

CANADA / JUDGMENT

Sekhon v. Sekhon

2023 BCSC 1413

COURT

Supreme Court of British Columbia

DECIDED

14 August 2023

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2023 BCSC 1413 Sekhon v. Sekhon

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Sekhon v. Sekhon,

2023 BCSC 1413

Date: 20230814

Docket: E57132

Registry: New Westminster

Between:

Palwinder Singh Sekhon

Claimant

(Respondent by Counterclaim)

And:

Kamaljit Kaur Sekhon, also known as Kamaljit

Kaur Gill, also known as Kamaljit Kaur Thind

Respondent

(Claimant on Counterclaim)

Before: The Honourable Mr. Justice Riley

Reasons for Judgment

The Claimant, appearing in person:

P. S. Sekhon

Counsel for the Respondent:

P.S. Sahota

Place and Date of Trial:

New Westminster, B.C.

November 23-25, 2020

February 22-26, 2021

January 9, May 23, June 8-9, and

July 19, 2023

Place and Date of Judgment:

New Westminster, B.C.

August 14, 2023

Introduction

- [1] These are reasons for judgment in a family law case. The sole issue at this point in the proceedings is Ms. Sekhon's claim for spousal support, with the two sub-issues being entitlement to support, and the quantum of support based on Mr. Sekhon's income, which is in dispute.
- [2] The parties were in an eight-year relationship that began with their marriage in India in 2009 and ended with their separation in Canada in 2017. It was a rather unusual relationship, in that for the first three and one-half years of their marriage, Ms. Sekhon lived in Canada while Mr. Sekhon continued to reside in India, pending approval of his immigration application. The parties have no children together, although each of them now has responsibility for a child from a subsequent relationship.
- [3] Ms. Sekhon advances a claim for spousal support on both compensatory and non-compensatory grounds. She claims to have made a financial investment and financial sacrifices to support Mr. Sekhon's immigration application, and that she has been in dire financial circumstances ever since the parties separated due to family violence. Ms. Sekhon also takes issue with Mr. Sekhon's stated income, claiming that it is understated because he has a history of supplementing his taxable income with cash earnings.

- [4] Mr. Sekhon says Ms. Sekhon is not entitled to spousal support, given the duration of the relationship and the fact that both parties were relatively mature when they married. He argues in the alternative that if he is found to have a support obligation, it should be based on his stated income, and should also be reduced based on his own financial hardship, including his financial obligations toward his new wife and his step son.

The Facts

The Personal Circumstances of the Parties

- [5] Ms. Sekhon was born in India in 1973 and emigrated to Canada in 1996. She worked for a number of years as a maid at various hotels, but injured her back in 2015 and has been on full time disability since then. She is now 50 years old. In 2022, she had a child, whose father resides in India and provides no financial support.
- [6] Mr. Sekhon was born in India in 1981 and emigrated to Canada in 2013. Within a year of arriving in Canada he started working as a glass installer. He suffered a serious work-related injury in 2015, and is on partial disability, although he is still able to work full time with some reduced physical capacity. He remarried in 2023, and his new wife and step child reside in India. Mr. Sekhon provides financial support for them and hopes to sponsor their immigration to Canada, although he will only be able to do so when he is in a financially stable position.

The History of the Relationship

- [7] The parties were married in 2009 in India, by way of an arranged marriage through an intermediary or "matchmaker", Mr. Randawa. At the time, Ms. Sekhon was a permanent resident of Canada and Mr. Sekhon had no status in Canada. It was Ms. Sekhon's third marriage, and she was eight years older than Mr. Sekhon. This was an issue for both parties prior to the marriage. Ms. Sekhon was concerned about being taken advantage of by someone who only wanted to marry her to get immigration status in Canada. Mr. Sekhon and his family were concerned that Ms. Sekhon was twice divorced and some eight years older than Mr. Sekhon. Through negotiations between the two families, with the assistance of the "matchmaker", an agreement was struck in which Mr. Sekhon's father committed to give Ms. Sekhon a 2.5 acre plot of farm land in India, as a form of security against the failure of the marriage.
- [8] After the marriage, Mr. Sekhon remained in India and Ms. Sekhon returned to Canada where she submitted an application for Mr. Sekhon to obtain permanent resident status. The application was refused twice, but eventually accepted on the third occasion. The process took almost four years. Over the course of that time Ms. Sekhon returned to India four times, for immigration interviews and also to spend time with Mr. Sekhon. Ms. Sekhon claims to have invested substantial sums of money in the immigration process, and sacrificed financially by paying for trips to India and taking time off from her work in Canada to make

the trips.

- [9] Mr. Sekhon was granted permanent resident status and immigrated to Canada in 2013.
- [10] Once in Canada, the parties lived together for some three-and-a-half years. It was a tumultuous relationship. Ms. Sekhon moved out of the family home a number of times and stayed with her sister, a matter of blocks away from the family residence, for months on end. On two separate occasions Mr. Sekhon was charged with offences involving alleged intimate partner violence. The first set of charges was laid in January of 2014 and concluded in April of that year when Mr. Sekhon entered a guilty plea and was placed on probation. The parties then reconciled. The second set of charges were laid in March of 2017 and basically spelled the end of the relationship, although Ms. Sekhon eventually withdrew the allegations and the second set of charges against Mr. Sekhon was stayed. Despite the fact that the charges were stayed, the second incident was more or less the end of the relationship.
- [11] The family law proceedings commenced when Mr. Sekhon filed a notice of family claim in 2019, seeking a divorce. Ms. Sekhon later filed a counterclaim seeking spousal support and property division. (At trial, Ms. Sekhon basically abandoned the property division claim for reasons explained below).
- [12] The trial in this matter has been lengthy and disjointed. It commenced in late 2020 and did not complete until 2023. Over that time, there were three continuation dates due principally to inaccurate time estimates, and four adjourned continuation dates due to COVID-19 illnesses and travel restrictions that made it difficult for the parties to return to Canada from India at various points in time.
- [13] In the meantime, as noted, the personal circumstances of the parties have changed over time.
- [14] In 2019, Mr. Sekhon was successful in obtaining a divorce order, with the balance of the issues in the family law proceedings being severed. By 2021, Mr. Sekhon was in a relationship with a new partner in India. Mr. Sekhon married his new partner in 2023. She has a child who is now Mr. Sekhon's step child. Mr. Sekhon now sends funds to his new partner in India on a monthly basis. He is hopeful that he can sponsor the immigration of his new wife and her child to Canada, although he says he will need to demonstrate financial stability as part of the immigration application process.
- [15] For her part, Ms. Sekhon now has her own child and is in a new relationship with a man whom she met in India. The child was born in 2022 and lives with Ms. Sekhon in Canada. The father is still in India. Ms. Sekhon says he is only a boyfriend, and in her trial testimony she was somewhat coy about their relationship. However, she grudgingly acknowledged that (i) he is the father of her child and (ii) she is hopeful that he can immigrate to Canada at some point. There is no evidence that he presently provides any financial support to Ms. Sekhon or the child.

Timeline

[16] For the sake of completeness, I would set out the following timeline of relevant events:

