes for all of his 2022 income which included \$41,500 in salary from Third Eye and the \$39,335 RRSP income. Thus, approximately one half of the tax (\$7,757.50) is attributable to the RRSP. One half of that amount (\$3,878.75) may notionally be attributed to Ms. Negarchi's share, although I take her point that she could probably keep the taxes lower in light of her income.
- [60] In my view, the fairest way to deal with this issue is to order that Mr. Saadati pay Ms. Negarchi \$17,000 which is one half the amount of the RRSP less \$2,667.50 which I consider a reasonable deduction to account for the tax issue.

4. Third Eye Martial Arts

(a) The Parties' Positions

- [61] Mr. Saadati owns all the shares in Third Eye Martial Arts. Shares in a company are family property, the assets held by the company are not: *Devick v. Devick*, 2005 BCCA 329 at para. 12. However, the assets may give the company value for the purpose of assessing the shares.
- [62] There is no expert evidence valuing Third Eye Martial Arts. Relying on *Zilic v. Zilic*, 2019 BCSC 1482, aff'd 2021 BCCA 107, Ms. Negarchi argues I should value Third Eye by combining the shareholder loan with any retained earnings. She further argues the valuation should be at the date of separation because Mr. Saadati has depleted Third Eye of its value since separation.
- [63] Mr. Saadati denies that he has been depleting Third Eye of its value. Rather, he argues that it struggled financially during the COVID-19 pandemic and accumulated significant debt as a result. Mr. Saadati has also accumulated significant personal debt which he attributes to his efforts to keep the company going. He says the only present value in the company is to him as a source of income. He says with its debt it has no marketable value.
- [64] Mr. Saadati also argues that Ms. Negarchi is liable for one half of Third Eye's debt exclusive of the shareholder loan. That debt is as follows:

Operating Loan

\$23,647.23

Business Loan

\$40,000.00

CEBA Expansion Loan

\$20,000.00

CRA Balance

\$114,740.66

Worksafe BC

\$75,749.12

GST Owing

\$38,258.37

Total

\$312,395.38

I will deal with that argument first.

(b) Third Eye's Company Debt

[65] I fail to see how Ms. Negarchi can be liable for any of this debt. It was accumulated well after separation and by the company, not by Mr. Saadati personally. A debt does not become a family debt simply because it was incurred by a spouse-owned company: *D.Z. v. M.Z.*, 2022 BCSC 1462; *Devick v. Devick*, 2005 BCCA 329. The debt likely diminishes the value of the shares of the company as a family asset but the debt itself is not family debt.

[66] Mr. Saadati argues the debt was incurred to maintain a family asset, namely the shares in the company but this does not change the fact that it is company debt. Regardless, I am not persuaded it was incurred to maintain family property. Rather, as I will explain in a moment, I find the company's debt and Mr. Saadati's personal debts accumulated are more likely attributable to the lifestyle he has chosen post-separation rather than financial challenges for the company because of the COVID pandemic. I therefore find Ms. Negarchi is not liable for this company debt.

(c) Date of Valuation

[67] Presumptively, the date for determining the value of family property and family debt is the date of the hearing (here the trial) respecting the division: *FLA*, s. 87(b)(ii). There must be compelling evidence for the court to depart from that date as doing so is, in effect, ordering an unequal division of family property or debt: *Kumagai v. Campbell Estate*, 2018 BCCA 24 at para. 76. Thus, to value the property or debt on some other date, the court must be satisfied that significant unfairness would otherwise arise: *Kumagai* at para. 76. Where one spouse has, after separation, caused a significant decrease in the value of family property beyond market trends, that may be a sign of significant unfairness: *Zilic* BCCA, para. 13; *FLA*, s. 95(2) (f).

- [68] Bank accounts that are used on a day-to-day basis after separation are typically valued as at the date of separation rather than the date of trial as this best accounts for money routinely moving in and out of those accounts. Long-term investment accounts are typically valued at the date of trial but subject to an accounting of contributions or withdrawals by one or both parties: *Bennett v. Bennett*, 2021 BCSC 1631 at para. 47; *Asselin v. Roy*, 2013 BCSC 1681 at paras. 171-172.
- [69] While I am persuaded that it would be significantly unfair to assess the value of Third Eye at the date of trial, I am not persuaded that the date of separation is appropriate either. As I have said earlier, it appears that the parties financed their lifestyle during the relationship by incurring consumer debt. After separation on June 15, 2018, Mr. Saadati continued this habit while Ms. Negarchi took steps to get her credit card debt under control. Some of Mr. Saadati's debt is personal and some is attributable to Third Eye but it is impossible to determine which is which.
- [70] Moreover, Mr. Saadati has used Third Eye as something of bank account from which he takes money out when he needs it and puts money in when he can or must. I find it would be significantly unfair to subject Ms. Negarchi's entitlements and obligations regarding family property and debt to Mr. Saadati's approach to the fiscal management of Third Eye.
- [71] Mr. Saadati claims he was forced to accumulate significant personal debt after separation in order to keep Third Eye afloat through the COVID pandemic. However, that is not born in Third Eye's financial statements.
- [72] Clearly, Third Eye's revenues took large drop because of the pandemic but so did its expenses. Its gross revenues for the fiscal year ending February 29, 2020, about two weeks before the pandemic was declared, were \$714,990. That is generally on par with previous three years (\$697,352 in 2019, \$730,009 in 2018, and \$740,147 in 2017). For the fiscal year ending February 28, 2021, after almost a year of the pandemic, Third Eye's gross revenues dropped by more than half to \$355,383, a decline of almost \$360,000 from the previous year.
- [73] However, Third Eye's expenses also dropped by more than \$376,000 in that same fiscal year. Salaries were down by \$255,565 (with no impact to Mr. Saadati's salary), rent was down by \$90,888, advertising and promotion was down by \$16,345, office expenses were down by \$5,674, uniforms were down by \$4,095, and utilities were down by \$3,970. Further the shareholder loan from Mr. Saadati was reduced from \$296,196 to \$216,918 indicating that Mr. Saadati took some \$82,000 out of the company in addition to the \$70,000 salary he drew (which was recorded as a company expense). Thus, Mr. Saadati's assertion that both he and the company had to incur significant personal debt to survive the business drop in the first year of the pandemic is not supported by the financial statements.
- [74] Even the following fiscal year, ending February 28, 2022, was not an unusually bad one for the company's bottom line. Its revenues bounced back to \$621,874, which is still around \$100,000 short of pre-COVID levels, but expenses also remained lower than pre-pandemic years. Salaries were up again but still \$47,368 below pre-COVID levels, rent was \$42,242

below pre-COVID levels, advertising and promotion was down \$13,038 from pre-COVID levels and uniforms were down \$5,113. Office expenses and utilities were higher than pre-COVID levels (by \$18,852 and \$3,884 respectively) but accounting for the rebound in revenues and the lower salary and rent expenses, there was only a shortfall of around \$8,000 for the fiscal year ending February 28, 2022 compared to the pre-COVID fiscal year. The loan from shareholder rose by \$47,190 suggesting that Mr. Saadati put money back into the company (likely through the use of personal credit cards) but the company's financial statements do not suggest a large influx of cash was required to sustain the business.

