

CANADA / JUDGMENT

Oleszko v. Forde

2025 BCSC 350

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Supreme Court of British Columbia

DECIDED

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2025 BCSC 350 Oleszko v. Forde

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Oleszko v. Forde,

2025 BCSC 350

Date: 20250228

Docket: E201116

Registry: Vancouver

Between:

Julie Ann Oleszko also known as Julie Oleszko

Claimant

And

Roger Henderson Forde also known as Roger Forde

Respondent

Before: The Honourable Justice E. McDonald

Reasons for Judgment

The Claimant, appearing in person:

J.A. Oleszko

The Respondent, appearing in person:

R.H. Forde

Place and Dates of Trial:

Vancouver, B.C.

April 22-26, 29-30,

May 1, June 13-14 and 27, 2024

Place and Date of Judgment:

Vancouver, B.C.

February 28, 2025

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Introduction

- [1] This family law proceeding arises from the breakdown of the parties' 20-year marriage. Julie Ann Oleszko ("the wife") was primarily a stay-at-home spouse during the relationship with Roger Henderson Forde ("the husband") who worked outside the home in telecommunications and then as a chief executive officer of various corporations. At the time of trial, the wife was 66 years old and the husband was 61 years old.
- [2] The main issues at trial are family property and debt, claims for excluded property and a family law agreement, and the wife's claim for spousal support. The wife claims that there is an agreement respecting certain debt that the husband would be solely responsible for and she seeks unequal division of family property and debt in her favour. The husband denies there is a family law agreement respecting debt and he also seeks unequal division of family property and family debt in his favour.
- [3] Neither party was represented by counsel at trial but the parties had counsel when they filed their pleadings in this proceeding. The parties were the only witnesses at the trial.

Background

- [4] The parties married on September 3, 1999 and prior to their marriage, they lived together. The wife says that the cohabitation began in late January 1999, when the husband moved into her home. The husband says he moved into the wife's home in February or March of 1998.

- [5] At the time the parties first met, they were both employed. The wife was a project manager responsible for a technology implementation project at a local health authority. The husband worked in software technology as a contractor and then as an employee at a telecom company, before eventually starting his own businesses. Both parties have some post-secondary education.
- [6] During the relationship, the husband incorporated a number of companies and worked as the chief executive officer. The corporations were involved in a variety of businesses such as bitcoin and telecom. He earned approximately \$200,000 per year from his work as an executive officer. The wife ceased working around the time the parties got married and for a while, she performed administrative work for the husband's businesses.
- [7] During the relationship, the parties lived a comfortable, sometimes luxurious, lifestyle that included, among other things, international vacations, living in a large home and driving many brand-new, high-end vehicles.
- [8] The husband described himself as someone with a passion for high-end vehicles. He had a practice of purchasing a BMW vehicle almost every year and sometimes, he travelled alone, or with the wife, to pick up his new vehicle in Europe. The husband agreed in his testimony that during the relationship, he expended very significant sums of money on vehicles.
- [9] Both parties agree that their jointly owned home at XX Ioco Road, Port Moody, BC (the "Family Home"), should be sold and the net proceeds divided. However, the parties disagree as to division of the sale proceeds and who should control the listing and sale process.
- [10] The parties disagree on the date of separation. The wife testified that the date of separation was November 22, 2019 while the husband testified they separated on July 29, 2019. After the parties separated, they continued to live at the same address but in different areas of the Family Home. Following an incident of alleged family violence in April 2020, the husband was unable to return to the Family Home and from that time onwards, the parties resided at separate locations.

Position of the Parties

- [11] In the Notice of Family Claim (the "Claim") and at trial, The wife sought spousal support and orders related to family property and family debt as follows:
- a) unequal division of family property pursuant to s. 95(2) and (3) of the Family Law Act [FLA] on a 90/10 basis in favour of The wife;
 - b) an interest in any and all property held by the husband, including but not limited to corporations, partnerships, bank accounts, motor vehicles and personal chattels; and
 - c) an order for compensation instead of an interest in property to adjust the division of assets on the grounds that the husband has disposed of assets and he has made no contribution to the cost of maintaining the family home since separation;

- d) determination of family property and family debt, pursuant to s. 81, 84 and 86 of the FLA;
 - e) determination of excluded property pursuant to s. 84 of the FLA;
 - f) determination of the value of family property and family debt pursuant to s. 85 of the FLA.
- [12] In the husband's counterclaim and at trial, he sought very similar relief, with the exception of spousal support, to that sought by the wife including the following:
- a) unequal division of family property and family debt on a 60/40 basis in his favour;
 - b) alternatively, for equal division of family property and debt;
 - c) an interest in any and all property held by the wife including, but not limited to, corporations, specifically, Calyx Ventures Inc., 0722633 B.C. Ltd., RogerForde Systems Group Inc. and Sequential Telecom Inc., bank accounts, RRSPs, pensions and chattels; and
 - d) for compensation instead of an interest in property to compensate him on the grounds that the wife has disposed of or dissipated family assets.

Credibility

- [13] In these proceedings, credibility impacts the determination of the issues of family property and debt and the role that each party played in the acquisition and maintenance of family property.
- [14] The well-known principles applicable to assessing credibility are set out in the often quoted case law *Faryna v. Chorny* (1951), [1952] 2 D.L.R. 354 at 357 [Faryna].
- [15] In *Bradshaw v. Stenner*, 2010 BCSC 1398 at para. 186 [Bradshaw], Justice Dillon describes the process for assessing credibility as an art based on a number of factors that are described in that authority.
- [16] In reaching my findings on the evidence, I have taken the principles set out in these authorities into account when assessing credibility.

Family Law Agreements

- [17] The wife alleges there are a number of valid and enforceable family law agreements between the parties that effectively provide for unequal division of family property and debt. The husband denies that any such agreements exist. In the event the court finds there is a family law agreement in place, he submits it should be set aside as significantly unfair.
- [18] Family law agreements, like all other contracts, must meet basic legal requirements. In *Oswald v. Start Up SRL*, 2021 BCCA 352, at para. 34, which is cited in family law cases, such as *Voitchovsky v. Gibson*, 2022 BCCA 428, the basic requirements of contract law principles are described in the following way:
- a) There must be an intention to contract;

- b) The essential terms of the agreement must be agreed to by the parties;
- c) The terms of the agreement must be sufficiently clear;
- d) Whether the requirements of a binding contract are met must be determined from the perspective of an objective reasonable bystander, not the subjective intention of the parties; and
- e) The determination is contextual and must account for all material facts including the communications between the parties and conduct of the parties before and after the agreement is made.