- (a) Ms. Sekhon first travelled from Canada to India to meet with Mr. Sekhon and his family, through a matchmaker, on 31 March 2009.
- (b) Mr. Sekhon was introduced to Ms. Sekhon and his family on 22 April 2009.
- (c) Following an introduction and a very brief formal courtship consisting of as few as two in-person meetings, Mr. Sekhon and Ms. Sekhon were married on 29 April 2009.
- (d) On 11 May 2009, Mr. Sekhon's father transferred a 2.5 acre plot of land in India into Ms. Sekhon's name. This land is part of a larger agricultural parcel owned by Mr. Sekhon's extended family. Ms. Sekhon has seen the land but she does not know what specific part of it is hers. She knows it is in active use for farming of two crops, wheat and berries, but she has never received a share of the proceeds from the crops nor has she ever received rent or lease payments for her portion of the property.
- (e) On 7 June 2009, Ms. Sekhon returned to Canada. Mr. Sekhon remained in India.
- (f) Upon her return to Canada, Ms. Sekhon initiated an immigration application for Mr. Sekhon. The records show that Ms. Sekhon filed the first application on 12 June 2009, three days after her return from India. It is not disputed that Ms. Sekhon paid all of the application fees, sponsorship fees, and consulting and legal fees for the applications process. The amounts in question were substantial. Mr. Sekhon's first two applications were rejected and he was only successful in the third application. Each application required a sponsorship fee of some \$1,050, in addition to consulting fees. Ms. Sekhon testified that she paid some \$5,500 to \$6,500 in consulting and legal fees for the first application, and a further \$2,300 to \$2,400 in legal fees for the second application. She did not give evidence about how much she paid for the third application.
- (g) In the three and one-half year time period after filing Mr. Sekhon's initial immigration application in 2009, Ms. Sekhon travelled to India four separate times to visit Mr. Sekhon and to assist in his application. This included attending a number of interviews with Canadian immigration officials who were tasked with processing Mr. Sekhon's immigration application in India. In particular: (i) The first trip was in or around 17 November 2009; (ii) the second trip was from 2 February to 7 March 2010; (iii) the third trip was from 5 August to 15 October 2010; and (iv) the fourth trip was from 22 November 2012 to 12 March 2013.
- (h) Ms. Sekhon testified that she covered the costs of her airfare for three of the four trips, at about \$1,200 per trip. Ms. Sekhon conceded in her testimony that Mr. Sekhon and his family paid for other costs while Ms. Sekhon was in India on these trips, including hotel costs, and the cost of multiple 350 km taxi rides from the airport to Mr. Sekhon's home village and back again.

- (i) Ms. Sekhon further testified that to accommodate each of these trips to India, she had to take time off from her job in Canada as a hotel maid. On the final occasion, Ms. Sekhon was fired from her job as her employer felt she was taking too many trips to India.
- (j) Mr. Sekhon's third immigration application was successful and he was granted permanent resident status in Canada. Mr. Sekhon arrived in Canada on 26 May 2013, at the airport in Vancouver.
- (k) There was a fair bit of evidence at trial from both parties about what happened at the airport when Mr. Sekhon arrived in Canada. Ms. Sekhon testified that the brother of the matchmaker, Mr. Randawa, showed up at the airport and wanted Mr. Sekhon to go with his family. This made Ms. Sekhon upset as it gave her the impression that she was simply being used as a tool for Mr. Sekhon to get status in Canada. For his part, Mr. Sekhon does not deny that the Randawas greeted him at the airport, but he makes that point that whatever happened at the airport, he made his own choice to leave the airport with Ms. Sekhon, and then the two of them went on to Regina where Ms. Sekhon was living at the time.
- (l) Upon their arrival in Regina, Ms. Sekhon resumed work as a hotel maid.
- (m) Within two to three months, the parties relocated to British Columbia, eventually taking up residence at an apartment in Surrey.
- (n) Ms. Sekhon got a job as a maid at a hotel in Richmond. Mr. Sekhon worked at a grocery store for five of six months, and then switched to glass installation work, which eventually became his occupation.
- (o) Mr. Sekhon's first job as a glass installer was for Acme Glass, where he worked for part of 2014. Later that year Mr. Sekhon changed employers and started working for Future Tech Glass.
- (p) In January of 2014, Mr. Sekhon was charged with a series of offences against Ms. Sekhon, including assault. He was released on bail on conditions to have no contact with Ms. Sekhon. On 16 April 2014, Mr. Sekhon pleaded guilty to two counts of assault and was sentenced to a period of probation. Thereafter, he and Ms. Sekhon reconciled and resumed living together.
- (q) On 5 January 2015, Ms. Sekhon suffered a back injury at work and started receiving workers compensation. Since that time, Ms. Sekhon has been unable to work. Initially, Ms. Sekhon received \$1,600 per month from WCB. Later, Ms. Sekhon went on long term disability for which she received a combination of WCB benefits and CPP benefits, totalling a little over \$1,000 per month.
- (r) By March of 2015, there was continuing strife in the relationship and Ms. Sekhon once again left the family residence and went to stay with her sister.

- (s) In around April of 2015, Mr. Sekhon was involved in a serious accident at work, when a sheet of glass fell on his right arm. Two of his arteries were severed. He spent a considerable amount of time in the hospital.
- (t) When Ms. Sekhon heard about the injury, the couple once again reconciled. Ms. Sekhon moved back into the family home, and Ms. Sekhon cared for Mr. Sekhon while he recovered from his injury.
- (u) It is uncontroverted that the injury to Mr. Sekhon's arm was serious and has had lasting physical effects. Mr. Sekhon had one surgery on his arm shortly after he was first admitted to the hospital, and a second surgery about nine months later. Thereafter he attended physiotherapy, initially four times per week, and then less frequently over time.
- (v) After the injury in April of 2015, Mr. Sekhon received full time WCB payments for the balance of 2015, the entirety of 2016, and part of 2017, before returning to work as a glass installer. Mr. Sekhon has some continuing limitations as a result of his injuries, but still has the physical capacity to work as a shower installer. He continues to receive WCB benefits of roughly \$1,000, based on the reduction in his work capacity due to his injury.
- (w) Ms. Sekhon alleged at trial that for a substantial part of the time that Mr. Sekhon was receiving full time WCB benefits, he worked for cash which he did not declare. Mr. Sekhon denies this. I will discuss the evidence on this point in more detail below.
- (x) Throughout the balance of 2015 and into 2016, the parties lived together in the family residence in Surrey.
- (y) In early 2017, both parties went to India, although they evidently took separate trips and were not there together.
- (z) Ms. Sekhon returned to Canada first, only to find that Mr. Sekhon had locked her out of the apartment. She went to stay with her sister again.
- (aa) In March 2017, when Mr. Sekhon got back from India, Ms. Sekhon went to see him at the family residence. Mr. Sekhon would not let her into the residence and the police became involved. Ms. Sekhon then disclosed that Mr. Sekhon had been violent toward her on a number of occasions in December 2016 and January 2017.
- (bb) On 30 March 2017, Mr. Sekhon was charged with multiple counts of assault, arrested, and held in custody for a number of days.
- (cc) The parties had little or no contact from 30 March 2017 to 5 December 2017.
- (dd) Ms. Sekhon says Mr. Sekhon contacted her a few days before his trial on 5 December 2017. Mr. Sekhon denies this. In any event, on the trial date, Ms. Sekhon went to court and withdrew the allegations, as a result of which the charges were stayed.

(ee) Ms. Sekhon testified that right after court, Mr. Sekhon walked away from her, changed his number, and had no further contact with her. Mr. Sekhon denies this. He says Ms. Sekhon was aware of his new phone number, which he had for over a year at that point. He also says Ms. Sekhon clearly knew where he lived, because she left a bag containing some kind of "black magic" materials at the door of his apartment on one occasion.

(ff) Regardless of whether Mr. Sekhon disappeared or hid from Ms. Sekhon, the fact is that the parties separated for good when the second set of charges was laid against Mr. Sekhon on 30 March 2017, and never reconciled thereafter.

(gg) Mr. Sekhon filed a notice of family claim on 4 March 2019. The only relief he sought was a divorce. Ms. Sekhon filed a response to the claim on 23 April 2019, opposing the divorce, and then filed a counterclaim on 10 July 2019, in which she sought (i) spousal support, and (ii) unequal division of family property, namely sole ownership of the 2.5 acre plot of land that had been put in her name by Mr. Sekhon's father.

(hh) On 13 December 2019, Mr. Sekhon applied for and was granted a divorce order, over Ms. Sekhon's objection.

(ii) On 18 September 2020, Mr. Sekhon attended for an examination for discovery. On the same date, he swore an affidavit claiming that he was presently laid off from his job since 13 March 2020.

(jj) A surveillance report obtained by Ms. Sekhon and tendered in evidence by admission indicates that Mr. Sekhon was in fact performing work-related tasks for Rahul Glass on at least two occasions during the time when he was supposed to have been off work.

(kk) The trial in this matter commenced on the week of 23 November 2020, but was cut short when Mr. Sekhon received a notice of COVID-19 exposure from his employer. The trial continued from 22 to 26 February 2021 but did not complete due to lack of court time. Thereafter, multiple continuation dates were adjourned due to COVID-19 illnesses and COVID-19 travel restrictions which prevented one party, the other party, or counsel from being in court. The trial continued on 9 January 2023 and 23 May 2023, and was finally concluded with Mr. Sekhon's closing submissions on 19 July 2023.