- [75] By the fiscal year ending February 28, 2023, revenues were back to pre-COVID levels as were most of the expenses. Rent was around \$33,000 higher than it was in the two years before the pandemic but more than a third of that (\$13,000) is explained by Mr. Saadati claiming 20% of his home mortgage and home utilities as a business expense because of a home office.
- [76] The one expense in the fiscal year ending February 28, 2023 that is markedly higher than pre-COVID levels is bank charges which are \$48,424. That is more than three times higher than any year going back to 2017. Previously, the highest pre-COVID year was in the fiscal year ending February 28, 2019 in which bank charges were \$14,550. In the COVID and post-COVID years the bank charges were \$11,270 and \$15,463. This suggests that Mr. Saadati is now carrying much more debt than he was prior to and during COVID and the company is paying for the interest on that debt. Since Third Eye's bottom line was largely unaffected by COVID and its revenues and expenses have returned to pre-COVID levels, the increase in both personal and company debt do not appear to be attributable to supporting the company through COVID.
- [77] Mr. Saadati's December 2023 Financial Disclosure Statement identifies his monthly expenses as \$12,450 and his annual expenses as \$149,400. That does not include interest he is paying on his credit cards because, as he agreed in cross-examination, he is running that expense through the company. Depending on how his annual income is calculated, he is spending money at around 1.5 times his annual pre-tax income. In short, it is evident that Mr. Saadati is living well beyond his means and likely has been since separation (and before).
- [78] By contrast, Ms. Negarchi negotiated a consumer proposal to manage her credit card debt. When the family home sold in August 2021, she used her share of the proceeds to buy a modest townhome in East Vancouver, mortgage free, and pay off her consumer debt. She has been living off the remaining funds ever since.
- [79] Given these very divergent paths, and the fact that Mr. Saadati has used Third Eye as something of a bank account for the past several years, I find it would be significantly unfair to Ms. Negarchi to value Third Eye using its current financial position.
- [80] However, I am not persuaded it would be fair to value it at the date of separation either. Between 2018 and the sale of the family home in 2021, Third Eye produced the income needed to pay the substantial mortgage on the former family home and other household expenses such as utilities and maintenance. These costs were well in excess of \$100,000

annually. This was obviously beyond the financial reach of both parties and explains their accumulation of consumer debt. However, it also maintained the home as a family asset for the benefit of both parties and provided both with a place to live. Mr. Saadati paid that mortgage from what he earned from Third Eye.

- [81] Over those same years, Third Eye's deficit grew as did Mr. Saadati's shareholder loan to the company. By the fiscal year ending February 28, 2021, the company's balance sheet showed assets of \$50,016 and liabilities of \$280,062 (including \$213,918 due to shareholder). At the time, Mr. Saadati was making the mortgage payments of almost \$9,000 a month and likely using Third Eye as something of a bank account to manage that. Third Eye's growing deficit in these years is likely attributable in large part to these significant mortgage payments.
- [82] Ms. Negarchi argues it would be significantly unfair to value Third Eye at any date other than separation because after that it lost its value. She says she had no influence over how the company was run after separation and it would be significantly unfair to value it at a time when she would get nothing for all she had contributed to the business in its early years without compensation.
- [83] I do not agree that Ms. Negarchi gets no benefit for what she put into the company. The company provided the income to buy the family home and pay its mortgage. Thus, while Ms. Negarchi put unpaid work into Mr. Saadati's company, she received the benefit of the company being the major source of the family income that paid the mortgage and other costs to maintain the home, the proceeds of which are now equally divided.
- [84] Thus, in my view, fairness suggests that Third Eye should be valued as at February 28, 2021 which is around the time that Ms. Negarchi moved out and the parties separated their financial affairs, and it is the last fiscal year end for the company before the West 49th Avenue family home was sold.
- (d) Value of Third Eye Shares
- [85] Ms. Negarchi argues Third Eye should be valued by combining the shareholder loan with the retained earnings of the company. She points out this approach was used in *Zilic*.
- [86] The difficulty I have with this approach is the shareholder loan is owed to Mr. Saadati and is therefore a liability of the company that devalues it. It is not an asset that gives the company value. That is not to say that the shareholder loan is irrelevant to property division. Where a shareholder loan is money owed by the corporation to one of the spouses, it is a family asset and subject to division under the FLA: *Parvizi v. Taherzadeh*, 2023 BCSC 1412 at para. 72; *Stobo v Cohoon*, 2022 BCSC 817 at para. 41. Thus, the loan should be valued as family property. If the company has any value of its own, that is other family property.
- [87] In *Holsworth v. Holsworth*, 2006 BCSC 604, Justice Shaw held that shareholder loans should be valued based on the underlying value of the company itself:

- [129] it is the underlying value in the company itself that gives the shareholder's loan its value. While his provisional opinion sets the value at \$275,000, I have reduced this to \$200,000, taking into account the weaknesses in the parties' estimates of value of the underlying assets, and drawing my own conclusions, as best I can, in a rough and ready manner.
- [188] In *Parvizi v. Taherzadeh*, 2023 BCSC 1412, Justice Francis suggested that the value of a shareholder loan for property division should not exceed the value of the company's assets:
- [184] In a case in which a shareholder's loan exceeds the value of a company, for the purposes of property division, the court will assess the shareholder's loan at an amount equivalent to the value of the company's assets: *Holsworth v. Holsworth*, 2006 BCSC 604 at paras. 126, 129.
- [189] As of 2021, Mr. Saadati's shareholder loan to Third Eye totaled \$213,919. Third Eye had another \$65,000 in debts to others and only \$50,016 in assets. The company therefore had a negative value in 2021 and things only got worse after that. On the basis of *Holsworth* and *Parvizi*, I find that neither the company nor the shareholder loan had any value as family property in 2021 or today.

