

CANADA / JUDGMENT

Sharifpour v. Rostami

2018 BCSC 681

COURT

Supreme Court of British Columbia

DECIDED

11 May 2018

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2018 BCSC 681 Sharifpour v. Rostami

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Sharifpour v. Rostami,

2018 BCSC 681

Date: 20180511

Docket: E103131

Registry: Kelowna

Between:

Cyrous Sharifpour

Claimant

And

Parisa Rostami

Respondent

And

Hassan Dekhodaï Dehaghi

Respondent by Counterclaim

Before: The Honourable Mr. Justice G.P. Weatherill

Reasons for Judgment

The Claimant on his own behalf:

C. Sharifpour

The Respondent on her own behalf:

P. Rostami

The Respondent by Counterclaim on his own behalf:

H.D. Dehaghi

Place and Date of Trial:

Kelowna, B.C.

February 5-9, 13-16, 19-23, 2018

Place and Date of Judgment:

Kelowna, B.C.

May 11, 2018

Contents

I. Introduction. 4

II. The Parties. 5

III. The Proceedings and Interim Orders. 5

IV. Background. 10

a. The Claimant 10

b. The Respondent 11

c. Mr. Dehaghi 12

d. The Claimant's and Respondent's Relationship. 12

e. The Claimant's Post-Marriage Business Activities. 15

i. Picture Paradise. 15

ii. Waves Coffee House - 0806430 BC Ltd. 16

iii. Mega Copy & Print Shop Inc. 18

iv. "Supplements" Business in the Middle-East 18

v. APA Motors. 19

vi. Mr. Rubbles Gravel and Recycling Ltd. 19

vii. Ownership and Sale of Five Vancouver Condominiums. 20

viii. Claimant's loans and borrowings from and to friends and relatives. 21

V. Post-Separation. 22

a. The Claimant 22

b. The Respondent 24

VI. 649 Buck Road Purchase. 25

VII. Transfer of Shares of 430 BC Ltd. to Dehaghi 26

VIII. Issues. 27

IX. Discussion. 28

a. Credibility Issues. 30

i. The Claimant's Credibility. 30

ii. The Respondent's credibility. 31

iii. Mr. Dehaghi's credibility. 32

b. Date of cohabitation. 33

c. Date of Separation. 34

X. Issue #1 - Divorce. 36

XI. Issue #2 - Spousal Support. 36

a. Entitlement 37

b. The Claimant's Income. 39

c. The Respondent's Income. 41

d. Spousal Support 42

XII. Issue #3 - Orders respecting the Children. 44

a. Guardianship and Primary Parenting. 44

b. Child Support 49

c. Arrears of Child Support 49

d. Special and Extraordinary Expenses. 50

XIII Issue #4 - Division of Family Assets and Family Debt. 51

a. The Claimant's Position. 51

b. The Respondent's Position. 53

c.	Mr. Dehaghi's Position.	53
d.	Family Assets.	54
i.	Brampton House.	57
ii.	Proceeds of the sale of 3511 Lakeshore.	58
iii.	430 BC Ltd.	60
iv.	649 Buck Road.	61
v.	Claimant's RRSPs.	63
vi.	Respondent's Nurse's Pension.	63
vii.	Canada Pension Plans.	63
viii.	Iranian Investments.	64
ix.	Household contents.	65
e.	856853 BC Ltd.	66
f.	Summary of Family Assets.	66
g.	Family Debts.	66
h.	Division of Assets and Debts.	68
i.	The Xerox Debt	69
j.	Mr. Rubbles' Debt	69
k.	Summary of Division of Family Assets.	71
l.	Summary of Family Debts.	72
XIV.	Issue # 5 - Is the Claimant bound by the Iranian Marriage Contract?.	72
XV.	Additional Orders.	75
a.	Income Disclosure and Document Production.	75
b.	Children's Passport	75
c.	Party's Address Change.	76
d.	Travel	76
XVI.	Parting Comments - Non-Disclosure.	77
XVII.	Summary of Decision.	78
XVIII.	Further Submissions.	81

XIX. Costs. 81

I. Introduction

- [1] These acrimonious matrimonial proceedings involve three people. The first two, the claimant and respondent, married, had two children together, separated and now raise between them the usual issues of spousal support, guardianship, child support and the division of their family assets and debts.
- [2] The third, Mr. Dehaghi, is the claimant's long-time friend. He is the registered owner of the house where the claimant now lives, that the respondent says was secretly purchased with the claimant's active assistance and using family money.
- [3] The parties were self-represented at trial. Their reluctance to disclose relevant documents, apparent indifference towards court orders and their inexperience in the trial process, resulted in the evidence and submissions being presented in a disjointed and disorganized manner that made the various claims, particularly respecting family assets, difficult to understand and follow. In both the run-up to trial and the trial itself, all three parties failed put their cards on the table face up. Instead they used their best efforts to frustrate and obstruct this Court's ability to determine the truth.
- [4] My sense was that the case was presented in this fashion in the hopes that the suspicion, uncertainty and doubt that surrounded the parties' financial affairs would go unnoticed.
- [5] It didn't.