(ll) Meanwhile, at some point in 2022, Ms. Sekhon had a child. As noted, the father resides in India.

(mm) On 26 February 2023, Mr. Sekhon was re-married, in India. His new wife remains in India, with her child, who is Mr. Sekhon's step-child.

The Financial Situations of the Parties

[17] Ms. Sekhon filed two financial statements.

- [18] Ms. Sekhon's first financial statement is dated 2 November 2020. It indicates that at the time, Ms. Sekhon's income was \$11,237 per year, consisting of (i) CPP benefits of \$8,932, and (ii) WCB benefits of \$2,304. It is supported by tax returns for the years 2019, 2018, and 2017, showing similar income levels over all three years. Ms. Sekhon's total annual expenses were listed as \$24,096. In her trial testimony, Ms. Sekhon explained that she covered her excess expenses by drawing on a line of credit. This is reflected in Ms. Sekhon's financial statement, which lists her total debt at \$33,171.
- [19] Ms. Sekhon's second financial statement was signed on 5 January 2023 and filed in court the next day. It indicates that at that time, Ms. Sekhon's basic income was \$11,655 (consisting once again of CPP benefits and WCB benefits). However, by this time Ms. Sekhon was also receiving child tax benefits of \$8,592 per year, such that her total income for spousal support purposes had risen to \$20,247. The financial statement is supported by tax assessments for 2019, 2020, and 2021. Ms. Sekhon's total annual expenses were listed as \$29,700. Her total debt had increased to \$71,900.
- [20] Ms. Sekhon has never received any spousal support from Mr. Sekhon.
- [21] Mr. Sekhon has filed three financial statements.
- [22] Mr. Sekhon's first financial statement purports to be dated 5 November 2020 and was signed on 14 November 2020. It lists no income, and attaches no tax returns, tax assessments, or statements of earnings, making the statement more or less useless for the purposes of ascertaining Mr. Sekhon's guideline income.
- [23] However, I have been provided with copies of Mr. Sekhon's tax returns for the years 2019, 2018, and 2017. In 2017, Mr. Sekhon's income was \$35,122, from two sources, namely employment income from Future Tech Glass Installations of \$18,234, and WCB benefits of \$16,888. In 2018, Mr. Sekhon's income was \$59,147, consisting of WCB benefits of \$11,588, and employment income from two employers, Future Tech and Elegant Glass. In 2019, Mr. Sekhon's income was \$57,928, consisting of WCB benefits of \$11,755, and employment income from three sources, Elegant Glass, Future Tech, and Rahul Glass.
- [24] Further, although Mr. Sekhon's 5 November 2020 financial statement suggested that he was not earning any income on the date that he signed it, at trial Mr. Sekhon provided a handwritten letter purporting to be written from the owner of Rahul Glass. The letter stated that Mr. Sekhon had resumed work at Rahul Glass (following a COVID-19 layoff) on 20 October 2020. In his trial testimony Mr. Sekhon agreed that he resumed work and that he had been working for at least three weeks when he filled out the financial statement. Mr. Sekhon also admitted that he received COVID-19 benefits in 2020 and these were also not listed in his financial statement. Mr. Sekhon gave no explanation for why the F8 listed no income. There is also evidence that Mr. Sekhon was in fact doing work for Rahul Glass during the periods of time when he claimed to have been laid off in 2020. I will discuss that evidence in more detail later.

- [25] Mr. Sekhon's 5 November 2020 financial statement listed annual expenses of \$44,971. Mr. Sekhon claimed that he made up the shortfall of his expenses over income by incurring debt. His financial statement listed some \$20,270 in credit card and bank debt. Prior to trial, Mr. Sekhon's former counsel had obtained and disclosed affidavits from individuals claiming that Mr. Sekhon owed them substantial amounts of money as of 2020, yet those debts are not listed in Mr. Sekhon's 5 November 2020 F8. Mr. Sekhon had no explanation for the discrepancy.
- [26] Mr. Sekhon's second financial statement is dated 8 January 2023. It is signed, but unsworn. It lists total income of \$70,475, from two sources, namely WCB benefits of \$12,290, and employment income of \$67,191.72. Again, no income tax returns, tax assessments, or statements of earnings are attached, making the financial statement virtually useless in assessing Mr. Sekhon's income. However, I have been provided with Mr. Sekhon's 2021 tax return, which confirms that at least in that year (though not in 2022), Mr. Sekhon's total reported income was in fact \$70,475.
- [27] Mr. Sekhon's 8 January 2023 financial statement claims total annual expenses of \$56,403. It also lists no debt, which suggests a change in that Mr. Sekhon's earlier financial statement listed credit card and bank debt of \$20,270. In cross-examination at trial, Mr. Sekhon claimed that he paid down the bank debt. When it was put to him that his total expenses and retired bank debt in 2021 exceeded his reported income by some \$6,000, Mr. Sekhon responded that he made up the difference by borrowing money from friends and associates. I will return to that point later.
- [28] Mr. Sekhon's most recent financial statement also purports to be dated 8 January 2023, but was clearly prepared much later than that. It was tendered in evidence when Mr. Sekhon testified in May of 2023. It is not signed or sworn, and again it contains no attachments, making it virtually useless as a piece of evidence. However, Mr. Sekhon presented the document during his trial testimony and he was cross-examined on it, so I will at least consider the entries in it, for what they are worth. This financial statement lists Mr. Sekhon's income as \$79,842, consisting of employment income of \$67,191.72, and WCB benefits of \$12,290. It also lists annual expenses totalling \$100,252. In his trial testimony, Mr. Sekhon also claimed to have incurred an additional \$20,000 in debt associated with his recent wedding in India, but had no explanation for why the debt was not recorded on his financial statement. When pressed on the fact that his monthly expenses exceed his monthly income, Mr. Sekhon once again stated that he was borrowing money from friends and associates to make up the difference.
- [29] One of the individuals who Mr. Sekhon claims to have been borrowing money from is Mr. Kanwar, the principal of a business called Gorilla Glass. In support of his claim to be borrowing money from Mr. Kanwar, Mr. Sekhon submitted a collection of Interac records showing electronic transfers of funds to Mr. Sekhon. The Interac records for transfers said to have come from Mr. Kanwar are actually from Gorilla Glass. These records include transaction notes or memos that would appear to be work related. For example, one of the

records is for an electronic transfer of \$1,680 with an accompanying message that says "til Aug 27", strongly implying it is for work done by Mr. Sekhon for Gorilla Glass up until 27 August 2022. Another record is for a deposit of \$1,800 on 27 July 2022 with a message line that reads "July 23". The most suspicious record is for a transfer of \$1,400 on 2 April 2022 with a message that reads "shower installation".

Analysis

Witness Credibility

- [30] There were two witnesses in this case, Ms. Sekhon and Mr. Sekhon. Both testified with the aid of a Punjabi interpreter. The credibility of both witnesses is in issue. There are important issues of credibility in this case.
- [31] The legal principles and factors relevant to the assessment of witness credibility were summarized in *Bilin v. Bilin*, 2018 BCSC 804 as follows:
- [212] Credibility is a question for the trier of fact. In assessing the credibility of each witness, I consider the following: the consistency of their evidence, its harmony with the totality of the evidence, their interest in the outcome of the litigation, and whether, during the course of their testimony, their previous statements are inconsistent with their evidence at trial.
- [213] As was stated in *Mac v. Mak*, 2016 BCSC 1140, at 127:
- [127] I must also consider the plausibility of the evidence, which includes a consideration of whether one party's version of events makes sense, or whether it is connected with the evidence as a whole. It is also important to consider the demeanor of the witnesses when giving evidence, but this is only considered in the context of the plausibility of their testimony and the evidentiary record.
- [128] In the often-cited *Faryna v. Chorny*, [1952] 2 D.L.R. 354 (B.C.C.A.), the validity of the evidence depends on whether the evidence is consistent with the probabilities affecting the case as a whole: *Faryna* at 357. The factors were also considered by Justice Dillon in *Bradshaw v. Stenner*, 2010 BCSC 1398 at para. 186:
- [186] Credibility involves an assessment of the trustworthiness of a witness' testimony based upon the veracity or sincerity of a witness and the accuracy of the evidence that the witness provides (*Raymond v. Bosanquet (Township)* (1919), 59 S.C.R. 452, 50 D.L.R. 560 (S.C.C.)). The art of assessment involves examination of various factors such as the ability and opportunity to observe events, the firmness of his memory, the ability to resist the influence of interest to modify his recollection, whether the witness' evidence harmonizes with independent evidence that has been accepted, whether the witness changes his testimony during direct and cross-examination, whether the witness' testimony seems unreasonable, impossible, or unlikely, whether a witness has a motive to lie, and the demeanour of a witness generally (*Wallace v. Davis* (1926), 31 O.W.N. 202 (Ont.H.C.); *Faryna*

v. Chorny, [1952] 2 D.L.R. 354 (B.C.C.A.) [Farnya]; R. v. S.(R.D.), [1997] 3 S.C.R. 484 at para. 128 (S.C.C.)). Ultimately, the validity of the evidence depends on whether the evidence is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time (Faryna at 357).