[19] I will now address each family law agreement asserted by the claimant.

1. The Family Home Agreement

- [20] Nearly a decade into the relationship, the wife alleges the parties entered into an agreement that the husband would take sole responsibility for repaying certain debt. According to the wife, in exchange for her contributing equity from a house that she fully owned, the husband agreed to be solely responsible to repay any money the parties borrowed to acquire a new home (the "Family Home Agreement"). The husband denies there was such an agreement.
- [21] For many years prior to the relationship, the wife owned a home at 4246 Parkwood Crescent in Burnaby, BC ("Parkwood"). In April 1999, shortly after the husband had moved in, the wife paid off the Parkwood mortgage. For most of the time that the parties lived in Parkwood, the wife held title in her name only.
- [22] In 2006, the parties began looking to purchase a new home together. Even though the wife was concerned about purchasing another home because Parkwood was paid for and she did not earn an income, the wife described understanding the husband's desire to live in a house that he also owned. Because she trusted the husband to be solely responsible to repay monies borrowed to buy a new home, the wife agreed to start financial arrangements to buy a new home together.
- [23] In July 2007, the wife was granted a \$472,000 mortgage against Parkwood (the "2007 Parkwood Mortgage") to free up equity to use for the purchase of the Family Home. The wife was listed as the borrower and the husband as the guarantor. The wife also produced documents confirming that the proceeds from the 2007 Parkwood Mortgage were invested in two GICs and the funds in the GICs were ultimately used in October 2007 to purchase the Family Home for \$1,039,000.
- [24] The wife provided a January 8, 2008 email between the parties and their accountant showing that the parties considered different plans to fund the purchase of the Family Home. The wife submits that the email shows the parties recognized that her contribution would come from her equity in Parkwood. While the parties did not implement the plans discussed in the email, which involved the husband paying the wife \$700,000 for her equity in Parkwood,

the wife submits that it supports her evidence that the parties always understood that Parkwood was her property and the Family Home Agreement reflects that.

- [25] Sometime in 2008, the wife added the husband to the title of Parkwood. In describing her decision to add the husband on title, the wife testified that this was part of their agreement to buy the Family Home. More specifically, the wife said it was due to the husband's agreement to take full responsibility for any loans obtained to acquire the Family Home.
- [26] The purchase of the Family Home was completed on January 28, 2008. To complete the purchase, the parties obtained an RBC mortgage for \$600,000 and a credit line for \$50,000. Both were secured against the Family Home.
- [27] The wife testified that after purchasing the Family Home, the husband wanted to renovate the Family Home and she agreed. The wife testified that the husband suggested that they continue living at Parkwood until the renovations were completed and she agreed. The wife also testified that the husband told her that he could afford to cover the mortgage on Parkwood and the Family Home while they waited to complete the renovations.
- [28] In September 2009, Parkwood was sold for \$670,000. The balance of the sale proceeds, along with the equity that had already been released from Parkwood, were applied towards the balance owing on the Family Home.
- [29] The wife agrees that after the purchase of the Family Home, the husband transferred the funds necessary to cover the payments for the loans secured against the Family Home. However, the wife submits that the husband's payments resulted in no pay down of the principal owing on the loans to acquire the Family Home. Given that the balance of the loans remain \$650,000 at the date of trial, I find that the payments made by the husband over the years did not decrease by much, if any, the principal owing on the loans.
- [30] The husband testified that the parties agreed that they would contribute equally to financial obligations, including the secured debt, but that did not happen because the wife stopped working. However, I do not accept the husband's evidence about this since the wife ceased working many years before the parties discussed and began taking steps in 2007 towards purchasing the Family Home.
- [31] The husband also testified that he ended up financing the parties' lifestyle and this worked well as long as the money was flowing from his businesses. He expressed frustration that the wife refused to allow him to borrow additional funds against the Family Home, testifying that this ultimately hurt his ability to invest in and operate his businesses.
- [32] For the wife to establish that the parties entered into the Family Home Agreement, she must demonstrate that the parties reached an agreement on all matters vital to the agreement: *Ostro v. Kotyk*, 2020 BCSC 1975 at para. 36.

- [33] Based on a consideration of all of the evidence, the wife has demonstrated that in July 2007, the parties intended to, and did in fact, reach an agreement to facilitate the purchase of a Family Home. The wife had to be convinced, and she was convinced, to give up living in Parkwood and to contribute her equity in Parkwood towards the purchase of another home. The husband wished to, and did in fact, contribute his income towards the acquisition of the Family Home by making the loan payments. Each party knew the other party's objectives and they entered into the Family Home Agreement on that basis.
- [34] I find that the terms of the Family Home Agreement are sufficiently clear. The terms are that in exchange for the wife contributing her equity in Parkwood, which the evidence indicates the parties treated as belonging solely to the wife, the husband agreed to take sole responsibility for repaying any funds borrowed to acquire the Family Home.
- [35] The husband agreed to the Family Home Agreement because of his desire to move and jointly own a home with the wife. The husband was not added to the title of Parkwood until after the Family Home Agreement was reached. The evidence establishes that the husband had no equity to invest in a new home. However, unlike the wife, he was earning an income. In light of those facts, it is not surprising the husband would enter the New Home Agreement with the wife.
- [36] The evidence indicates that both parties signed the relevant RBC loan documents as borrowers and/or guarantors. However, that does not mean the parties failed to reach an agreement with each other respecting who would repay the secured debt.
- [37] I find that the parties reached an agreement on the essential terms of the Family Home Agreement. The terms were that the wife would contribute her equity in Parkwood towards the cost of the Family Home and the husband would contribute by taking sole responsibility for the amounts borrowed to acquire the Family Home in 2008.
- [38] There is ample evidence to show that the parties' conduct before and after the Family Home Agreement was consistent with those terms having been agreed to. For example, until separation, the husband forwarded the wife funds to pay the monthly secured debt payments and the wife refused to increase the amount of the borrowing secured against the Family Home because, the parties had agreed that the husband's obligation was to cover the funds borrowed to acquire the Family Home in 2008.
- [39] When I consider the matter from the perspective of an objective reasonable bystander, I find the circumstances demonstrate that the requirements of a binding contract are met respecting the Family Home Agreement. As well, when all of the evidence is considered, such as the parties' communications as they considered their plans and their conduct before and after the Family Home Agreement, I find that in July 2007, the parties agreed the wife would contribute her equity in Parkwood towards the 2008 purchase of the Family Home. In exchange, the husband agreed he would be solely responsible to repay funds borrowed to acquire the Family Home.