II. The Parties

- [6] The claimant, age 59, and the respondent, age 45, are both Iranian. They began cohabiting in 2004, were married in 2006 and separated in 2012. They have two children, a son born October 7, 2006 and a daughter born August 7, 2011 ("Children").
- [7] Regrettably, conflict between the claimant and respondent was a routine part of their relationship from the beginning, causing short periods of separation on various occasions. In the years leading to their final separation, they argued, disagreed on most things and developed an immense distrust for each other.
- [8] Mr. Dehaghi, also Iranian, was added as a party to this proceeding by order of Master Wilson dated November 21, 2016, because the respondent claimed that a house registered in his name in 2015, civically described as 649 Buck Road, Kelowna B.C. ("649 Buck Road"), was purchased using money the claimant had hidden from her following his sale of family assets.

III. The Proceedings and Interim Orders

- [9] The claimant filed the notice of family claim ("NOFC") on May 12, 2014, over one year after the new property division regime in the Family Law Act, S.B.C. 2011, c. 25 ("FLA") came into force. This means that the property issues in this action are governed by the FLA and not by the former Family Relations Act, R.S.B.C. 1996, c. 128 ("FRA").
- [10] In the NOFC, the claimant pleaded that the date of separation was July 1, 2012.
- [11] The respondent filed her response to family claim and counterclaim on June 2, 2014 ("Response and Counterclaim"). In the Response and Counterclaim, the respondent pleaded that the date of separation was June 23, 2012.
- [12] On February 10, 2016, the respondent filed, and the court registry accepted, an amended counterclaim purporting to add Mr. Dehaghi as a party to the proceedings without a court order. In this version of the amended counterclaim, the respondent continued to state that the parties separated on June 23, 2012. The error in adding Mr. Dehaghi without a court order was corrected by Master Wilson's November 21, 2016 Order. The respondent then filed a further amended counterclaim on November 25, 2016, in which she stated, for the first time in her pleadings, that the parties began to live in a marriage-like relationship on August 1, 2003 and separated on February 23, 2012.
- [13] Since the filing of the NOFC, there have been a number of interim orders, the most relevant portions of which are as follows.
- a) November 4, 2014 - Master Young (as she then was) ordered that both parties were restrained from disposing of family assets or any other property at issue; the respondent was restrained from using any of the net sale proceeds she received from the sale of 3511 Lakeshore Road, Kelowna, B.C., legally described as PID:009-844-112, Lot B, DL 134, ODYD, Plan 8219 Except Plan 17308 ("3511 Lakeshore"); and that those proceeds were to be held in trust by her counsel pending agreement or court order ("Master Young's First Order");
 - b) November 19, 2014 - Master Young ordered that, within 14 days, each party deliver a list of documents related to the disposition of any property since July 1, 2012; the respondent was to produce documents related to the sale of 3511 Lakeshore indicating where the net sale proceeds were deposited; where, when and how much of those funds were transferred and the whereabouts of those funds ("Master Young's Second Order");
 - c) February 16, 2015: Master Harper ordered that the respondent forthwith deliver the Children's passports to her then counsel to be held until further order or written agreement;
 - d) May 6, 2015: Betton J. found and ordered that on an interim basis, the claimant and respondent each had the same income for support purposes; that the claimant and respondent would each share parenting time of the Children; both the Children's Iranian and Canadian passports be held by the claimant's counsel pending further order or written agreement; all Provincial and/or Federal Child Benefits or subsidies payable for the Children

were to be shared equally from February 1, 2015 onward; the Children's day care costs would be shared on a pro-rata basis according to their respective annual incomes; and the respondent was to have no contact with the claimant except through counsel or written communication;