[214] Finally, I turned to the oft cited decision of the B.C. Court of Appeal Farnya v. Chorny, [1952] 2 D.L.R. 354 (B.C.C.A.), wherein O'Halloran J.A. stated the following at 357:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

[32] The credibility issues in relation to Ms. Sekhon relate to her entitlement to spousal support. Ms. Sekhon claims that she wanted the marriage to be successful and that she sacrificed to make it work, but Mr. Sekhon (who was self-represented) challenged her on this.

[33] The credibility issues in relation to Mr. Sekhon involve a broader range of topics, but their principal relevance is with respect to the truthfulness and reliability of Mr. Sekhon's stated income. It was suggested that throughout his time in Canada, Mr. Sekhon has under-reported his income and has supplemented his taxable income with funds received from cash jobs. Mr. Sekhon denies this. This is an important issue in the case.

Credibility of Ms. Sekhon's Testimony

[34] Subject to certain concerns about Ms. Sekhon's description of her current relationship, I find her evidence to be credible for the reasons that follow.

[35] Ms. Sekhon's description of the nature of the pre-marriage discussions and the marriage arrangement is corroborated by independent evidence, including her passport records, the documents and other evidence with respect to the transfer of the 2.5 acre parcel of property into her name, and affidavits sworn by Mr. Sekhon in connection with his immigration application.

[36] Ms. Sekhon's description of the investment of time and money she put into securing Mr. Sekhon's immigration status in Canada is corroborated by her passport records and the immigration documents themselves.

[37] Ms. Sekhon's description of the relationship between herself and Mr. Sekhon while in Canada (and in particular her allegations of family violence) is corroborated to some extent by the court records showing that Mr. Sekhon in fact pleaded guilty to two counts of assault relating to incidents occurring on at least two separate dates. I cannot attach much significance to the court documents in relation to the second set of charges, because they

were stayed. However, there is certainly nothing in those records that undermines Ms. Sekhon's credibility or her account of the relationship with Mr. Sekhon and how it soured over time.

- [38] Finally, Ms. Sekhon's testimony about Mr. Sekhon working for cash or working during periods of time when he was supposed to be on full time disability is corroborated by other, independent evidence supporting the proposition that Mr. Sekhon had a history of working for cash to supplement his reported income.
- [39] One area of concern about Ms. Sekhon's credibility has to do with the manner in which she described her current circumstances. I find that Ms. Sekhon was not forthcoming in her testimony in relation to these issues. In particular, by the time the trial resumed in 2023, Ms. Sekhon had a child. This is reflected in her most recent financial statement showing that she now receives a child tax credit. It is also reflected in the fact that she has legally changed her name from Ms. Sekhon to Ms. Bhullar. The case was re-opened to allow Ms. Sekhon to give evidence about her change in name and her being in receipt of child tax benefits. In chief, Ms. Sekhon represented that she had the child by way of a "procedure" in India because she always wanted to be a mother, and that when she returned to Canada she had her name legally changed to Bhullar because she did not want to continue to live with reminders of being married to Mr. Sekhon. Ms. Sekhon claimed that she selected the name Bhullar for her new last name because she always liked it. However, in later questioning from the court Ms. Sekhon admitted that Bhullar was the last name of the child's father. Ms. Sekhon further admitted that while she is not married to Mr. Bhullar, she does consider him a boyfriend and she appeared open to the idea of Mr. Bhullar immigrating to Canada to be with her, although she had no concrete plans to pursue that issue in the short term. Based on all this evidence, I conclude that Ms. Sekhon's testimony in chief on this point was misleading and not entirely honest. Ms. Sekhon obviously wanted to downplay her new relationship and the significance of her connection to the father of her child.
- [40] However, even after taking this evidence into account, it does not shake my confidence in Ms. Sekhon's credibility on the other issues I touched upon above. As I say, Ms. Sekhon's testimony on these points is corroborated to some extent or another by independent evidence.
- [41] I should not leave my discussion of Ms. Sekhon's credibility without addressing two further issues raised by Mr. Sekhon.
- [42] One of these is Mr. Sekhon's suggestion that Ms. Sekhon targeted him for marriage because he was from a reasonably well off, middle class family in India, but after they got married Ms. Sekhon was not committed to making the relationship work. I do not find this submission convincing. I accept that Ms. Sekhon did some things from time to time that were not productive, including leaving a note at the residence informing Mr. Sekhon that she had passed away and discussing funeral arrangements. Ms. Sekhon characterized the note as a joke that Mr. Sekhon should clearly have recognized as such, but in any event the

evidence about the note does not convince me that Ms. Sekhon had no commitment to the marriage. Ms. Sekhon made considerable effort and took a fair amount of initiative in securing permanent resident status for Mr. Sekhon, and I infer that she did so because she wanted her marriage with Mr. Sekhon to be a success. The evidence does reflect that Ms. Sekhon left the family residence, sometimes for as long as a month, but I have no difficulty in concluding that this took place in the context of family violence that had arisen during the marriage.

- [43] The other point is Mr. Sekhon's suggestion that Ms. Sekhon has undeclared income or is underemployed. Mr. Sekhon did not put either of these contentions to Ms. Sekhon during her trial testimony. At the beginning of the trial I explained to Mr. Sekhon the importance of the confrontation principle and the obligation to fairly put allegations to an opposing witness during the witness's testimony, rather than leaving the issue to be raised as a surprise during argument. Mr. Sekhon evidently did not heed this caution. I am not prepared to give any credence to the suggestion that Ms. Sekhon has unreported income or that she is underemployed. Neither of these points was put in issue in Mr. Sekhon's pleadings. Moreover, there is no shred of evidence to support either suggestion. Ms. Sekhon qualified for long term disability benefits and I am not going to revisit that issue, particularly where it was not raised until closing argument. And there is absolutely no evidence to support a theory that Ms. Sekhon has been earning unreported income. There is no suggestion that Ms. Sekhon has worked anywhere outside the home since her documented disability in 2015.

Credibility of Mr. Sekhon's Testimony

- [44] There are at least four areas where I found Mr. Sekhon's credibility to be lacking to such an extent that it causes me to question the truthfulness of any part of his testimony not supported by independent evidence. Those four areas are: (i) Mr. Sekhon's testimony as to his knowledge of Ms. Sekhon's background prior to the marriage, (ii) Mr. Sekhon's testimony about alleged IVF treatments obtained by Ms. Sekhon in India, (iii) Mr. Sekhon's evidence about the land in India, and (iv) Mr. Sekhon's testimony about his income and work history. Of these, obviously the fourth topic is most directly relevant to the issues to be decided in this case. On that issue, I find that there are multiple inconsistencies in Mr. Sekhon's trial testimony, which I will discuss in detail below.
- [45] To deal with the first area, Mr. Sekhon claimed in his trial testimony that prior to the marriage he did not know Ms. Sekhon was twice divorced. According to him, Ms. Sekhon said she had only been divorced once. Later, after they were married, Ms. Sekhon told him about the second divorce; she said it was a brief, merely technical marriage; not a real marriage.
- [46] Mr. Sekhon's testimony on this point is contradicted by two of his own affidavits sworn in India, for the purposes of his immigration application. In the first affidavit, undated, Mr. Sekhon attested that before he agreed to the marriage he and Ms. Sekhon met together for

45 minutes during which time she told him about her two prior divorces. In the second affidavit, dated 12 Mar 2012, Mr. Sekhon attested that he was aware that his wife had previously been divorced and was older than him but that he agreed to marry her anyway because she appeared to come from a noble family and he believed they could have a good life together.