- [40] Pursuant to the terms of the Family Home Agreement, the equity the wife ended up contributing from Parkwood was \$670,000 and the amount of the secured debt to acquire the Family Home was \$650,000. As of Nov. 30, 2019, which is the date closest to the date of separation for which information was available, the outstanding balance on the mortgage and line of credit secured against the Family Home was \$646,872.
- [41] Having found that the wife has established that the parties reached a valid family law agreement, I must also consider the husband's submission that any such agreement should be set aside.
- [42] Section 93(5) of the FLA provides that an agreement may be set aside for significant unfairness as follows:
- (5) Despite subsection (3), the Supreme Court may set aside or replace with an order made under this Part all or part of an agreement if satisfied that none of the circumstances described in that subsection existed when the parties entered into the agreement but that the agreement is significantly unfair on consideration of the following:
- (a) the length of time that has passed since the agreement was made;
- (b) the intention of the spouses, in making the agreement, to achieve certainty;
- (c) the degree to which the spouses relied on the terms of the agreement.
- [43] In my view, the length of the marriage does potentially militate in favour of setting the Family Home Agreement aside. However, I also find that the parties entered the Family Home Agreement nearly half-way into their relationship, which reduces the militating effect of this factor.
- [44] I have also already found that the parties entered into the Family Home Agreement with the intention of achieving certainty. More specifically, they wanted certainty about: what each of them would contribute to the purchase of the Family Home and how new debt to acquire the Family Home would be paid for.
- [45] Both parties testified about the scope and cost of renovating the Family Home being more than initially anticipated. The husband testified that the cost of renovating the Family Home was approximately \$350,000 to \$400,000. The husband testified that he funded the Family Home renovations using his income and litigation settlement monies.
- [46] In my view, when I consider the factors under s. 93(5) of the FLA, along with all of the evidence, I am unable to conclude that the Family Home Agreement should be set aside as significantly unfair. While there is some unfairness to the husband associated with his having largely funded the renovation costs for the Family Home, I do not find that those facts, together with all of the other circumstances, rise to the level of significant unfairness sufficient to justify setting aside the Family Home Agreement.

2. Agreement respecting unsecured line of credit

- [47] The wife also alleges that the parties entered into an agreement respecting a \$50,000 unsecured line of credit debt she incurred to purchase a vehicle for the husband (the "Unsecured LOC Agreement"). The husband denies the existence of the Unsecured LOC Agreement.
- [48] The wife alleges that under the Unsecured LOC Agreement, she agreed to obtain and draw down the unsecured line of credit so the husband could purchase a vehicle. The wife said the bank would not extend credit to the husband. In exchange for obtaining the loan, the husband allegedly agreed he would be solely responsible to repay the \$50,000 line of credit. Despite the husband long ago disposing of the vehicle that was initially purchased using the borrowed funds, the unsecured line of credit debt has never been repaid and it remains outstanding.
- [49] In my view, the wife has not established the basic legal requirements to demonstrate the existence of the Unsecured LOC Agreement. Namely, I do not find sufficient evidence to show an intention to reach an agreement between the parties. I also do not find that the essential terms were agreed to or that the terms are sufficiently clear. The parties' conduct before and after the \$50,000 line of credit was obtained also does not indicate that there was an agreement reached between them.
- [50] In conclusion, I do not find that there is a valid and enforceable Unsecured LOC Agreement.

3. Agreement respecting Mercedes Benz Vehicle

- [51] The wife further alleges that the parties entered an agreement respecting financing arranged with Mercedes Benz for the wife to purchase a 2018 C43 Mercedes Benz vehicle for \$90,000 (the "Vehicle Loan Agreement").
- [52] The wife alleges the husband insisted that she obtain the 2018 C43 Mercedes Benz and he promised that he would repay the financing. The wife submits that contrary to the Vehicle Loan Agreement, the husband did not repay the loan to Mercedes Benz and she continues to make the monthly payments. The husband denies the existence of the Vehicle Loan Agreement.
- [53] In my view, the wife has not established the basic legal requirements to demonstrate the existence of the Vehicle Loan Agreement. There is insufficient evidence to show the parties' intention to reach such agreement and to show that the essential terms were agreed to or that the alleged terms are sufficiently clear.
- [54] In conclusion, I do not find that there is a valid and enforceable Vehicle Loan Agreement.

Division of Family Property and Debt

Legislative Framework

- [55] In *Lang v. Wang*, 2023 BCSC 1017, Justice Harvey succinctly summarizes the statutory provisions that apply to dividing family property and debt:
- [148] The division of property in matrimonial actions is governed by the FLA.
- [149] Upon separation, each spouse is entitled to a presumptive one-half interest in all family property as a tenant in common and is equally responsible for family debt: FLA, s. 81.
- [150] Family property includes all real and personal property a spouse owns or has a beneficial interest in at the date of separation, as well as property derived from family property: FLA, s. 84(1).
- [151] Property acquired before the commencement of the relationship or derived from property owned prior to the commencement of the relationship by one or the other of the spouses is excluded property: FLA, s. 85. The spouse claiming an exclusion bears the onus to satisfy the requirements of s. 85.
- [152] Where circumstances warrant it, as is suggested here by the respondent, the Court may order an unequal division of family property if it would be significantly unfair to divide family property equally: FLA, s. 95(1).
- [153] Significant unfairness requires something objectively unjust, unreasonable, or unfair in some important or substantial sense having regard to the enumerated factors set out in s.95(2): see: *Jaszczewska v. Kostanski*, 2016 BCCA 286.
- [157] Section 85 of the FLA excludes certain property from the definition of family property. The relevant portions of s. 85 read as follows:
- 85 (1) The following is excluded from family property:
- (a) property acquired by a spouse before the relationship between the spouses began;
 - (b) inheritances to a spouse;
 - (b.1) gifts to a spouse from a third party;
 - (g) property derived from property or the disposition of property referred to in any of paragraphs (a) to (f).
- (2) A spouse claiming that property is excluded property is responsible for demonstrating that the property is excluded property.
- [159] Property that is excluded from family property includes property acquired before the relationship began, inheritances, gifts from third parties, and property derived from excluded property: FLA, s. 85(1) The accretion in value of excluded property during the marriage is considered family property: FLA, s. 84(2)(g).

[160] The onus rests upon the spouse asserting an exclusion to establish, on a balance of probabilities, the basis for and extent of the exclusion, based on "clear and cogent evidence": *Shih v. Shih*, 2017 BCCA 37 at paras. 42-43.

[161] Importantly, as will be seen here, the trier of fact is permitted to draw reasonable inferences from evidence that is less than certain or precise in order to do justice between the parties: *Shih* at para. 44.