D. Family Debt

[90] Both parties had consumer debt at or around the time of separation as follows:

Ms. Negarchi

Account

Amount

Statement Date

CIBC Visa

\$17,956.52

April 2, 2018

MasterCard

\$2,497.58

May 4, 2018

TD Visa

\$9,673.22

June 13, 2018

TD overdraft

\$1,910.59

June 13, 2018

TD Line of Credit

\$10,325.66

June 13, 2018

\$42,363.57

Mr. Saadati

Account

Amount

Statement Date

Amex

\$26,416.09

June 27, 2018

TD Visa

\$7,246.83

June 22, 2018

BMO MasterCard

\$28,202.44

June 13, 2018

CIBC Visa

\$1,392.37

June 12, 2018

MBNA MasterCard

\$26,645.34

June 6, 2018

\$89,903.07

[91] Ms. Negarchi submits that each party should be responsible for their own debt. She argues that since Mr. Saadati uses his credit cards for both business and personal purchases and has not separated those for the benefit of the court or otherwise, it would be unfair to Ms. Negarchi to burden her with half of Mr. Saadati's debt.

- [92] Mr. Saadati argues it does not matter whether the debt was incurred for personal or business reasons because debts incurred for the benefit of the company amount to a family investment in a family asset.
- [93] I agree with Mr. Saadati. The business expenses charged to a personal credit card, unless specifically reimbursed by the company, would likely be recorded in the company's financial statements as money owed to the shareholder and thus reflected in any value attributed to the shareholder loan. Third Eye is a family business and Ms. Negarchi benefited from it during the relationship as the main source of income for the family. She will continue to benefit from it through Mr. Saadati's spousal support payments. I find that both parties' personal debts that accrued before separation are family debts which should be divided equally between the parties.
- [94] A case could be made to value the family debts as at 2021 when Ms. Negarchi moved out of the former family home. As I have said earlier, the evidence does not suggest the parties changed their semi-blended financial affairs until after Ms. Negarchi moved out in 2021. Mr. Saadati continued paying the full mortgage and utilities for the home after separation and given the cost of that in relation to his income, it is likely that he incurred more debt during this period. However, neither party has led evidence of where Mr. Saadati's debt stood as of February 2021.
- [95] Mr. Saadati argues he should not be liable for any of Ms. Negarchi's credit card debt because she dealt with it through a consumer proposal and did not have to pay for it. There is very little documentary evidence about the consumer proposal. It appears to have been made in June 2018 around the time of separation. The evidence does not say when it was accepted. Under the proposal, Ms. Negarchi paid \$215 a month to Sands and Associates starting June 11, 2018 with the last \$215 payment on March 1, 2022. These payments were made from her business account. The general ledger for her business shows one further payment to Sands on April 1, 2022 but this was for \$3,440 which is the equivalent of 16 monthly payments of \$215. Thus, she paid a total of \$13,330 to Sands in the equivalent of monthly installments. In cross-examination she said that after she received her share of the proceeds of the sale of the West 46th Avenue home she paid off her credit card debt which was then "close to \$17,000". I am not able to locate that payment in any of the bank statements or any evidence of what her credit card debt was reduced to by her consumer proposal. I do not know whether the \$17,000 was included what she paid to Sands or whether it was in addition to it. She did not explain this in her evidence and the point was not pursued further in cross-examination.
- [96] Doing what I can with the evidence, I infer that the "close to \$17,000" was in addition to what Ms. Negarchi paid to Sands. This suggests her overall credit card debt was reduced under the consumer proposal to around \$30,000. That reduces her overall debt by over \$12,000.

- [97] Arguably, it would be significantly unfair to Ms. Negarchi to give Mr. Saadati credit for half of the amount by which she was able to reduce her debt by what I infer to be \$12,000. The price she paid for that was an unfavourable credit rating. Mr. Saadati has not shared in that burden.
- [98] However, there is also some (though not significant) unfairness in Mr. Saadati paying the substantial mortgage and utilities costs for the family home after separation and until it was sold, particularly since he likely had to accumulate more debt to do so. In the end, and doing what I can with the evidence, I find that the portion of the family debt attributed to Ms. Negarchi should be reduced by \$12,000 to account for the consumer proposal. The reduced debt should then be equally apportioned.
- [99] Thus, I find Mr. Saadati's debt at 2018 stood at \$89,903 before he paid it off later that year and Ms. Negarchi's debt, after a deduction to account for the consumer proposal, stood at \$30,000 before she paid it off after the sale of the family home. These are both family debts for which the parties are equally responsible. The net setoff payment for the debt is \$29,952 owed to Mr. Saadati from Ms. Negarchi.

E. Summary of Property and Debt Division

[100] I summarize the net result of the division of property and debt as follows:

Item

Value

Negarchi

Saadati

Due to Negarchi

Due to Saadati

Property

Home

\$2,278,906

\$1,126,263

\$1,152,663

--

\$13,200

Coq. Condo

\$250,000

\$125,000

\$125,000

\$125,000

--

RRSP

\$31,578

\$17,000

\$17,000

\$17,000

--

S/h loan

\$0

\$0

\$0

--

--

Third Eye

\$0

\$0

\$0

--

--

Debt

Negarchi Debt

\$30,000

\$15,000

\$15,000

\$15,000

--

Saadati Debt

\$89,903

\$44,951

\$44.952

--

\$44,951

Total

\$157,000

\$58,151

Net

\$98,849

[101] The family property and debt will be divided as I have set out. There results in a net payment of \$98,849 to Ms. Negarchi.

V. Spousal Support

A. The Parties' Positions

[102] Ms. Negarchi seeks an order for spousal support payable as a lump sum, retroactive to 2020. She argues her entitlement is based on a needs and compensatory basis because she has very limited means to support herself and she has made unpaid contributions to the establishment and growth of Third Eye Martial Arts. She argues that spousal support should be paid as a lump sum because it is exceedingly difficult to discern Mr. Saadati's income because of how he mixes his business and personal expenses. She argues she should not have to go through the complicated process of trying to determine his income in the event of a review of spousal support or a material change in circumstance.

[103] Mr. Saadati argues that Ms. Negarchi has not suffered economic disadvantages from the marriage and thus is not entitled to compensatory spousal support. He argues her contributions to the business were minimal and overstated in her evidence. He argues she did not sacrifice her own career or take time away from it to further his career or Third Eye's business. He argues she is also not entitled to support on a needs basis because she and Mr. Saadati continue to share a similar lifestyle. He points out that Ms. Negarchi bought and renovated a townhome, mortgage free, with the proceeds from the sale of the former family home and says she has not given a credible explanation for how she spent the balance of those funds. Meanwhile, he claims he had to go further into debt to support Third Eye.