- e) June 1, 2016: Cole J. ordered disclosure of all financial records from all corporate or individual sources from January 1, 2008 to the present within 60 days; the claimant was ordered to provide the respondent with all documents concerning all businesses in which he had either a direct or indirect interest or involvement from the date of marriage; each party was to provide the other with a sworn affidavit setting out lists of assets and liabilities they each had at the time they began cohabiting, at the time they separated and those they currently had together, with particulars of what happened to these assets and/or money realized from their disposition, all within 60 days. He also ordered that a s. 211 views of the child report be immediately prepared and updated Form F8 financial statements be prepared at least 90 days prior to trial;
- f) August 31, 2016 : I made an order that the claimant's records from March 25, 2006 to the present in the possession or control of the claimant's accountant, Action Management, and Mr. Kami Rahmati of Waves Coffee House, be produced for inspection or copying by the respondent; the claimant produce a copy of his National Card (Iranian Social Security Card); and that all of the claimant's personal or corporate records in the possession or control of the Royal Bank of Canada, CIBC, Toronto Dominion Bank, Bank of Montreal, Scotia Bank, PC Financial, Capital One Master Card, Van City Savings and Interior Savings be produced to the respondent;
- g) September 30, 2016: I made a further order for production of the claimant's individual and corporate records from March 25, 2006 to present; production of all relevant documents in Action Management's and Kami Rahmati/Waves Coffee House's possession or control within seven days, failing which the claimant would be fined \$2,000. I also ordered that the respondent file an affidavit confirming production of her Iranian National Card within seven days failing which she would be fined \$500. The claimant was also ordered to provide copies of letters from the CIBC and Scotia Bank confirming they have no records in their possession/control and attach those letters to an affidavit;
- h) November 21, 2016 : Master Wilson ordered that Mr. Dehaghi be added as a party and he provide a list of documents;
- i) December 9, 2016: I ordered that by January 3, 2017, the claimant produce to the court a copy of the financial disclosure he claimed to have given the respondent and that he file an affidavit respecting his compliance with my September 30, 2016 order;
- j) January 4, 2017: Master Wilson ordered that, within 14 days, Mr. Dehaghi provide the respondent with copies of documents he submitted to the TD Bank in support of his application for a mortgage to purchase 649 Buck Road together with documents related to the TD Bank's mortgage approval, and all documents showing the source and amount of the

down payment for the purchase of 649 Buck Road, his CRA Notices of Assessments from 2011-2015 and proof of payment for the purchase from the claimant of the shares of 0806430 BC Ltd. ("430 BC Ltd.");

- k) January 25, 2017: Master Baker ordered the TD Bank to release all documents supporting Mr. Dehaghi's application for a mortgage and mortgage approval documents related to 649 Buck Road;
- l) February 2, 2017: I ordered the claimant and respondent to file and deliver updated Form F8 financial statements to include the last three years of income tax returns and Notices of Assessments;
- m) March 1, 2017: Master Wilson ordered that any person except the claimant's then counsel Mr. Zaseybida, who had the Children's passports must surrender them to the Court;
- n) March 27, 2017: Master Wilson ordered Mr. Dehaghi deliver all documents he was ordered to deliver in the January 4, 2017 order by April 12, 2017, or else explain in an affidavit why he cannot;
- o) June 20, 2017: I ordered the respondent to provide the court with copies of documents she had received from Mr. Dehaghi and fined Mr. Dehaghi \$1,000 for contempt of the January 4, 2017 and March 27, 2017 court orders, which he could purge by providing the documents;
- p) July 4, 2017: Cole J. fined Mr. Dehaghi \$1,000 payable by July 11, 2017, which fine could be purged if there was compliance with Master Wilson's orders; Mr. Dehaghi was directed to sign a letter authorizing the respondent to obtain his records related to 649 Buck Road directly from the TD Bank;
- q) November 30, 2017: I ordered the parties to obtain a 15-day trial date as soon as possible; no further applications were permitted to be filed by any party without prior court approval; and each party was ordered to ensure that all prior orders for disclosure were complied with; and that all documents in their respective possession or control were delivered to the other parties within 60 days of trial.

[14] Despite these various orders for document disclosure, many documents relevant to the issues in this proceeding were not disclosed.

IV. Background

a. The Claimant

[15] The claimant began his entrepreneurial life at the age of nine as a "peddler". He did well at school graduating in 1975. He obtained a bachelor's degree in economics in 1982 and a master's degree in English literature in 1985, both in India.

- [16] He immigrated to Canada and settled in the Toronto area in 1988. He began a one-man business selling Persian, Egyptian, Chinese and Canadian artwork. To make ends meet, he also worked as a limo driver at night and sang Kurdish Folk Music. He worked hard building his business, often working seven days per week.
- [17] He approached a chain store in the USA and was soon selling his wares in 33 Crafter's Marketplace outlets. By this point, he had incorporated his business into a company called Cyrous Picture Paradise and Framing Inc. ("Picture Paradise"). He developed a relationship with the Hudson's Bay Company ("HBC") who allowed him to place his paintings and artwork reproductions into various HBC outlets on consignment charging him 21% of gross sales. His target was the middle-income population, selling the paintings in the \$200 - \$300 price range. The claimant was well liked by HBC's management who considered him a hard worker. By 2001, the claimant had expanded to over 90 HBC stores from coast to coast. He managed the inventory he had in each store by himself from his home base, which was then in Vancouver. His business required him to travel a considerable amount. He was doing well financially.
- [18] In 1999 - 2000, the claimant became involved in the Anthony Robbins Foundation and is now a life skills coach. He has also pursued his passion for hypnotherapy counselling courses which he hopes to follow-up on in 2018 after this litigation is completed.
- [19] He met the respondent in 2003 in Vancouver.