- [47] In cross-examination, Mr. Sekhon admitted that he swore the affidavits but claimed he did not read them. The affidavits are written in English, but both state that the contents were read over to the affiant before they were executed. Mr. Sekhon said he just showed up at the lawyer's office in India and signed, but he was unable to say where the details contained within the affidavit came from if they did not come from him.
- [48] Finally, Mr. Sekhon was shown a third affidavit, sworn in Canada on 25 October 2019, stating that prior to the marriage, Ms. Sekhon advised him that she had been divorced twice. Mr. Sekhon said the affidavit was wrong, because someone else prepared it and he just signed it.
- [49] Later in cross-examination, Mr. Sekhon agreed that he learned about both divorces prior to the wedding, when they were preparing or reviewing the wedding documents. He agreed that this was before the wedding ceremony. He said it did not matter if she had been divorced once or twice, he liked her and wanted to marry her anyway.
- [50] I find Mr. Sekhon's trial testimony on this topic to be incredible. Of course, the question of whether Ms. Sekhon had been previously divorced, and even Mr. Sekhon's knowledge of that fact, is completely irrelevant to the legal issues in this case. Regardless, Mr. Sekhon's trial testimony on this issue is not credible, and it reflects poorly on the credibility of his evidence as a whole.
- [51] The second point has to do with Mr. Sekhon's testimony about an alleged in vitro fertilization (IVF) treatment that Ms. Sekhon was said to have obtained in India, at a cost of \$6,500, paid for by Mr. Sekhon's parents. Mr. Sekhon had sworn an affidavit attaching what purported to be a hospital record from a healthcare facility in India, stating that Ms. Sekhon got an IVF procedure on "02/09/2011". However, it is clear from Ms. Sekhon's passport that she was not in India at the time. Mr. Sekhon responded that the date might be wrong but the document is otherwise correct. However, even if one were to reverse the dates, so that the treatment was on 2 September 2011, Ms. Sekhon would still not have been in India at the time. In either case, this document, which is a photocopy and not an original, does not present to me as authentic, which causes me to question Mr. Sekhon's credibility on other issues. I should say, there is independent evidence that Mr. Sekhon attended a fertility clinic in Canada at least once during the relationship. The issue is not about anyone's fertility or about anyone's willingness or wish to have a baby in the course of the relationship as a measure of their commitment. The issue is about a photocopied document, presented in evidence by Mr. Sekhon, that on its face cannot possibly be correct.

- [52] The third point has to do with the property in India. Mr. Sekhon did not deny that his family transferred some property into the name of Ms. Sekhon as part of the marriage arrangement, but claimed not to know the details regarding how the land came to be transferred, or the precise terms. He said it was arranged between Mr. Sekhon's father, the matchmakers (the Randawas), and Ms. Sekhon. That testimony does not accord with Mr. Sekhon's affidavit dated 25 October 2019 at para. 4 where he described the details of the arrangement. In cross-examination, Mr. Sekhon claimed that the lawyer drafted the affidavit and he just signed it. I do not accept that, for two reasons. First, a commissioner who takes an affidavit has an obligation to ensure that the affiant is aware of all the contents and that the affiant is attesting to their truth, I have no reason to question that the commissioner who took this affidavit fulfilled that responsibility. Second, Mr. Sekhon's explanation that the lawyer drafted the affidavit and he just signed it without knowing the contents does not explain where the lawyer would have gotten the details. It was Mr. Sekhon's lawyer who took this affidavit. I infer he got the details from his client, Mr. Sekhon, and that Mr. Sekhon then swore to the truth of the contents. Thus, I find Mr. Sekhon was being untruthful at trial when he said he was not aware of the details regarding how the land came to be transferred from his father to his wife within two weeks of Mr. Sekhon's wedding.
- [53] The fourth and final aspect of Mr. Sekhon's testimony that lacks credibility has to do with the state of his finances and his employment history. This is by far the most important credibility issue in the case, so I must address it in granular detail.
- [54] Mr. Sekhon tendered in evidence a typewritten letter purporting to be written by Mr. Johal, the president of his employer Rahul Glass. The letter states that (a) Mr. Sekhon worked for Rahul Glass from 26 August 2019 to 13 March 2020, full time, at 57.4 hours per week, earning a salary of \$6,000 per month, and was laid off on 13 Mar 2020 due to lack of work; and (b) Mr. Sekhon started working for Rahul Glass again on 13 October 2020, full time, 50 hours per week, earning a salary of \$4,950 per month.
- [55] A surveillance report for the period from 30 September 2020 to 8 October 2020 shows that on multiple occasions Mr. Sekhon was doing tasks consistent with working at Rahul Glass. In his trial testimony, Mr. Sekhon maintained that he was not working and was laid off due to COVID-19 during this time. In his testimony in chief Mr. Sekhon admitted that it was him in the photos, claiming he was only "helping out" his boss "two or three times" and did not receive any money. He said he was just helping because his boss took care of him and did not give him much heavy work due to his injury. Mr. Sekhon said his boss was so good to him that he would work for a month for free if he were asked. Mr. Sekhon said his employer tried to pay him but he refused because it was only for two or three days. I do not find this explanation to be credible in the least. I have no difficulty concluding that Mr. Sekhon was in fact working for Rahul Glass during the period of time in issue, contrary to what is suggested in the letter, and contrary to Mr. Sekhon's trial testimony.

- [56] Later in his testimony, Mr. Sekhon explained that the Rahul Glass letter dated 9 November 2020 was written before he had seen the surveillance report. He said that if he had seen the surveillance report then he would have told the employer to write the letter differently. This suggests that Mr. Sekhon was prepared to tailor his evidence and prepared to ask his employer to tailor the records to suit the other evidence in the case.
- [57] In his closing submissions Mr. Sekhon said he was not paid anything at the time, but he may have done the work for free and then gotten paid much later. He repeated that it was only on two or three occasions. Although Mr. Sekhon's closing submissions were not testimony under oath, this position is indicative of an effort to limit the damage to his case where the weight of the admissible evidence is clearly against him.
- [58] Further, according to the Rahul Glass letter, Mr. Sekhon was laid off and did not work at all from March through to October 2020, yet there are multiple deposits in Mr. Sekhon's bank account over that time frame, from sources other than WCB and government COVID-19 payments. Mr. Sekhon was unable to offer a satisfactory explanation for the source of these deposits. He said simply that he knew and worked with many people in the glass installation business who were prepared to help him out over this period of time.
- [59] The evidence with respect to Mr. Sekhon's income in 2019 is also highly suspect. Mr. Sekhon testified that in 2019 he had only one bank account, at RBC. Mr. Sekhon was shown at least eight pay cheques issued to him from two separate employers, Future Tech and Rahul Glass, on various dates in 2019. When taken to his RBC bank statements indicating that none of these amounts had ever been deposited into his account, Mr. Sekhon had no explanation. He maintained that he did not have any other bank accounts at the time.
- [60] The payroll records tendered by Mr. Sekhon included six separate pay cheques from Future Tech dated 30 June 2019, all numbered sequentially, from cheque number 896 to cheque number 900, with the last two cheques having the same number, 900. Mr. Sekhon denied the suggestion that the cheques were fakes that had been made up after the fact to cover up his working for cash, however, Mr. Sekhon had no explanation for why six of the cheques were issued on the same date, two of them had the same cheque number, and none of them had ever been deposited into what he claimed to be his one and only bank account at the time.
- [61] In cross-examination, Mr. Sekhon initially confirmed that in relation to all the employers for whom he has worked, he worked as an employee, not a contractor. All of the materials were provided by the employer. He simply installed shower doors. He did not pay any money out of pocket. However, when shown entries in his Visa statements reflecting purchases at businesses with apparent connections to interior design, bathroom renovations, and window and glass suppliers in amounts as much as \$1,200 for a single transaction, Mr. Sekhon replied that he sometimes picked up and paid for materials for his employer, and was subsequently reimbursed. He was unable to point to any bank or Visa records showing that he was reimbursed for these expenditures. Mr. Sekhon denied that these Visa purchases were for supplies in relation to cash jobs that he did outside of his employment. I did not

find the denial credible.