Excluded Property

[56] While the wife alleges that the parties entered into the Family Home Agreement and that it ought to be enforced, she also asserts an excluded property claim pursuant to s. 85 of the FLA respecting her ownership of Parkwood.

[57] For the reasons explained, I have found that the Family Home Agreement expressed, among other things, the parties' agreement about the wife's equity in Parkwood and her contribution of that equity to the Family Home. I have already determined that the Family Home Agreement is a valid and enforceable contract and that it should not be set aside.

[58] In my view, the wife is not entitled to assert an excluded property claim respecting Parkwood in addition to the terms of the Family Home Agreement. The Family Home Agreement fully provides for the wife's interest in Parkwood.

What is Family Property?

i. Real Property

[59] The main item of family property is the Family Home that the parties jointly purchased in early 2008 for \$1,039,000. Neither party has tendered appraisal evidence to show the value of the Family Home as of the date of trial.

[60] The husband testified that similar homes in the parties' neighbourhood are listed for sale or they have sold for prices in excess of \$2.4M. However, in both parties' most recent financial statements, they list the value of the Family Home as \$2.388M. That value is apparently based on the 2024 BC Assessment value of the Family Home for property tax purposes.

i. Chattels

[61] The wife currently owns the 2018 C43 Mercedes Benz (the "C43 Mercedes"). At the time of the purchase of the C43, the wife also owned a 2004 Mercedes SLK (the "SLK Mercedes") that she had purchased in 2006. In 2020, the wife sold the SLK for \$14,000 and she reported that disposition on her financial statement.

[62] The wife testified that she currently owes \$20,000 on the loan for the C43. There is no expert evidence concerning its value, but in her recent financial statement, the wife indicates the C43 has a value of \$32,186. The husband does not dispute that value in his submissions or with his own evidence.

- [63] The husband testified that he does not presently own a vehicle. At separation, he owned a 2018 BMW X5M that he purchased in March 2018 for nearly \$139,000. He also owned a 2016 BMW i8 purchased in March 2017 for more than \$157,000, less a \$20,000 down payment. The husband stated that both of these vehicles were repossessed after separation and that he owes money for the BMW vehicles.
- [64] Documentation shows that the 2018 BMW X5M and 2016 BMW i8 were acquired using financing. The husband provided no documentation to verify that the BMW vehicles were repossessed or to show amounts owing. In his most recent financial statement, the husband discloses the post-separation disposition of the BMW vehicles for zero proceeds.
- [65] The husband was cross-examined at length about his acquisition and sale of many high-end vehicles and motorcycles during the relationship. For example, in the year prior to the parties' separation, the husband agreed that he wrote cheques for vehicles totalling more than \$300,000.
- [66] When the husband was asked about details of the vehicle transactions, he would baldly answer that he had provided his bank statements or that he had explained where the funds came from or went. In his cross-examination, when asked about where he got the funds to purchase vehicles or where the sale proceeds went, he said his friend gave him the money or the proceeds went in and out of the corporate accounts because the vehicles were recorded in the corporations.
- [67] The husband did not refer to a specific statement, or a specific transaction on the statements, that showed vehicle sales or purchases. He did not refer to which corporate record, if any, verified corporate investments in vehicles.
- [68] In my view, given the very large sums of money expended by the husband on vehicles, there is a troubling lack of documentation to explain where the funds came from, or went, when acquiring/disposing of the nearly 30 high-end vehicles that the husband admits having an interest in during the relationship. In my view, the inadequacy of the husband's financial disclosure concerning the vehicles presents a serious impediment to the claimant's ability to establish her claim and to the court's ability to identify family property and whether family property has been disposed of or dissipated.
- [69] I found the husband's evidence about the details of the financial transactions involving the vehicles to be vague and deliberately evasive. I find his evidence was intended to obscure the facts and to thwart the wife's efforts to identify the details of family assets, including whether he still owns or has disposed of assets.
- [70] For the vehicles, despite the deficiencies in the evidence, I find the vehicles that were family property at the time of separation consist of the wife's C43 Mercedes with a value of \$90,000; her SLK Mercedes with a value of \$14,000 and the husband's BMW X5M with a value of \$138,791 and the BMW i8 with a value of \$157,147. The total value of the vehicles at the time of separation was \$399,938.

- [71] The parties also held personal assets such as jewelry, watches, liquor, office equipment and household furnishings acquired during the relationship and at the date of separation.
- [72] The wife testified that the only piece of equipment that she sold from the Family Home after separation was a microwave for \$2,300. She listed that disposition of property on her financial statement. I believe the wife's evidence that this is the only item from the Family Home that she sold following separation.
- [73] Based on an overall view of the documents and financial records she prepared and tendered at trial, I find that the wife was meticulous in disclosing the details of the property disposed of and that she held at separation. I find that the husband was careless about keeping and disclosing records about property that he had at the date of separation or that he subsequently disposed of. The alleged repossession of the vehicles, which I accept happened, are examples of deficiencies in the husband's records.
- [74] I heard evidence from the parties about chattels that the husband removed from the Family Home or the business premises. He testified that he had two storage lockers. The husband said that the wife knew about the items he removed. However, the husband agreed that he provided no inventory of the items removed or contained in his storage lockers. For example, the husband took his liquor collection from the Family Home that included bottles of liquor worth many thousands of dollars.
- [75] The husband said that when the wife accused him, falsely, of family violence, he was not allowed back into the Family Home. However, I find that the husband was provided an opportunity to attend the Family Home to collect items. The wife testified, and I accept her evidence, that following separation, she carefully packed and sent the husband many boxes containing items, including those from the office he maintained in the Family Home.
- [76] The husband could not recall the items that he received in the boxes. The wife had a good recall of the items she packed and sent to the husband, including financial records and documents. The husband testified that the wife refused to give him his work equipment and tools, and that prevented him from working after he left the Family Home. When the husband was shown photos of the basement of the Family Home, he identified equipment and tools in the photos. However, he said that when his wife recently offered to give him those items, he declined because the tools and equipment are now junk without much value.
- [77] During his testimony, the husband could not itemize the items he removed from the Family Home and he could not value them. He had no supporting records respecting the items he once held in his storage lockers. The husband said that he moved those items to his rental accommodation. It was unclear whether the items once held in the storage lockers still exist.
- [78] The husband's most recent financial statement refers to two Rolex watches that he sold for \$38,000. He presented no evidence to show the disbursement of the watch sale proceeds. The wife claims these two Rolex watches as family property.