B. Legal Principles

[104] Entitlement to spousal support is to be determined in accordance with the objectives set out in s. 161 of the FLA or s. 15.2(6) of the Divorce Act. The two provisions largely mirror each other but Ms. Negarchi seeks relief under the FLA so I will focus on those provisions. Section 161 reads:

161. In determining entitlement to spousal support, the parties to an agreement or the court must consider the following objectives:

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

[105] There are three bases for entitlement to spousal support: contractual, compensatory, and non-compensatory: *Bracklow v. Bracklow* [1999] 1 S.C.R. 420 at para. 37. The latter two are in issue here.

[106] Entitlement to compensatory support is grounded in sacrifices made by one spouse during the relationship, usually to the benefit of the other spouse, that has impaired the sacrificing spouse's economic prospects. Justice Rowles explained the purpose of compensatory support as follows in *Chutter v. Chutter*, 2008 BCCA 507:

[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. 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. In *Moge v. Moge* [1992] 3 S.C.R. 813, 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".

[Underlining is Rowles J.A.'s. Citations omitted.]

[107] Non-compensatory support is aimed at narrowing the gap between the means and needs of the spouses on marital breakdown. It is grounded in a "social obligation model" in which marriage is seen as an interdependent union. It embraces the idea that upon dissolution of a marriage, the primary burden of meeting the needs of the disadvantaged spouse falls on his or her former partner, rather than the government: *Chutter* para. 54, *Bracklow* at para. 23. In a longer relationship, such as this one, the parties' standard of living during the relationship helps to inform a spouse's "needs" for support: *Chutter*, paras. 57-59. The objectives of relieving economic hardship from the breakdown of the marriage and promoting economic self-sufficiency should bear some relationship to this factor: *Hodgkinson v. Hodgkinson*, 2006 BCCA 158 at para. 69.

[108] Determining the amount and duration of spousal support is informed by the factors in s. 162 of the FLA (mirrored in s. 15.2(4) of the Divorce Act):

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.

[109] Courts must take guidance from the Spousal Support Advisory Guidelines ("SSAG"). In *Sebok v. Babits*, 2022 BCCA 2 at para. 24 the Court of Appeal confirmed that while courts are not necessarily bound by the SSAG, reference to them is "required as part of the process for quantifying support" and exceptional circumstance are required to justify a substantial departure from them. Reasons should be given for departing from the SSAG: *Sebok* paras. 25-26.

[110] The SSAG provide ranges - low, mid, and high - for spousal support. These are designed to allow for adjustments to the amount and duration of support to accommodate the specific circumstances of each case in light of the factors and objectives set out in the FLA, ss. 161 and 162 and the Divorce Act, ss. 15.2(4) and (6): SSAG, Chapter 9, p. 98. Factors such as a strong or weak compensatory claim, greater or lesser need, stronger or weaker ability to pay by the payor, the presence or absence of family property to provide support are among the factors that might guide a decision of where to place support within the range and what adjustments to amount or duration might be appropriate: SSAG, Chapter 9 pp. 98-101; Spousal Support Advisory Guidelines: The Revised User's Guide, 2016 pp. 45-48.

C. Entitlement to Spousal Support

- [111] I find that Ms. Negarchi is entitled to spousal support primarily on a non-compensatory basis. This was a relatively long relationship (18 years) which ended when Ms. Negarchi was 54. That is a difficult age at which to become self-sufficient. Mr. Saadati was 46 at the time of separation and has an active business which provides him with a salary. While the business is now carrying some significant debt, it has strong revenues and it appears the company's current financial position is largely attributed to Mr. Saadati using it to support an ambitious personal lifestyle.
- [112] I find there is economic hardship for Ms. Negarchi arising from the breakdown of the marriage. Her business rarely cleared more than \$10,000 a year after expenses. By contrast, Mr. Saadati regularly draws a salary from Third Eye and frequently draws money down from the shareholder loan, tax free, although he also puts money back in. Regardless, the company provides him with an income stream that is better than Ms. Negarchi's and covers some of his personal expenses such as his phone, his car, the interest on his credit cards, and a portion of his home mortgage and utilities. I will attempt to find some precision in the parties' respective incomes in a moment but for the purpose of determining whether there is entitlement to spousal support, I am satisfied that Third Eye provides an income for Mr. Saadati that is superior to what Ms. Negarchi receives through her business or what she is reasonably capable of earning with changes to her business model.
- [113] When the parties were together, Mr. Saadati's income covered the mortgage and major household expenses. These reached well over \$10,000 a month by the time of separation. Ms. Negarchi paid for groceries but according to the parties' Financial Disclosure Statements, this monthly cost was in the hundreds of dollars. Thus, while the parties theoretically maintained separate finances, they were not truly independent to one another as Ms. Negarchi was dependent on Mr. Saadati's superior income to cover the bulk of the expenses. To achieve some measure of equity in trying to maintain the standard of living the parties had during the relationship, non-compensatory support is required.
- [114] However, I am not persuaded that Ms. Negarchi has a strong claim for compensatory support. She contributed to the early development of Third Eye by assisting with collecting and organizing receipts, registering students, and planning and helping at special events

but I find she did not provide bookkeeping services (as her evidence seemed to imply at one point) and she agreed there were not many students at the time she was helping with enrollment. Her involvement diminished as she pursued her own business. Her contributions merit recognition but there is no evidence they impeded or disrupted her own career aspirations or that she took on a role in the marriage that had that effect. She stated in cross-examination that her dream was to work in a hair salon and she fulfilled that dream. She said she runs her own salon business because it is her job and her passion. She confirmed that she aspired to no other career path that she had to give up on.

- [115] That said, this was a long marriage that should generally result in a roughly equal standard of living between the parties after breakdown: Chutter, para. 53.
- [116] I am also not persuaded that Ms. Negarchi should receive spousal support dating back to 2020 as her need did not justify it until she moved out of the home in 2021. Up to that point, Ms. Negarchi's expenses were largely unchanged. She continued to pay for her own groceries and perhaps some for Mr. Saadati as well. However, Mr. Saadati continued to pay the mortgage on the home as well as the utilities and other maintenance costs. Essentially, the parties did not materially change their pre-separation financial arrangements until Ms. Negarchi moved out.
- [117] However, once Ms. Negarchi moved out and started paying rent and storage fees, the parties separated their expenses and I find that she became entitled to spousal support. As I discuss below, there is a significant disparity between Ms. Negarchi's income and Mr. Saadati's. While I conclude that some amount of income should be imputed to Ms. Negarchi (and to Mr. Saadati, although less than Ms. Negarchi argues) a significant gap exists between their incomes. Further, and contrary to Mr. Saadati's argument, I find that the capital that Ms. Negarchi has and will receive through the division of family property does not displace her entitlement to spousal support.
- [118] I reject Mr. Saadati's argument that Ms. Negarchi should not receive spousal support because she received significant capital from the sale of the former family home. The proceeds of the sale of the home were equally divided yet Mr. Saadati continues to have the superior income that he had throughout the marriage. Leaving Ms. Negarchi's entitlement only to what she received through property division would not constitute an equitable sharing of the economic consequences or hardship of the marriage and its breakdown.