- [62] Counsel tallied up all of the payments into Mr. Sekhon's RBC bank account in the first nine months of 2020, demonstrating that the deposits into his account appeared to exceed all known sources, including CPP, COVID-19 payments, and his reported income. Recall that in 2020, Mr. Sekhon's reported annual income from all sources was said to be \$51,747. However, Mr. Sekhon's total bank deposits from 1 January 2020 until 30 October 2020 were \$53,812. These deposits did not include Mr. Sekhon's income from Rahul Glass, or WCB payments for the last two months of the year. Mr. Sekhon denied the suggestion that the additional deposits must be unreported income for additional jobs he worked in 2020. He claimed that he had many friends who would help him out by loaning money to him.
- [63] In support of his position that he received loans from friends, Mr. Sekhon tendered Interac record transfer records purporting to show money loaned to him by way of Interac transfers from two friends, Mr. Kanwar and Mr. Khangara. The Interac records for transfers said to have come from Mr. Kanwar are actually from a business called Gorilla Glass Ltd. I have discussed these Interac records above. They contain messages or internal references to topics that I infer to be clearly work-related, specifically: "til Aug 27", which I interpret to mean payment for work done until August 27; and "July 27", which I interpret to mean payment for work done on July 27; and perhaps most obvious, "shower installation", which I have no difficulty interpreting to mean payment for shower installation job. Based on all the evidence, I find that these are records of payments from Gorilla Glass to Mr. Sekhon for glass installation work.
- [64] Mr. Sekhon's records also include a copy of a cheque dated 25 November 2022 from Mr. Sekhon to Gorilla Glass Limited in the amount of \$9,000. Mr. Sekhon says this is a cheque effectively repaying Mr. Kanwar for all of the money that was loaned to him through Gorilla Glass Ltd. However, there is no independent evidence that the cheque was ever given to Mr. Kanwar or Gorilla Glass, and no evidence that it was ever cashed. I do not find Mr. Sekhon's evidence on this point to be credible. I find that this is an after-the-fact effort to explain away the transfers made to him by Gorilla Glass, which I infer from the name of the business and the accompanying messages are payments by Gorilla Glass for shower installation work performed by Mr. Sekhon.
- [65] There are also disclosure issues that cause me to be concerned about the truthfulness and accuracy of Mr. Sekhon's evidence concerning his income. The obligation on each party in a family law case to make full and timely disclosure of all relevant information as provided for under the Supreme Court Family Rules, B.C. Reg. 169/2009 and the Family Law Act, S.B.C. 2011, c. 25 was discussed at length in *J.D.G. v. J.J.V.*, 2013 BCSC 1274 at para. 18-25. At para. 20 of that decision, Justice Punnett referenced a well-known passage from *Cunha v. Cunha*, 1994 CanLII 3195 (B.C.S.C.) describing non-disclosure in matrimonial proceedings involving property division as a "cancer". Clearly, the same can be said of proceedings involving claims for child or spousal support where income is an issue.

[66] At para. 21 of J.D.G., Justice Punnett said the following, in reference to the remedies available for non-disclosure as provided for under s. 213 of the FLA:

Section 213 recognizes that non-disclosure is a barrier to the speedy and inexpensive determination of cases. In many cases considerable resources, both private and public, are expended on pre-trial disclosure. This before any consideration of the real issues can be carried out. It is a barrier that should not be countenanced. Private and public resources are better spent on resolving the real issues between the parties rather than being depleted on such matters.

[67] Section 213(2)(b) provides that one of the remedies available for non-disclosure is an adverse inference against the delinquent party. In the case at bar, I find that Mr. Sekhon's failure to make full and timely disclosure of relevant information has made it more difficult to assess the evidence. This impacts negatively on his credibility.

[68] Mr. Sekhon's financial statements were incomplete and unsupported by any tax returns, tax assessments, or pay statements. By way of example, Mr. Sekhon's first financial statement, dated 5 November 2020 and sworn on 14 November 2020, lists all of Mr. Sekhon's expenses, but makes no disclosure of income from any sources, and attaches no supporting documents. This, despite the fact that Mr. Sekhon was clearly in receipt of monthly WCB benefits and had been working for at least two months prior to the completion of the financial statement, according to a letter from his employer, which Mr. Sekhon relied upon at trial as proof of his income. I acknowledge that Mr. Sekhon was self-represented at trial, but that is no excuse for his failure to make even a basic effort to provide accurate information in his first financial statement, prepared a matter of weeks before the trial commenced. Mr. Sekhon was clearly able to write into the financial statement fairly detailed information with respect to his monthly expenses, and yet he simply left the income portion of the statement completely empty, merely drawing a line through that entire portion of the document. The complete lack of candour and reliability in Mr. Sekhon's financial statement was a significant impediment to the court in ascertaining his actual income. It slowed down the trial process considerably, making it difficult to obtain even basic facts about Mr. Sekhon's sources of income.

[69] Further, at a Judicial Case Conference on 5 September 2019, both parties were ordered to make disclosure of their bank statements from 2013 to present. In his trial testimony, Mr. Sekhon admitted that at one time he had a TD bank account, but claims that he closed it in 2018 or 2019. He never provided disclosure of any records from his TD account. He claims that the account was closed by the time the litigation commenced. That is no excuse for not producing the records. Banks keep financial records for seven years. Even in 2023, Mr. Sekhon would have been able to make a request to the TD bank to produce his records going back to 2016.

[70] In the same vein, Mr. Sekhon attended an examination for discovery on 18 September 2020 but refused to answer any questions. He claims he did not know what the discovery was about, but I find it hard to understand why he would not simply answer questions about his

income, knowing that Ms. Sekhon was claiming spousal support and that his capacity to pay support was in issue. Mr. Sekhon's examination for discovery was less than eight weeks before the trial date. Indeed, on the same date, 18 September 2020, Mr. Sekhon swore an affidavit claiming that he had been laid off from his job at Rahul Glass since 13 March 2020. As we know from the surveillance report, that claim was simply untrue, as he was observed doing work-related tasks, for Rahul Glass, on two separate dates during the time frame in which he alleges that he was laid off.

The Property Division Claim

- [71] Ms. Sekhon's counterclaim includes a claim for unequal division of family property. That claim relates specifically to the 2.5 acre parcel of real property in India, that was transferred into Ms. Sekhon's name on 11 May 2009.
- [72] There is no dispute between the parties that the property exists and that it was transferred into Ms. Sekhon's name after the parties got married. I am also satisfied on the whole of the evidence that the property was transferred into Ms. Sekhon's name by Mr. Sekhon's father as a form of security or guarantee that the marriage was bona fide and not a part of a scheme for Mr. Sekhon to get immigration status in Canada.
- [73] On the face if it, the property in India would appear to qualify as family property within the meaning of the FLA. The property would be presumptively subject to equal division, and Ms. Sekhon would have the right to argue for unequal division if she could demonstrate significant unfairness as contemplated in s. 95 of the FLA. Further, the court has jurisdiction under s. 106 of the FLA to make orders with respect to "extraprovincial property" that qualifies as family property.
- [74] However, before making any such order, the court must be "satisfied that it would be enforceable against the spouse in the jurisdiction in which the extraprovincial property is located": FLA s. 109(2)(b), (c); see also *Slavenova v. Rangelov*, 2015 BCSC 79 at para. 78. In this particular case, there are at least two problems with regard to the enforceability of an order in the foreign jurisdiction.
- [75] First, the evidence reflects that the property in issue is functionally part of a larger plot owned and controlled by Mr. Sekhon's father or extended family. On this point, I accept Mr. Sekhon's evidence that he personally has no physical or practical control over his family's agricultural lands in India. The property is controlled by his extended family, most notably his father. Thus, I question whether an order directed at Mr. Sekhon himself, for example an order requiring him to transfer or deliver the property to Ms. Sekhon, would have any practical effect. Indeed, according to the land registry document, Ms. Sekhon is already the legal owner of the property.
- [76] Second, there is no evidence as to how any property division order made in this Court would or could be enforced in India. There is evidence that Ms. Sekhon tried to take some legal action against Mr. Sekhon in India, but that appeared to be of no effect as Mr. Sekhon simply

left India and returned to Canada to avoid dealing with the legal proceeding in India. Finally, there is the fact that in her trial testimony, Ms. Sekhon explained she was fearful that if she tried to take control of the property in India, or tried to enforce any order that might be made by this Court in respect of the property, her physical safety might be in jeopardy.