[79] Neither party presented evidence as to the value of the general chattels that they held at the time of separation, such as furniture, electronics or jewelry. Therefore, beyond the microwave, vehicles and Rolex watches, there is nothing to assist me in determining the chattels that existed on the date of separation or their value.

[80] I find that the chattels that were held by the parties at separation that formed family property subject to division totals \$440,238 and consisted of the following:

- a) Vehicles: \$399,938;
- b) Two Rolex watches: \$38,000;
- c) Microwave: \$2,300

iii. Retirement Savings

[81] The wife accumulated some retirement savings. According to a statement of account for the period ending November 30, 2019, the current market value of the wife's RRSP, and LIF investments at Credential Securities was \$268,195.27. This statement is very close to the date when I find the parties separated on November 22, 2019. The wife asserts that the retirement savings are excluded property.

[82] There was no evidence that prior to, or during the relationship, the husband had ever contributed to a retirement savings plan. Indeed, his testimony was that the parties had put all of their funds into the Family Home and they planned to fund their retirement through the growth of the value of the Family Home.

[83] I find that the value of retirement savings that existed at separation on November 22, 2019 was \$268,195.

[84] The wife testified that she withdrew money each year during the relationship and after separation she exhausted her retirement savings paying for expenses to maintain family property. Her explanation for doing so was that the husband stopped all contributions to the Family Home, she received no spousal support from the husband, and she had minimal income.

[85] I find that the wife's retirement investments have been fully withdrawn and spent and the retirement savings are no longer in existence. Regardless of why the wife withdrew and expended all of her retirement savings, the retirement savings are family property that existed on the date of separation.

[86] As mentioned, the wife asserts an excluded property claim in respect of the retirement savings. However, I find there is insufficient evidence to demonstrate that any of the retirement savings were accumulated prior to the relationship. The wife has the onus to establish excluded property in the retirement savings and she has not done so.

iv. Corporations

- [87] During the relationship, the husband incorporated numerous corporations. He also worked for and acquired interests in a variety of corporations during the relationship. In the course of acting as an executive for corporations, he received compensation and valuable benefits such as share options which sometimes provided him with funds to pay the couples' expenses. The husband testified that he supported the parties' lifestyle including through share options, through his earnings and corporate interests.
- [88] The husband gave evidence about the corporations which included, RogerForde Systems Group Inc. [RFSGI], 0722633 BC Ltd. [Numco], Sequential Telecom Inc. [Sequential], Calyx Bio Ventures [Calyx], Cannigistics Agri-Solutions Corp., Leafhub Technologies Inc., and, Canada Blockchain Holdings Corp. In some cases, the husband held shares in the corporations and in other cases, he was employed, directly or indirectly, by the corporations in his capacity as a director and/or officer and his compensation included share options. Some of these corporations were closely held and some were publicly traded or subsidiaries of publicly traded corporations. The wife testified that the only corporation she held shares in was RFSGI.
- [89] There was very little evidence presented concerning the financial status of, or the value of the shares held in these corporations. The wife cross-examined the husband about his apparent lack of disclosure respecting his shareholdings in these corporations. The husband's responses were generally that the corporations were either shut down or inactive and that they had no assets and only liabilities. He tended to baldly state that he had disclosed all of the corporate records that he had access to.
- [90] The husband testified that his holding company and the other corporations' bank accounts were closed due to inactivity in 2021. He agreed that he had produced no records to verify that. He testified that he went to the bank to ask for records and he produced any records he managed to obtain.
- [91] In my view, given that the husband generated considerable earnings to fund the parties' lifestyle from the corporations, including by exercising share options, there is a further troubling lack of documentation about his financial interest in them. In my view, the inadequacy of the husband's financial disclosure concerning his shareholdings presents a further serious impediment to the claimant's ability to establish her claim and the court's ability to identify and value family property.
- [92] I also found The husband's evidence about the details of the corporations to be vague and deliberately evasive. I find his answers to questions posed by the wife were often intended to thwart and frustrate the wife's efforts to get information and to identify family assets. I have taken these findings about the husbands' credibility into account when considering the resolution of the issues in this family law proceeding.

- [93] The wife submits that there is no value in the shares of the corporation available for division despite the fact that for many years of the relationship, the parties' lifestyle was supported by the husband's ownership interest in, or employment by, these corporations. On his most recent financial statement, the husband listed Numco as the only business asset held. The husband valued Numco at zero.
- [94] I find that at separation, the husband held shares in RFSGI, Numco, Sequential and Calyx. The wife held shares in RFSGI.
- [95] Neither party presented evidence as to the value of the shares they held. While there clearly were shares held during the relationship and on the date of separation, there is nothing to assist me in determining the value for purposes of property division.
- [96] As the wife concedes that the shares are likely worthless, I find the shares each party held at the date of separation have no value. The parties shall retain any shares they held as of the date of separation.

Summary of Family Property

- [97] The summary of the family property owned as of the date of separation is:
- a) Family Home: \$2,388,000;
 - b) Chattels: \$440,238; and
 - c) Retirement Savings: \$268,195.
- [98] The total value of family property held by the parties as of the date of separation is \$3,096,433.

Compensation Payments for Family Property

- [99] For the retirement savings, microwave, watches and certain vehicles, those items of the family no longer exist. The husband will be unable to receive his one-half share of the retirement savings, microwave and SLK Mercedes Benz because those items were sold by the wife.
- [100] The wife shall make a compensation payment to the husband for his one-half share of the retirement savings, microwave and SLK Mercedes. For clarity, her compensation payment to the husband for his one-half share of these items of family property shall be \$142,247. All compensation payments provided for in the reasons for judgment shall be paid from the party's respective share of the net sales proceeds of the Family Home.
- [101] The wife will be unable to receive her one-half share of the two vehicles that the husband owned and which were apparently repossessed. However, I accept the husband's evidence that when the vehicles were repossessed he received nothing and he actually owed money.

[102] The wife will be unable to receive her one-half share of the two Rolex watches that the husband sold after the date of separation for \$38,000. The husband shall make a compensation payment to the wife for \$19,000 to compensate her for the disposition of the Rolex watches.

Family Debt

[103] Section 86(a) of the FLA defines family debts to include all financial obligations incurred by a spouse from when the relationship began. Section 86(b) also provides that family debts may include debts incurred after separation if the post-separation debt is incurred to maintain family property.

[104] The party alleging family debt, whether during the relationship or post-separation, bears the onus of establishing that fact: *Chatha v. Uppal*, 2018 BCSC 6 at para. 309.

Secured Debt

[105] The secured debt to acquire the Family Home and registered against the Family Home was \$650,000. I have already determined that pursuant to the Family Home Agreement, the respondent is entirely responsible for that secured debt.