D. The Parties' Incomes

- [119] Income for the purposes of SSAG is determined using the Federal Child Support Guidelines, ss. 15-20 (the "Guidelines"): SSAG, Chapter 6, p. 46. The steps for determining the parties' respective incomes was summarized in *Vincent v. Vincent*, 2012 BCCA 186 as follows:

- [35] All determinations of child support begin with finding the spouse's Line 150 income, a relatively straight-forward step one. The second step is to make whatever adjustments to that amount are required by Schedule III [to the Federal Child Support Guidelines]. Once these two steps are completed, the court must look to section 17 to 20, to determine whether any of the exceptions set down in those provisions applies, and, if so, what effect they should be given on the facts of the case.
- [120] There is nothing in Schedule III of the Guidelines that applies in this case but ss. 18 and 19 potentially do. Section 18 provides that where a spouse is a shareholder of a privately held corporation and the court determines the spouse's income as reflected in the tax return does not fairly reflect all the money available for support, the court may calculate the income with consideration of the some or all of the income of the corporation. The court may add back into the spouse's income items such as the pre-tax income of the corporation, wages paid to family members, personal expenses of the spouse paid by the corporation (often car or phone expenses), and unusual items such as home office expenses and unreported cash: *M.A.M. v. D.L.L.*, 2018 BCSC 2114 at para. 104.
- [121] Section 19 of the Guidelines permits the court to impute income to a spouse in a number of different circumstances, including where the spouse is intentionally under-employed, where it appears that a spouse has diverted income which would affect the level of support to be determined, where a spouse has failed to provide income information when under a legal obligation to do so, and where a spouse unreasonably deducts expenses from income. There must be an evidentiary basis upon which to attribute or impute income and the party seeking to impute the income bears the onus of establishing that evidentiary basis: *Hagman v. Yasmina*, 2024, BCSC 807 at para. 155; *MacCarthy v. MacCarthy*, 2015 BCCA 496 at para. 35.
- [122] Personal expenses paid by a business can be added back to a spouse's income under either ss. 18 or 19 of the Guidelines. Where a spouse has put in issue the business expense deductions of the other spouse made through a corporation, it falls to that other spouse to prove the reasonableness of the deduction: *M.T. v. J.S.* 2023 BCCA 64 at paras. 8-10; *C.M. v. V.M.*, 2016 BCSC 2144 at paras. 39-40.
1. Mr. Saadati's Income
- [123] Ms. Negarchi argues the court should impute income to Mr. Saadati by adding to his basic employment income 50% of the gross the rental income for the suite in the former family home and a portion of the Third's Eye's business expenses which ought to be attributed to Mr. Saadati personally. Specifically, she argues that 50% of Third Eye's advertising and promotion expenses, 50% of its automotive expenses, and 20% of the office and miscellaneous expense, utilities, and bank charges should be attributed to Mr. Saadati's own income.

- [124] It is very difficult to ascertain Mr. Saadati's true income. He has drawn a salary from Third Eye in varying amounts each year and has also drawn down from his shareholder loan to the company in some years and added to that loan with advances back to the company in other years. The draws from the shareholder loan are not income but provide some context for trying to understand patterns in his income. It also illustrates the challenge in determining what his true income is.
- [125] Mr. Saadati has not fully produced information relating to the income and expenses of Third Eye. He has produced two Excel spreadsheets which are in the nature of a general ledger for 2021 and 2022 but these contain only some basic information in broad categories. They were prepared by Mr. Saadati, not his bookkeeper or accountant, and they do not match the expense information in Third Eye's financial statements. Nor do they individualize transactions.
- [126] Mr. Saadati argues this is irrelevant because it is "explained by the accountant applying his skill as an accountant to properly tabulate expenses in congruence with applicable tax law". However, the accountant did not testify and I cannot make assumptions about what the accountant did or did not do or why. Moreover, certain deductions might be viewed as permissible under tax law but not for the purposes of determining income for child or spousal support: Guidelines, s. 19(1)(g); M.T. at para. 15. Mr. Saadati agreed in cross-examination that he cannot look at his own credit card statement and say with certainty whether expenses are business or personal (although he can identify some). For example, he was not able to say whether or to what extent his restaurant meals were expensed to the company.
- [127] Mr. Saadati argues it is unreasonable to expect him to produce every last receipt for Third Eye's expenses. He argues it is not the court's task to perform a forensic audit of the parties' expense: S.K.S. v A.A.S, 2023 BCSC 1777, at para. 45. While that is true, an assessment of the legitimacy and reasonableness of business expenses does not necessarily require scrutiny of every receipt. A review of the company's general ledger or expense account can provide sufficient information this regard. A general ledger, such as those provided by Ms. Negarchi (Exhibit 18, Tabs. 2 and 4), can provide much more detail on the specific expense items than what is shown in the very general categories of Third Eye's financial statements or even Mr. Saadati's spreadsheets. This is why Ms. Negarchi's counsel sought production of the ledgers. The court would likely have benefited from evidence from Mr. Saadati's accountant to better understand the expenses charged to the business and how the shareholder loan is used and why it fluctuates so much year over year.