- [77] Further, given my finding that Mr. Sekhon does not own or have any control over the property (which is part of a larger plot controlled by his extended family), it does not seem to be an appropriate case to make a compensatory order against Mr. Sekhon pursuant to s. 109(2)(c) of the FLA.
- [78] Given the anticipated legal and practical difficulties that would likely accompany any effort to extritorially enforce a property division order in this particular case, counsel for Ms. Sekhon indicated, part way through the trial, that his client would not be seeking any property division order with respect to the farm property in India. Instead, Ms. Sekhon would argue that the promises made by Mr. Sekhon's family, and the unlikelihood of Ms. Sekhon ever realizing any financial benefit from the property following the breakdown of the relationship, are factors that strengthen her spousal support claim.

Spousal Support

(a) Entitlement

- [79] Spousal support is dealt with under s. 15.2 of the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.). Under s. 15.2(4), the court is required to take into account the condition, means, needs and other circumstances of each spouse, including their length of cohabitation, and the functions performed by each of them, and any agreement or order regarding support. The objectives of spousal support as set out in s. 15.2(6) are: (a) the recognition of any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown, (b) the apportionment of the financial consequences pertaining to the care of the children over and above each spouse's child support obligations, (c) relief of economic hardship arising from the breakdown of the marriage, and (d) insofar as it is possible, promoting the economic self-sufficiency of each spouse within a reasonable period of time.
- [80] In *Bracklow v. Bracklow*, [1999] 1 S.C.R. 420, the Court stated at para. 49 that, "[i]n summary, the statutes and the case law suggest three conceptual bases for entitlement to spousal support: (1) compensatory, (2) contractual, and (3) non-compensatory". In this particular case, Ms. Sekhon says she is entitled to spousal support on both compensatory and non-compensatory grounds.
- [81] 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 at para. 50. The compensatory model of spousal support often focuses on economic disadvantages from "sacrifices made by a recipient spouse in assuming primary childcare and household responsibilities": *Chutter* at para. 50. Compensatory support may also address economic advantages enjoyed by one

spouse as a result of the other spouse's efforts: Chutter at para. 51, citing *Moge v. Moge*, [1992] 3 S.C.R. 813 at 864.

- [82] Non-compensatory or needs-based support is "grounded in the 'social obligation model' of marriage, in which marriage is seen as an interdependent union": Chutter at para. 54. This form of support starts from the proposition that where the marriage relationship breaks down, the burden to meet the needs of the disadvantaged spouse should fall on the more advantaged spouse rather than on the state: Chutter at para. 54. Further, the concept of "need" goes beyond "basic necessities of life", and "varies according to the circumstances of the parties": Chutter at para. 55.
- [83] On the facts of this case, there are certainly some considerations that weigh against Ms. Sekhon's spousal support claim. This was not a long-term relationship. Further, both parties were mature individuals at the time that they entered the relationship. Indeed, Ms. Sekhon was the more mature partner, and she had already established a life in Canada. Further, this is not a case involving any personal or professional sacrifice made in the interests of raising the children of the marriage, as the parties did not have any children.
- [84] Despite all of this, I find that Ms. Sekhon has a compelling case for spousal support, on both compensatory and non-compensatory grounds.
- [85] On the compensatory side, I find that Ms. Sekhon made significant investments of time, effort, and money in the interests of a successful marriage relationship, and that she has been significantly disadvantaged following the breakdown of the relationship. Relative to her income and means at the time, Ms. Sekhon made substantial financial contributions in support of Mr. Sekhon's immigration applications. She also travelled to India four times in the first three and one-half years of the relationship, largely to assist Mr. Sekhon in advancing his immigration application. On each occasion Ms. Sekhon had to take time off work, and on the last occasion she lost her job due to the frequency of her trips abroad. Thus, Ms. Sekhon made financial and personal sacrifices for the sake of the relationship, and her current financial position has suffered as a result.
- [86] Furthermore, in the course of the relationship Ms. Sekhon suffered a back injury as a result of which she went on permanent disability. At that point, Mr. Sekhon became the primary income earner in the family.
- [87] When the relationship ended, Ms. Sekhon received no financial support from Mr. Sekhon, despite the discrepancy in their incomes. She has had to continue borrowing money to make up the difference between her income and living expenses. Ms. Sekhon's personal debt has increased from \$33,000 in 2020 to \$71,900 in 2023. Meanwhile, Mr. Sekhon was able to pay down his bank debt from \$20,270 in 2020 to \$0 in 2023.
- [88] On the non-compensatory side, Ms. Sekhon has clearly been in financial need ever since the breakdown of the relationship. Having been injured and gone on full time disability during the relationship, she became dependent on Mr. Sekhon to support her. Ms. Sekhon has been

in an unsustainable financial situation ever since the breakdown of the relationship. Mr. Sekhon's income was and continues to be significantly higher than that of Ms. Sekhon. Further, Mr. Sekhon's income has continued to rise after the breakdown of the relationship, while Ms. Sekhon's income is still very low. Thus, in the wake of the separation, Ms. Sekhon is in financial need, and there is a significant disparity in income between the parties.

[89] I also agree with Ms. Sekhon's counsel that his client's spousal support claim is bolstered by the circumstances pertaining to the 2.5 acre parcel of land that was transferred into her name by Mr. Sekhon's father in 2009. I find that the land was transferred into Ms. Sekhon's name as a form of security to protect Ms. Sekhon's interests in the event that the marriage to Mr. Sekhon failed. Ms. Sekhon was in a potentially vulnerable position when she agreed to marry Mr. Sekhon, by way of an arranged marriage, on the understanding that she would then sponsor him to come to Canada as her husband. Mr. Sekhon's father appeared to acknowledge this and addressed the concern by transferring the 2.5 acre parcel of family land into Ms. Sekhon's name. Over the course of the relationship, Ms. Sekhon did not receive any share of the proceeds from crops grown on the property, or any lease or rent payments. Further, on the evidence I have heard, I find virtually no prospect that Ms. Sekhon will ever be able to realize or act on her interest as the registered owner of the subject property. I find all of this relevant to both the compensatory and non-compensatory grounds for spousal support in this case.

[90] I conclude that Ms. Sekhon has an entitlement to spousal support. The Spousal Support Advisory Guidelines provide that in an eight year, "without child" relationship, the duration of support should be fixed at somewhere between four and eight years. In this particular case, I would fix the duration of support at five years. I reach that conclusion because Ms. Sekhon was 36 years old when the relationship began, her pre-relationship income was relatively modest, and she is in the process of transitioning toward a new relationship.

(b) Quantum

[91] The quantum of spousal support is determined based upon the ranges provided for in the SSAGs. The starting point is the determination of each party's guideline income under the Child Support Guidelines, which is then adjusted to include additional income sources for spousal support purposes.

[92] With respect to Ms. Sekhon, I have no difficulty in determining that her income for spousal support purposes is \$20,247, as set out in her most recent financial statement. Mr. Sekhon argues that the amount should be higher based on his allegation that Ms. Sekhon has undeclared cash income, but as explained above, I do not accept that argument because (i) it does not fit with the pleadings, (ii) Ms. Sekhon was not cross-examined on her income and it was never suggested to her that her income was understated, and (iii) there is no evidence in the record on which one could possibly conclude that Ms. Sekhon has undisclosed sources of income.