[106] There is also a secured debt for deferred property tax registered on title to the Family Home with a current balance of \$61,511. Therefore, the total secured debt is \$711,511 and the husband is solely responsible for \$650,000 of that debt due to the Family Home Agreement.

Unsecured Debt

[107] The parties were co-borrowers on an RBC unsecured line of credit with a balance of \$50,000 as of the date of separation

[108] The wife listed certain debts in her financial statements and she testified at trial about the following personal loans, credit cards and/or lines of credit debts that she incurred during the relationship, which were owing as of the date of separation:

- a) Car loan for C43 Mercedes - \$20,000;
- b) RBC line of credit account ending in #252 - \$10,000;
- c) RBC line of credit account ending in #793 - \$5,000;
- d) RBC Avion Visa ending in #769 - \$31,172;
- e) MBNA credit card ending in #145 - \$53,466.

- [109] The husband's financial statement made April 2, 2024 includes a statement of his debts. He lists a variety of unsecured debts, for example, lines of credit and personal loans from his family and friends. The husband does not list any credit card debt in his financial statement, but at trial, he testified that he forgot to include the credit card debt and he tendered exhibits showing his credit debt at the time of separation.
- [110] The husband testified that he owes money for the vehicles that he had at separation that he alleges were repossessed. However, there is insufficient evidence to establish the balance of any money owing for those vehicles following their repossession.
- [111] I find that the husband has established the following personal credit card and line of credit debts owing as of the date of separation.
- a) Mastercard ending #498 - \$6,138;
 - b) Visa credit card ending in #718 - \$35,063; and
 - c) Line of credit ending in #531 - \$5,000.

Summary of Family Debt

- [112] The summary of the family debt accumulated during the relationship and owing as of the date of separation is:
- a) Secured Debt: \$711,511; and
 - b) Unsecured Debt: \$215,839.
- [113] The total amount of family debt as of the date of separation is \$927,350. After deducting the \$650,000 covered by the Family Home Agreement, the family debt that is subject to division is \$277,350.

Unequal Division

- [114] The threshold for "significant unfairness" is a high one and the parties' relative contributions to assets and debts is not relevant. There must be "something objectively unjust, unreasonable or unfair" and, to justify an unequal division, the court must find that the unfairness is compelling or meaningful having regard to all of the factors set out in s. 95(2) of the FLA: *Jaszczewska v. Konstanski*, 2016 BCCA 286, at paras. 41-42.
- [115] The relevant provisions of the FLA are as follows:
- 95 (1)The Supreme Court may order an unequal division of family property or family debt, or both, if it would be significantly unfair to
- (a)equally divide family property or family debt, or both, or
 - (b)divide family property as required under Part 6 [Pension Division].

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

- (a) the duration of the relationship between the spouses;
- (b) the terms of any agreement between the spouses, other than an agreement described in section 93 (1) [setting aside agreements respecting property division];
- (c) a spouse's contribution to the career or career potential of the other spouse;
- (d) whether family debt was incurred in the normal course of the relationship between the spouses;
- (e) if the amount of family debt exceeds the value of family property, the ability of each spouse to pay a share of the family debt;
- (f) whether a spouse, after the date of separation, caused a significant decrease or increase in the value of family property or family debt beyond market trends;
- (g) the fact that a spouse, other than a spouse acting in good faith,
- (i) substantially reduced the value of family property, or
- (ii) disposed of, transferred or converted property that is or would have been family property, or exchanged property that is or would have been family property into another form, causing the other spouse's interest in the property or family property to be defeated or adversely affected;
- (h) a tax liability that may be incurred by a spouse as a result of a transfer or sale of property or as a result of an order;
- (i) any other factor, other than the consideration referred to in subsection (3), that may lead to significant unfairness.

(3) The Supreme Court may consider also the extent to which the financial means and earning capacity of a spouse have been affected by the responsibilities and other circumstances of the relationship between the spouses if, on making a determination respecting spousal support, the objectives of spousal support under section 161 [objectives of spousal support] have not been met.

[116] In *Healey v. Healey*, 2024 BCCA 68 at para. 69, Justice Horsman notes that the starting place for an analysis of the claim for unequal division of family property involves examining the financial situation of the parties if family property is divided equally. The first step is to make a notional equal division of family property and then determine whether such division would be significantly unfair under the factors s. 95(2) and, if applicable, s. 95(3).

[117] The notional equal division of family property and debt, without giving effect to the \$650,000 owed solely by the husband pursuant to the Family Home Agreement, would be as follows:

PROPERTY

Total Family Property - \$3,096,433

Wife

Husband

1/2 of total family property - \$1,548,216

Subtotal: \$1,548,216

1/2 of total family property \$1,548,216

Subtotal: \$1,548,216

DEBT

Total Family Debt - \$927,350

Wife

Husband

Less 1/2 of family debt - \$(463,675)

Less 1/2 of family debt - \$(463,675)

Net Total: \$1,084,541

Net Total: \$1,084,541

[118] As mentioned, both parties seek unequal division of family property and debt pursuant to s. 95 of the FLA. The wife seeks an unequal division of property should be ordered 90/10 in her favour because of the Family Home Agreement.

[119] I have already found that the Family Home Agreement is valid and enforceable and that it fully provides for the parties' intentions. In my view, the terms of the Family Home Agreement already provide for unequal division respecting the debt. Therefore, the wife is not entitled to make an additional claim for unequal division beyond the terms of the agreement that she has sought to enforce.

[120] The husband seeks a 60/40 unequal division of family property in his favour, including due to the fact that he paid for the family lifestyle by using his earnings.

[121] Having set out the notional equal division of property, the next step is to determine whether such an equal division would be significantly unfair given the factors in s. 95(2) and where applicable s. 95(3) of the FLA: Healey, para. 69.

- [122] The relevant factors in s. 95(2) include the duration of the relationship, which was a long marriage of 20 years in this case. As the marriage was lengthy, this factor tends to support an equal division. However, when I consider all of the evidence, I find that dividing property and debt equally would not be significantly unfair as it would leave the parties in a similar financial situation following their lengthy marriage.
- [123] Another relevant factor in s. 95(2) includes the terms of any agreement between the spouses, other than an agreement described in section 93(1). Respecting this factor, as I have already explained, the wife has established that under the Family Home Agreement the parties agreed, among other things, that the husband would take sole responsibility to repay any funds borrowed to acquire the Family Home.
- [124] The husband submits that there is significant unfairness arising from the fact that he expended his income to support the parties' lifestyle when the wife chose not to work and he paid approximately \$350,000 to renovate the Family Home.
- [125] However, for almost the entirety of the relationship, the wife earned no income and the husband paid for things like vacation, vehicles and home renovations using his income. As the husband stated in his evidence, this arrangement between the parties worked well up until the point where his income became insufficient to support the parties' lifestyle.
- [126] When I consider all of the evidence, I do not find that this arrangement rises to the level of significant unfairness that is required by the legislation and the authorities. I find there is no significant unfairness that would justify an order for unequal division of family property or debt.