- [128] Where information is lacking about a spouse's income or business expenses, it is open to the courts to make inferences based on the person's lifestyle and spending patterns: *Sullivan v. Struck*, 2015 BCCA 521 and *Motyka v. Motyka*, 2001 BCCA 18. Further, it is Mr. Saadati's burden to justify the reasonableness of expenses that are challenged and it is not Ms. Negarchi's responsibility to engage an expert to challenge them: *Wiebe v. Treissman*, 2017 BCSC 1523 at para. 94.
- [129] With those principles in mind, I consider the specific expenses challenged by Ms. Negarchi.
- (a) Advertising and Promotion
- [130] Ms. Negarchi argues that 50% of Third Eye's advertising and promotion expenses should be added back to Mr. Saadati's income. She argues that he has provided no evidence of what these expenses are. She points out that there is no category for meals and entertainment in Third Eye's financial statements and suggests the accountant probably included at least some of Mr. Saadati's meals out as a business expense under the category of advertising and promotion. She argues attributing 50% of the advertising and promotion expenses to Mr. Saadati's income is reasonable in the absence of specific evidence of the expenses.
- [131] Mr. Saadati argues the advertising and promotion includes costs of Google ads, social media presence, and having a promotional booth at community events like the Khatsahlano Festival in Vancouver. He produced no evidence of the costs of the community events. There is some evidence of the cost of Google advertising and social media. He identified a \$750 charge on a 2018 Visa statement as the monthly cost for Google ads. Other statements in the same year have the same entry in different monthly amounts: \$675 (June 1); \$750 (July 31), \$729 (Sep 28), and \$448 (October 28) for December 2018. I infer from this that Google Ads typically cost the business around \$700 a month which is close to \$9,000 annually. For Third Eye's fiscal year ending February 28, 2019 (to which these charges would have applied) the advertising cost was \$31,627. That leaves over \$20,000 in advertising and promotion unexplained for that year. A November 2, 2023 credit card statement shows a charge for Google ads of \$899. If that represents a monthly figure, the annual cost for Google ads in 2023 would be around \$10,800 which is very close to the \$10,360 in Third Eye's advertising expenses for the fiscal year ending February 28, 2023.
- [132] There was a significant drop in Third Eye's Advertising and Promotion after 2019 (fiscal year ending February 29, 2020). For the calendar years 2020, 2021, and 2022 the cost was about one third of the costs in previous years. The cost of Google ads and social media expenses as stated in the Excel spreadsheets come close to covering the amount in 2020 through 2022. There is no evidence to explain why the costs are so much higher in earlier years. In the absence of any evidence to explain those, I am left to infer that Mr. Saadati was expensing meals and other personal benefits to the company during those years. I would therefore add one half of that expense back to Mr. Saadati's income for each of those years but not for 2020-2022 when the advertising and promotion expenses seem to come close to the annual costs for Google ads.

(b) Automotive Expenses

- [133] Ms. Negarchi argues 50% of Third Eye's automotive expense should be added to Mr. Saadati's income. She points out that he drives a leased Tesla which is fully expensed through the company including the lease payments, maintenance, and insurance. Before he had the Tesla he expensed a Range Rover through the company. Mr. Saadati claims that he is only able to claim a maximum of \$800 per month for the lease expense for his Tesla due to restrictions in the Income Tax Regulations, s. 7307(3). However, I do not understand this cap applies to insurance and maintenance which he also expenses. He says he uses his car to go between Third Eye's two locations and to attend the community centre sessions from time to time. He also argues that the vast majority of Third Eye's automotive expenses are for the vans that transport kids in the after-school program from their school to the Third Eye studio.
- [134] Given the other vehicles used in the company, and particularly the vans for the after-school program, I find that attributing 50% of the automotive expense to Mr. Saadati overstates the personal benefit to him. Having regard to the cap on expensing lease payments and adding in some amount for insurance and maintenance, I estimate that around \$12,000 of the company's annual automotive costs are attributable to the Tesla. I accept that Mr. Saadati makes some business use of these cars but given that he lives in Lions Bay while the studios are on the west side of Vancouver, I find his major use of the car is likely going to and from work which is not a business use for the purposes of assessing income for support since it is not an expense that would be deducted from a salaried party's income: M.T., para. 15. I would add \$9,000 back to Mr. Saadati's income for this item which is 75% of my estimate for the Tesla expense paid by the company.
- [135] I will use the same amount dating back to 2021 since I expect the Range Rover had a similar cost plus the added expense of gas. Before 2021, Third Eye was also paying the lease and insurance costs for Mr. Negarchi's car. For the purposes of assessing spousal support, I will address that by not adding a vehicle expense to Mr. Saadati's income before that year as those benefits cancel each other out. However, Mr. Saadati took the car back in 2021 and Ms. Negarchi had to get her own car. I will therefore add \$9,000 per year back to Mr. Saadati's income for each year starting in 2021.

(c) Bank Charges

- [136] Ms. Negarchi argues that 20% of Third Eye's bank charges should be added back to Mr. Saadati's income because Third Eye pays all the interest charges on Mr. Saadati's credit cards which include both business and personal expenses. Mr. Saadati confirmed that Third Eye pays the interest although he did not know if his accountant expensed the whole amount to the company or only that which is attributable to business expenses on the credit card. In the absence of evidence from the accountant on this point, I infer that Third Eye pays the full amount but even if it does not, 20% is a reasonable amount to attribute to Mr. Saadati. If anything, it likely understates the personal benefit he receives given my

earlier findings that Mr. Saadati's personal lifestyle appears to be a bigger draw on this debt than the company is.

(d) Home Office

[137] Mr. Saadati claims 20% of his home mortgage cost and utilities as a business expense based on having a home office and a company storage space in his home. According to his Excel spreadsheet, the cost of this in 2021/2022 was \$12,650 and in 2022/2023 it was \$13,176. Ms. Negarchi argues the full amount should be added back into income.

[138] I agree that a substantial amount of this should be added back into Mr. Saadati's income. His evidence was that he and his new partner bought the Lions Bay home because it was less expensive than in North or West Vancouver. He did not say it was necessary to buy a house with an office or that he is unable to use space at one of the two studios for an office. In short, there is no evidence that he and his partner would have bought a smaller and less expensive house if Mr. Saadati did not need a home office. I accept the storage cost is legitimate as Mr. Saadati stores the snow tires for the company vans at his home during the spring and summer months. I accept it would otherwise be necessary to arrange for other storage for that. I would therefore add \$3,667 back to his 2021 income to account for the four months he was living in the Lions Bay home and \$11,000 per year thereafter.

(e) Office and Phone Expenses

[139] Ms. Negarchi argues that 20% of Third Eye's utility costs and of its office and miscellaneous costs should be added back to Mr. Saadati's income. Apart from the company paying for his cell phone, I am unclear on how these items give Mr. Saadati a personal benefit. According to his 2022 Excel spreadsheet, the company pays for three cell phones for a total cost of \$6,666 for the year. One of those is his. I would add \$1,000 back into his income which is half the amount for that one phone.

(f) Rental Income

[140] Finally, for the purposes of assessing income for spousal support I will not include the rental income for the West 46th Avenue family home that Mr. Saadati took in. I have found no entitlement to spousal support before Ms. Negarchi moved out and that additional income offset the mortgage that Mr. Saadati was paying. I have applied the rental income as a credit for Ms. Negarchi that offsets the mortgage payments made after she moved out. Since the home was sold Mr. Saadati has not collected further rental income.