- [93] With respect to Mr. Sekhon, the figures in his most recent financial statement would suggest that his income for spousal support purposes is \$79,842. That figure would appear to be based on Mr. Sekhon's 2022 tax assessment, which was not attached to his financial statement, but which Mr. Sekhon disclosed to opposing counsel and the Court at some point prior to closing submissions.[1] However, there is good reason to question whether Mr. Sekhon's tax assessment accurately reflects his true income.
- [94] The totality of the evidence - including but not limited to Mr. Sekhon's testimony, his tax assessments, his payroll records, his bank statements, and the surveillance reports - leads me to conclude that Mr. Sekhon has a history of unreported earnings from his work as a glass installer. I am not going to descend into the details here. I will simply repeat three key features of the evidence discussed above.
- [95] First, there are the surveillance reports establishing that Mr. Sekhon was doing work related tasks for his employer(s) during periods of time when he claims to have been out of work. Mr. Sekhon basically admitted this but claimed that the work he was doing was for free. I do not find that credible.
- [96] Second, there are Visa records reflecting Mr. Sekhon's purchase of what are clearly supplies or materials used in the glass installation business. Mr. Sekhon initially claimed that his employer provided him with all of his supplies but when confronted with his own Visa statements he changed his evidence to say that he purchased these supplies on his employer's behalf and was reimbursed for them. He was not able to point to any records showing the reimbursement. I do not accept Mr. Sekhon's evidence on this point and I infer from all the evidence that the Visa purchases were for supplies Mr. Sekhon acquired for use in glass installation jobs he did on the side, in addition to the glass installation work he did for his employers as reflected in his annual T4s.
- [97] Third, there is the evidence from the Interac records showing that Mr. Sekhon received electronic transfers of funds from a company that is clearly involved in glass installation - Gorilla Glass - with memos or messages reflecting that the transfers were for particular jobs or work performed on particular dates. Mr. Sekhon testified that the proprietor of Gorilla Glass simply loaned him money which he subsequently repaid by cheque, but I did not find that explanation credible in light of the memos or messages referencing the work to which the transfers related. Once again, this evidence supports an inference that Mr. Sekhon has a consistent pattern of earning money from glass installation jobs on the side, in addition to the work reflected in his T4 income.
- [98] Mr. Sekhon argued in closing submissions that at a rate of \$20 per hour, at 57.5 hours per week, it would not have been possible for him to earn any more than the \$67,191.72 of employment income as reflected in his financial statement and his 2022 tax return. I do not find that argument convincing for a number of reasons. First, I have no reliable evidence that Mr. Sekhon's current pay rate is \$20 per hour. There is some evidence that his base pay in 2020 was \$20, but I have no way to determine whether that is his current pay rate. Second,

this argument does not take into account that even according to his own payroll records, his pay rate for overtime work (in 2020) was actually \$30 per hour. Third, there is evidence that in 2022 Mr. Sekhon was being paid for jobs for Gorilla Glass, which payments are clearly not reflected in his 2022 tax return.

- [99] I conclude that Mr. Sekhon's income is under-reported. I would add a further \$10,000 per year to Mr. Sekhon's stated income, on account of glass installation work not accounted for in his financial statement and 2022 tax return. In the result, I find that Mr. Sekhon's income for spousal support purposes is \$90,000 per year.
- [100] On the basis of an eight-year relationship, with no children, and incomes as specified above, the Spousal Support Advisory Guidelines suggest a quantum support of \$698 per month at the low end, \$814 per month at the mid range, and \$930 per month at the high end.
- [101] It is within the Court's discretion to determine where in the range any particular case should fall. In this case, there are a number of factors militating toward the higher end of the range. The most notable of these is the unlikelihood that Ms. Sekhon will ever be able to realize any financial benefit in connection with the 2.5 acre parcel of property in India. The evidence indicates that the property was transferred into Ms. Sekhon's name as a form of security against the failure of the marriage. The marriage has failed, and yet Ms. Sekhon has received no income or other financial benefit from the property, and on the evidence I heard, I expect she never will. Above and beyond this, there is the fact that Ms. Sekhon has never received any support from Mr. Sekhon following the breakdown of the relationship, and her personal debt has increased substantially since separation.
- [102] There are other factors that tend to point in the opposite direction, that is, in favour of a quantum of support at the lower end of the range. The most salient point is that even after grossing Mr. Sekhon's income up to \$90,000 as I have done, he is also not in a particularly strong financial position. He does not own a residence and rents have increased substantially. Of course, both parties - Mr. Sekhon and Ms. Sekhon - are not in good financial positions, and the fact is that Ms. Sekhon is by comparison much worse off financially.
- [103] What is more, a certain proportion of Mr. Sekhon's expenses pertain to his financial commitments toward a new partner and her child. Mr. Sekhon was only able to marry the new partner because he obtained a divorce order in this matter on 3 December 2019, some 18 months after separation, but still some three and one-half years prior to the conclusion of the family law proceedings. Mr. Sekhon obtained the divorce order without addressing the corollary relief, namely Ms. Sekhon's spousal support claim. Had Mr. Sekhon been paying support since separation in 2019, his obligation would have been nearly extinguished by now. But he has put the matter off and now must pay support for the next five years.

- [104] Taking all of this into account, I conclude that Mr. Sekhon's support obligation should be toward the higher end of the range, though not at the top. I would fix Mr. Sekhon's spousal support obligation at \$900 per month.
- [105] Finally, Mr. Sekhon argues that requiring him to pay spousal support would constitute an undue hardship upon him. Under s. 10 of the Child Support Guidelines, the court has the discretion to order a different quantum of child support where the table amount of support would be an undue hardship to either party. The SSAGs seem to contemplate that the concept of undue hardship can be also be invoked in relation to spousal support claims in cases where there are no children or child support obligations.
- [106] However, I would not accede to Mr. Sekhon's undue hardship argument for a number of reasons. To begin with, a fair proportion of Mr. Sekhon's monthly expenses have to do with financial obligations he has assumed in respect of his new partner and his step-child. The fact is that Mr. Sekhon chose to take on these financial responsibilities knowing that Ms. Sekhon had an outstanding spousal support claim against him. Perhaps just as importantly, Ms. Sekhon is at this point in time in an even worse financial position than Mr. Sekhon. It is true that she now also has a child, but Mr. Sekhon is not being penalized for that as he is obviously not required to pay child support. Moreover, Ms. Sekhon receives child tax benefit payments, which I have not deducted from her income for spousal support purposes even though there might be some discretion to do so.

Conclusion on Spousal Support

- [107] To conclude and summarize, Mr. Sekhon is required to pay spousal support of \$900 per month to Ms. Sekhon, commencing on 1 August 2022, and continuing each and every month thereafter up to and including 1 July 2027.
- [108] Counsel for Ms. Sekhon asks that I direct the support to be payable to Ms. Sekhon by cheques delivered to her counsel, in trust. I am not prepared to make that order. I simply order that Mr. Sekhon is to pay monthly support. Often support payments are done by e-transfer. I am not going to micro manage the details. The manner of payment is to be worked out between the parties. If they cannot agree, then the Family Maintenance Enforcement Program could be invoked.

Other Orders Sought

- [109] As noted, the counterclaim included a claim for unequal division of property, but I would dismiss that claim for the reasons given above. I have taken the situation with respect to the property in India into account in determining both entitlement to and quantum of spousal support.

[110] Ms. Sekhon seeks orders under ss. 212 and 213 of the FLA in connection with Mr. Sekhon's non-compliance with the Rules and prior orders relating to disclosure. I have taken Mr. Sekhon's lack of timely disclosure into account in assessing the evidence. I ultimately found in favour of Ms. Sekhon in respect of her claim for spousal support. In the circumstances, I do not believe any further order is necessary.

Costs

[111] Ms. Sekhon was the successful party at trial and is entitled to costs of the action, subject to any prior costs orders for particular steps in the proceedings.

[112] Counsel for Ms. Sekhon asks that the costs order specifically include disbursements for surveillance reports, and costs thrown away for Mr. Sekhon's failure to answer questions at the examination for discovery.

[113] The surveillance reports were necessary because Mr. Sekhon had taken the position at various points in the proceedings that he was not working. The reports were helpful to the Court in determining Mr. Sekhon's income for spousal support purposes. I determine that these disbursements were necessary and properly incurred. Pursuant to Rule 16-1(5)(b), I direct that costs of the action are to include the costs for these disbursements. I would leave it to the Registrar to determine the reasonableness of the actual amounts per Rule 16-1(4)(b) if Mr. Sekhon seeks an assessment of the bill of costs.

[114] With respect to the discovery, the transcript reflects that Mr. Sekhon attended but refused to answer any questions. Ms. Sekhon's counsel thus went to the expense of setting up the examination for discovery but did not receive any benefit from the process. Pursuant to Rule 16-1(5)(b), I direct that costs of the action are to include costs thrown away for that particular step in the proceedings.

"Riley J."

[1] To be fair to Mr. Sekhon, his 2022 tax assessment was only issued on 27 April 2023, so it would not have been possible for him to disclose it until then, which would have been about four weeks before Mr. Sekhon was scheduled to give his evidence in re-direct, on 23 May 2023.

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