Compensation Payments for Family Home Debt and Maintenance

- [127] Following separation, the husband refused to sign the mortgage renewal for the Family Home. In 2021, the wife paid off the mortgage using funds from the parties' joint line of credit because of the husband's refusal to renew the mortgage.
- [128] The wife testified and provided documents showing that she covered all borrowing costs for the mortgage on the Family Home from December 2019 to March 2021. The wife testified that she also funded the cost of maintaining the Family Home, including insurance, city utilities and other expenses, by borrowing from family, withdrawing funds from her retirement savings, and using her monthly government pension plus money borrowed from friends and her lines of credit.
- [129] The husband was clear in his evidence that he disapproved of the wife staying in the Family Home. The husband testified that he refused to contribute to the Family Home following separation, because he wanted it sold and the funds distributed to the parties.

- [130] In my view, the wife is entitled to compensation from the husband for the cost of servicing the secured loans on the Family Home since November 2019. That is because, pursuant to the Family Home Agreement, the husband is solely responsible to repay that debt. According to the wife's evidence, from November 28, 2019 to March 28, 2024, she has paid \$117,842 in secured debt payments (i.e. mortgage and line of credit).
- [131] The wife is entitled to receive a compensation payment of \$117,842, from the husband out of his share of the net sale proceeds of the Family Home, plus half of any secured debt payments that the wife pays after March 29, 2024 until the completion of the sale of the Family Home. The parties are to account for the post-March 2024 payments by the wife after the sale of the Family Home and before the net sale proceeds are disbursed to the parties.
- [132] I also find that the wife is entitled to receive equal contribution from the husband for the cost of insurance and annual city utility charges for the Family Home since separation. The wife provided detailed information about the expenses she paid for the maintenance of the Family Home. Many amounts she claimed, such as pet care, car insurance, and routine maintenance, are not to be shared on an equal basis because they do not relate to maintaining family property and they are personal expenses.
- [133] The total house insurance and annual city utility payments paid by the wife for 2020 to the date of trial in 2024 are \$21,655. The husband is required to compensate the wife for one-half of these expenses, which is \$10,827, out of the husband's share of the sale proceeds of the Family Home.

Conclusion on Property/Debt Division & Compensation Payments

- [134] The outcome of the findings in these reasons for judgment is summarized in the table that follows:

PROPERTY

Total Family Property - \$3,096,433*

The wife

The husband

1/2 of family property after excl. - \$1,548,216

Total: \$1,548,216

1/2 of family property after excl. - \$1,548,216

Total: \$1,548,216

DEBT

Total Debt: \$927,350 (with the \$650,000 debt subject to the Family Home Agmt.)

Add \$650,000 credit for husband's payment of secured debt

Deduct \$650,000 for husband's obligation for secured debt on Family Home

Subtotal: \$2,198,216

Subtotal: \$898,216

Total family debt (not including the \$650,000 secured debt): \$277,350

Less 1/2 of family debt - \$(138,675)

Less 1/2 of family debt - \$(138,675)

Subtotal: \$2,059,541

Subtotal: \$759,541

COMPENSATION PAYMENTS

\$19,000 (from husband for two Rolex watches)

\$117,842 (from husband for Family Home secured loans payments since separation)

\$10,827 (from husband for insurance / city utilities on Family Home)

\$(142,247) (to husband for retirement savings)

\$(19,000) (to wife for two Rolex watches)

\$(117,842) (to wife for Family Home secured loan payments since separation)

\$(10,827) (to wife for insurance / city utilities on Family Home)

\$142,247 (from wife for retirement savings)

Net Total: \$2,064,963

Net Total: \$754,119

*Total family property amount will require adjustment depending on sale price of the Family Home

Spousal support

[135] The wife seeks indefinite spousal support, retroactive to the date of separation, on a compensatory and non-compensatory basis. The wife seeks a lump sum award of spousal support. In her closing submissions, the wife indicated that she seeks spousal support only if her claim for excluded property and unequal division of family property is not granted on a 90/10 basis in her favour.

[136] The husband takes the position that the wife is not entitled to spousal support and he submits that income should be imputed to her as she has the skills and capacity to work.

[137] In *Tereposky v. Fooks*, 2023 BCSC 1989, Justice Jackson considered an application for lump sum spousal support and succinctly summarized the applicable legal principles in the following way:

85 Section 161 provides that when determining spousal support, the court must consider these 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.

86 If, after considering the objectives set out in s. 161, a spouse is entitled to spousal support, the other spouse has a duty to provide support for the spouse in accordance with s. 162: FLA, s. 160.

87 The FLA also permits an order for lump sum spousal support after considering s. 160: FLA, s. 170(c). A lump sum award should not be made in the guise of support for the purpose of redistributing assets. However, an important consideration in determining whether to make a lump sum spousal support award is whether the payor has the ability to make the lump sum payment without undermining the payor's self-sufficiency: *Parton v. Parton*, 2018 BCCA 273.

88 A lump sum award may be appropriate where the payor spouse has insufficient income to pay spousal support on an ongoing basis but has capital assets with which to make a lump sum payment: *Parton* at para. 48, citing *Robinson v. Robinson*, 2011 BCSC 1489.

89 The FLA requires a fair and equitable distribution of resources to alleviate the consequences of a marriage breakdown regardless of gender: *Moge v. Moge*, [1992] 3 S.C.R. 813. The FLA seeks to put the family in as close a position as possible to the household before the marriage breakdown: *Moge* at p. 74.

90 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: *Chutter v. Chutter*, 2008 BCCA 507. 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: *Chutter* at para. 50.

91 Where compensatory principles do not apply, need alone may be sufficient to ground a claim for spousal support: Chutter at para. 54. The concept of "needs" in the context of non-compensatory spousal support goes beyond basic necessities of life and varies according to the circumstances of the parties. Self-sufficiency, a spousal support objective primarily related to non-compensatory support, is a relative concept informed by the standard of living previously enjoyed by the parties: Chutter at para. 56.

[138] Importantly, in considering whether to award of lump sum spousal support, the court must weigh "the perceived advantages of making a lump sum award in the particular case against any presenting disadvantages": Parton, para. 47, citing *Davis v. Crawford*, 2011 ONCA 294 at para. 66.