(g) Summary

[141] I assess Mr. Saadati's income as follows:

Employment

Ad/Promo*

Auto*

Bank*

Home**

Phone**

Sub Total

Grossed up^

2017

\$36,750

\$13,758

--

\$1,589

\$1,000

\$43,097

\$58,735

2018

\$98,472

\$15,813

--

\$2,910

\$1,000

\$118,195

\$121,235

2019

\$102,000

\$12,561

--

\$1,985

\$1,000

\$117,546

\$127,745

2020

\$104,000

--

--

\$2,254

\$1,000

\$107,254

\$109,271

2021

\$70,000

--

\$9,000

\$3,093

\$3,667

\$1,000

\$86,760

\$93,693

2022

\$41,500

--

\$9,000

\$9,685

\$11,000

\$1,000

\$72,185

\$82,856

Average 2017-2022

\$98,922

Average last three years

\$95,273

*from Third Eye Financial Statements

**from Mr. Saadati's Excel spreadsheet

^expenses added back in are grossed up to account for tax

[142] The average of these six years is \$98,922. The average for the last three years is \$95,273. Section 17(1) allows the court to have regard to a person's income over the past three years to determine an amount of income that is fair and reasonable. Given the wide swings in Mr. Saadati's income, I find it is appropriate to do that in this case.

[143] Considering Mr. Saadati's pattern of income and his ability to draw some amount of his income from the shareholder loan, I find that \$100,000 best represents his annual income for support purposes.

2. Ms. Negarchi's Income

[144] Ms. Negarchi has never had a significant income despite owning her own business since 2012. There is no evidence of her income when she was working in the salon as an employee or for the first five years she was in business for herself. According to Ms. Negarchi's personal tax returns (the salon business is not incorporated), in 2017 through 2019 the business brought in gross revenues of \$85,368, \$85,005, and \$89,971 but only generated a net income of \$13,389, \$6,971, and \$9,840. The major expense was rent, which was \$49,239 in 2017 but dropped to \$43,591 in 2019 after she moved locations and \$41,979 in 2020. Utilities are also a significant cost at around \$6,500 in most years. In 2020 the business lost \$8,356, largely due to a fall in revenues from COVID. It would have lost money the following year as well were it not for \$20,000 in COVID assistance payments but that turned out to be the most profitable year at \$18,803. In 2022 the business made only \$394 on gross revenues of \$71,000. In 2023 it made \$1,582 on gross revenues of \$79,045.

[145] Mr. Saadati argues the court should impute an income of \$50,000 to Ms. Negarchi. He argues she is deliberately under-employed because she is pursuing a business that is her passion but is not economically viable. He argues she has the capacity to earn more and has done so in the past. He argues it is reasonable to expect that Ms. Negarchi, as a skilled hairdresser, could earn in the range of \$25 per hour as an employee in another salon. He has not led evidence of what hairdressers earn but suggest that \$25 per hour is reasonable considering minimum wage is \$17.40. He also suggests that Ms. Negarchi likely does not report all her cash income given that she sees multiple clients a day and rents out chairs.

- [146] Mr. Saadati further argues Ms. Negarchi could make more money going back to work as a care aid. She was making around \$40,000 a year when working at that job in the late 1990 and early 2000s. He suggests this is the equivalent of around \$70,000 today.
- [147] Ms. Negarchi argues that in light of her age and earning history, her income for ongoing spousal support purposes should be set at her 2023 income of \$3,893 plus 75% of the \$4,819 she claimed as a vehicle expense through her business. That brings her income (with gross-up) to \$7,507. She argues that retroactive spousal support dating back to 2020 should be awarded based on her actual income for each year plus 75% of her vehicle expense. Alternatively, she argues that if income is to be imputed to her, it should be no more than the best year of her business plus 75% of the vehicle expense which would total \$22,023 (her 2021 income). She argues there is no evidentiary basis on which to impute a higher income.
- [148] One of the objectives of spousal support is to promote the economic self-sufficiency of each spouse within a reasonable time, as far as that is practicable. However, contrary to Mr. Saadati's written submission (at para. 25), the Supreme Court of Canada has rejected characterizing this a "duty" on the part of a spouse: *Leskun*, para. 26. Rather, it is an objective of spousal support that is qualified by the words "in so far as practicable". It is to be weighed and considered in that context along with the other objectives of spousal support: *Leskun*, para. 27.
- [149] In deciding whether a person is under-employed, courts are to consider the capacity to earn income in light of the person's age, education, health, work history and work availability: *Marquez v. Zapiola*, 2013 BCCA 433 at para. 37-38. In my view, these factors help to inform the practicability of a spouse working towards self-sufficiency.
- [150] I agree with Mr. Saadati that it seems futile for Ms. Negarchi to continue working at her salon business. It barely turns a profit, exceeding \$10,000 a year in only two of its last seven years. In one of those years the business would have lost money were it not for COVID financial assistance programs.
- [151] As with Mr. Saadati's income, I have some hesitation accepting that Ms. Negarchi's financial records and tax returns accurately reflect her income. She testified that some of her customers pay by credit card or bank card and a portion of her bank charges is for the cost of renting the machine for that purpose. However, almost every deposit into her business account and entry for salon income on the business's ledger is a round number. (The only exception I found was an entry in the ledger for February 9, 2022.) If clients are paying by credit or debit card, one would expect to see some deposits, after GST is added, that are not round numbers. Further, the bank statement shows e-transfers from customers but I was not able to find Interac or credit card deposits. At the end of the day, I left with some unease in concluding that the evidence paints a full picture of Ms. Negarchi's business income given what seems to be a contradiction in her evidence about the use of credit and debit cards.

- [152] Ms. Negarchi describes herself as hairdresser with above-average skills who does good work. She says she has loyal clients who are happy to keep coming back to her. She also explained that she rents out chairs in the salon to other hairdressers who pay \$1,000 a month for a full-time rental and \$500 a month for part time. If Ms. Negarchi were to rent a chair in a salon rather than maintain her own salon business, she could make significantly more money than she is now.
- [153] For example, in 2023 her business had gross earnings of \$79,000. Of that, \$33,000 came from chair rentals (one full time and four part time) meaning that \$46,000 of her revenue came from her own work. Given that she has a loyal client base, I infer she could sustain the same kind of revenues by renting a chair in a salon to reduce her overhead, potentially to as low as \$1,000 a month. That would bring her profit up to around \$34,000 a year rather than the \$1,582 she earned in 2023. She may even earn more profit since she was not putting in full-time hours in 2023 and thus may be able to rent a chair at a part-time cost.
- [154] Ms. Negarchi's is now 60 years old and that will certainly be a factor in her ability to reinvent her business model. It is unfortunate that she did not look for ways to enhance her income sooner after separation. However, she has a skill and a client base and I struggle to accept her submission that her income-earning ability is limited to only, at most, \$22,000 a year.
- [155] Ms. Negarchi says she has had to reduce her work hours because of injuries she sustained to her neck and shoulder in a car accident in 2022. She said the injuries affected her ability to work but she continued doing so because she was likely to lose clients if she took a break. She says she applied to ICBC for wage loss benefits but they were not approved. Since the accident she has not worked full time but she attributes this mainly to arthritis in her right side, unrelated to the accident. She has not tendered any medical records relating to her injury or arthritis. While medical evidence is not essential to support a claim that a spouse's ability to work is diminished, it is "highly desirable": *Leskun v. Leskun*, 2006 SCC 25 at para. 28. In the absence of any medical evidence, I give this factor only limited weight.
- [156] Considering all these factors, I find that income should be imputed to Ms. Negarchi. Starting at separation (June 15, 2018), it is reasonable to expect Ms. Negarchi to have begun looking for ways to make her business model more cost effective or at least to increase her own income using the skills and client base she has. An immediate change to her business upon separation could not be reasonably expected. It would take a few years to make a change to a more profitable model, particularly with the intervention of the pandemic. Moreover, there is no evidence that Mr. Saadati urged Ms. Negarchi during the relationship to look at more viable business or employment options and it would be unfair too impute income to her immediately on separation: *Hagman*, para. 175. However, I find that by 2022 it is reasonable to impute a higher income to her.

[157] I do not accept Mr. Saadati's argument that it is reasonable to expect Ms. Negarchi might return to work as a caregiver. That requires certain qualifications and certifications she does not have. The time she spent doing this when she first came to Canada was an informal arrangement with a family and I am not persuaded that kind of arrangement is reasonably possible now or that Ms. Negarchi has the same physical capacity at 60 that she had 25 years ago to work 10-or 12-hour days looking after an elderly client.

[158] However, Ms. Negarchi's evidence about what she charges independent hairdressers to rent a chair in her salon is evidence that provides some indication of what is reasonably possible for Ms. Negarchi to reshape her own business to take better economic advantage of the skills she has. Considering her age, experience and skills, I find an imputed income of \$30,000 starting in 2022 reasonably captures Ms. Negarchi's ability to earn.

E. Amount and Duration of Spousal Support

[159] Based on the imputed incomes of \$100,000 for Mr. Saadati and \$30,000 for Ms. Negarchi, the SSAG suggest monthly spousal support at \$1,575 at the low end, \$1,838 at the mid-range, and \$2,110 at the high end. Considering the history of the relationship, Ms. Negarchi's age, skill set, and opportunities, her need for support and means of earning money are higher whereas her claim for compensatory is relatively low. I find support near the mid-range is appropriate and I would order monthly spousal support in the amount of \$1,800 commencing January 1, 2025. Given Ms. Negarchi's age and the length of the marriage, spousal support will be indefinite.

[160] For retroactive support, I find that spousal support should begin in February 2021 when Ms. Negarchi moved out of the former family home and the parties separated their financial obligations. As I would not impute the \$30,000 annual income to Ms. Negarchi for that year, I will use her income as I have found it for that year adding back in the business expense for her car. (I make no deduction for that as I heard no evidence of any business use of the car.) I would still use the \$100,000 income for Mr. Saadati as that is reflected in the three-year average at 2021. At the mid range that generates monthly support for 2021 at \$2,013 which I round to \$2,000 for a total of \$22,000 for February to December 2021. Thereafter I use the \$1,800 per month support based on the imputed incomes of \$100,000 and \$30,000 for a total of \$64,800 for January 2022 to December 2024.

[161] I will therefore order that to Mr. Saadati pay Ms. Negarchi \$1,800 per month in spousal support commencing January 1, 2025 and \$86,800 in retroactive support dating back to February 1, 2021 plus interest under the Court Order Interest Act.

[162] I do not consider this to be an appropriate case for lump sum spousal support payment as sought by Ms. Negarchi. I am not persuaded that she would have difficulty collecting monthly payments from Mr. Saadati and Ms. Negarchi has no immediate need for capital given that she owns her home outright and will receive a payment for retroactive support. There is a problem with Mr. Saadati's financial disclosure, particularly with respect to the

general ledgers for Third Eye, but it is not as egregious as *Hamouth v. Hamouth*, 2022 BCSC 1798 on which Ms. Negarchi relies. As for the other cases Ms. Negarchi relies on, there were other factors at play that led the court in *N.K. v. M.H.*, 2020 BCCA 121 to award a lump sum and in *Fornwald v. Fornwald*, 2023 BCSC 1322 the court capped spousal support at 5 years due to a reapportionment of family property and this was a contributing factor, along with disclosure issues, that supported the lump sum.

[163] While support in this case is indefinite, that does not necessarily mean it is "permanent": *Parton v. Parton*, 2018 BCCA 273 at para. 44. Third Eye appears to have strong revenues but it also has some significant debt. A future material change in circumstances is possible and I would not rule out the possibility of an application to vary support at some point in the future. It will be for Mr. Saadati to persuade the court of a material change, should one arise, and he can expect that the financial affairs of the company will be carefully scrutinized. Full disclosure of financial statements and expenses will be required. However, a lump sum award based on Ms. Negarchi's life expectancy, as she seeks, would effectively foreclose future applications.

[164] I also find that a lump sum award would be an unfair burden to place on Mr. Saadati. As Ms. Negarchi acknowledges, that order would compel him to sell his home. While that may well be inevitable given his other debts, I am not persuaded that ordering spousal support in a lump sum should be the straw that breaks that camel's back, particularly since he has a new partner and young daughter. As the court stated in *Bracklow* at para. 32:

It is critical to recognize and encourage the self-sufficiency and independence of each spouse. It is equally vital to recognize that divorced people may move on to other relationships and acquire new obligations which they may not be able to meet if they are obliged to maintain full financial burdens from previous relationships.

[165] For these reasons I decline to award spousal support as a lump sum.

VI. Conclusion

[166] In summary, I order:

- a) The parties are divorced, with the divorce to take effect 31 days from the date of this order;
- b) The family property be divided as set out in the table at para. 100 of these reasons;
- c) The parties' debt at separation is family debt to be divided equally as set out in the table at para.100 of these reasons; and
- d) Mr. Saadati is to pay Ms. Negarchi \$1,800 per month in spousal support commencing January 1, 2025 and \$86,800 in retroactive support dating back to February 1, 2021 plus interest under the Court Order Interest Act.

[167] The parties may address the issue of costs by written submissions of not more than five pages each, double spaced. Counsel should agree on a schedule to exchange submissions but they should be submitted to Supreme Court Scheduling by no later than January 30, 2025.

"Kirchner J."

[1] His 2019 and 2020 income was comparable to his 2018 income excluding the capital gain. In 2018 he was assessed \$68,537 in income tax. In 2019 and 2020 he was assessed \$24,330 and \$25,339 respectively.

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Prepared on 29 October 2026 · Esheria