[139] Considering the objectives of spousal support set out in s. 160, 161, 162 of the FLA and s. 15.2 of the Divorce Act, R.S.C. 1985, c.3, I will begin by considering any economic advantages or disadvantages to the spouses arising from the relationship or the breakdown of that relationship.

[140] I heard considerable evidence that when the relationship began, the wife was financially secure. She owned her own home, had savings and enjoyed good credit. I also heard evidence that the husband was not financially secure when the relationship began. The wife utilized her access to credit and contributed her equity in Parkwood to the Family Home to assist the husband financially.

[141] During the relationship, the wife worked for the husband's businesses doing administrative, bookkeeping and other work. However, she testified that the working relationship soured and eventually they decided she would withdraw her services.

[142] The husband agrees he encouraged the wife not to take outside employment both early in the relationship and at the time they decided she should withdraw from the businesses. The husband encouraged her to concentrate on managing the renovations to the Family Home and maintaining their personal lives. The husband did not deny doing this, but says he did so because, at the time, he earned enough to support their lifestyle and there was no need for the wife to work.

[143] I find that both parties have experienced economic advantages or disadvantages arising from the relationship or its breakdown. However, in my view, the disadvantages from the relationship or its breakdown have had a more severe effect on the wife mainly because she continued to live in the Family Home and cover the expenses associated with it. Those costs have already been addressed and compensated for earlier in these reasons.

[144] However, despite the economic hardship to the wife, for nearly the entirety of the relationship, she described that her living costs were low and it was the husband who spent lavishly. The wife described that after she stopped working, near to the start of the relationship, she was able to live in Parkwood for minimal cost. She took small annual withdrawals from her retirement savings to use as discretionary money for herself.

- [145] I also find that the Family Home Agreement was intended to maintain the financial status quo between the parties because it recognized the wife's equity in Parkwood and provided that monies borrowed to acquire the Family Home would be the sole responsibility of the husband to repay. In my view, the Family Home Agreement was the parties' way of protecting themselves and their long-term interests.
- [146] Nearly all of the wife's evidence about her current need for spousal support, whether compensatory or non-compensatory, ties back to her struggle to make the loan payments on the Family Home when it was always intended that the husband would be solely responsible for that secured debt.
- [147] In light of all of the evidence and my findings about the Family Home Agreement, I do not find that the wife has established an entitlement to spousal support on a compensatory or non-compensatory basis.

Miscellaneous Matters

Costs already ordered

- [148] The wife paid for the appraisal of Parkwood and the husband was ordered to reimburse her for one-half of the appraisal cost. To date, he has not done so. The husband shall reimburse the wife for one-half of the cost of the Parkwood appraisal out of his share of the net sale proceeds of the Family Home.
- [149] During this proceeding, the husband was previously ordered to pay certain costs to the wife in the amounts of \$2,000 and \$500. The husband shall pay the wife \$2,500 for the unpaid costs previously awarded to her payable from his share of the net sale proceeds of the Family Home.

Protection order

- [150] The wife also seeks, pursuant to s. 183 of the FLA, a protection order against the husband. The husband submits that the court should deny the request for a protection order and instead impose a conduct order on both parties.
- [151] There is an allegation of family violence in the background to this proceeding. After the parties had separated and while they living in separate areas of the Family Home, there was an incident that led to the husband's arrest. On April 13, 2020, the wife testified that the husband assaulted her and destroyed her cell phone. The wife said that during the assault, the husband grabbed her, shoving her against a wall and pushing her to the ground. The wife testified that she sustained bruising to her arms and legs from the assault.

[152] The husband was subject to an undertaking related to the allegation of domestic assault.

The husband agreed to an undertaking that he would not attend the Family Home and have any contact with the wife. The husband denies that he assaulted the wife, but he did admit to damaging her cell phone. The husband testified that he was never charged with assault and he has no criminal record as a result of the incident that took place on April 13, 2020.

[153] In my view, the need for a protection order has not been established. The parties are long separated and there is no evidence of further or ongoing acts of family violence between them. The husband now resides in another province and there is no evidence to establish that the parties will be required to personally, or even electronically, interact with each other.

[154] I decline to grant a protection or conduct order because I am not satisfied that there is a basis in the evidence to do so.

Sale of Family Home

[155] The Family Home will be sold according to the following terms:

- a) The wife will have exclusive conduct of the sale.
- b) The wife will sign a listing agreement with a real estate agent within 14 days of these reasons for judgment.
- c) The wife will receive and act upon proper advice from the listing agent in respect of the price and listing of the Family Home.
- d) The wife will instruct the listing agent to forward a copy of the listing agreement together with the listing agent's name and phone number to the husband or his counsel forthwith upon the agreement being entered into.
- e) While the husband will have no authority to give the listing agent any instructions, he shall be entitled to receive all relevant information about the listing and relevant developments concerning the Family Home directly from the agent. The wife will advise the listing agent that the listing agent can and should receive the husband's requests, or his lawyer's requests, and answer all reasonable requests for information.
- f) The husband is at liberty to make an application to the court that may arise out of his reasonable belief that the wife is delaying the sale of the Family Home unreasonably or that she had failed to accept an offer to purchase the Family Home that the husband believes is reasonable. I am not seized of that application.
- g) Property taxes, secured loan payments, property insurance, utilities, and other reasonable property-related expenses will be shared on a 50/50 basis until a sale of the Family Home is completed.

- h) Compensation and other payments referred to in the reasons for judgment will be paid from the net proceeds of the sale of the Family Home, after normal closing costs are deducted.

Costs

- [156] The wife seeks special costs against the husband, including on the grounds that the husband failed to disclose documents throughout the proceeding. In my view, while the husband did not produce documents in a timely fashion, for example, he only provided his tax returns during the trial, those documents only confirmed the submission he had been making throughout that he was not reporting any amount of income after separation. I do not find a basis for awarding special costs based on his late or incomplete document disclosure.
- [157] In my view, on the key issues involved in this family law proceeding, the wife was successful on establishing the New Home Agreement and the husband was successful on the issue of spousal support. In light of all of the circumstances, I order that the parties shall bear their own costs. For clarity, this does not alter the husband's liability for costs that he was already ordered to pay to the wife.
- [158] If the parties are unable to agree on the amounts required to be paid from the net sale proceeds of the Family Home as a result of these reasons, or if there are any mathematical errors in these reasons, they are at liberty to seek a further appearance before me to address those matters. To do so, the parties are directed to contact SC Scheduling with their time estimate and available dates for a further appearance before me.

"E. McDonald J."

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