b. The Respondent

- [20] The respondent is 45 years of age. She obtained a bachelor's of nursing degree in Iran and worked for a number of years as an operating room nurse. In 2002, she immigrated to Vancouver with her first husband. They divorced in 2002.
- [21] The respondent met the claimant through the Persian community in Vancouver. The claimant was performing with a Kurdish music group and the respondent came to one of his concerts. They connected immediately and began dating. The claimant had an apartment in the West End of Vancouver and the respondent was working at Subway and living in a small apartment in Burnaby. The respondent's plan was to work as a registered nurse. In September 2003, she began an upgrading program at Kwantlen University College in Surrey to qualify as a registered nurse in Canada. She not only had the claimant's blessings, but his financial support. She did not have a driver's licence at the time. When the claimant was not travelling for Picture Paradise, he drove her to and from school. To make life easier, the claimant suggested the respondent move to Surrey nearer her school. She agreed and the claimant helped her get a place and helped her move. The respondent's mother came from Iran and stayed with her from August 2003 to the end of March 2004, much to the claimant's chagrin.

- [22] The respondent finished her upgrading at the end of March 2004 and successfully wrote her registered nurse exam in April 2004. In June 2004, she went to Iran for an extended family visit.
- [23] On her return from Iran in the summer of 2004, the respondent decided to leave her life in Vancouver behind and move to Toronto to be with the claimant who had decided to move there for business reasons. By then the claimant had arranged the purchase of a house civically described as 26 Chopin Cres, Brampton, Ontario ("Brampton House"), which he registered in the respondent's name. The down payment came from the claimant's resources.
- [24] The claimant and respondent rented a truck and moved their belongings from Vancouver/Surrey to Toronto.
- [25] Shortly after the Toronto move, the respondent took operating room nursing training and was quickly hired by a Hamilton hospital, a commute of some 3 hours per day from the Brampton House. She found the hospital job stressful, quit and thereafter helped the claimant with Picture Paradise.
- [26] In early 2006, the respondent obtained employment at a Brampton hospital. In April 2006, she found out she was pregnant with their son and the couple decided to marry. The respondent continued to work as a nurse until October 2006, when her son was born.
- c. Mr. Dehaghi
- [27] Mr. Dehaghi moved to Canada in March 1989. His friendship with the claimant began in 1979 in Iran. They have been best friends ever since.
- [28] From 1999 to 2009, Mr. Dehaghi owned a store at the Cherry Lane Shopping Center in Penticton, B.C., selling paintings similar to Picture Paradise's business. With the 2008 recession, business began to slow down. In 2009, the mall advised him that they would not renew his lease. He had inventory that he could not sell and made an undocumented arrangement with the claimant to sell the inventory on consignment through Picture Paradise. This arrangement became one of the main issues at trial. Mr. Dehaghi said he trusted the claimant as a friend and expected he would be paid for the inventory when the claimant had money available.
- [29] In 2004, Mr. Dehaghi purchased a home in Olalla, some 40 km west of Penticton where he currently resides with his partner, Cynthia Pearson.
- [30] Mr. Dehaghi has reported income of \$12,000 per year on his tax returns each year since 2009.
- d. The Claimant's and Respondent's Relationship

- [31] The claimant and respondent had both been married and divorced previously. When they met, the claimant was a self-made businessman and the respondent was a nursing student. They dated for about one year and in 2004 moved to the Brampton House so the claimant could better operate his expanding business. By the time the couple had moved to Brampton, the claimant had been successfully operating Picture Paradise in the HBC for over six years and according to Picture Paradise's unaudited financial statements, had a net worth of approximately \$250,000. In addition, in 2004 the claimant had accumulated RRSP's of some \$42,000. All told, the claimant says when he entered the relationship with the respondent his net worth was approximately \$455,000.
- [32] In March and April 2006, and as a result of the respondent's pregnancy, the claimant and respondent decided to marry. They had two marriage ceremonies, one an Iranian ceremony and the other a Canadian ceremony, both in Brampton.
- [33] The first was the Iranian ceremony on March 25, 2006, during which they signed an Iranian marriage agreement ("Iranian Marriage Contract") wherein the claimant agreed to pay the respondent 2,000 Gold Coins on demand.
- [34] The second was the Canadian ceremony on April 14, 2006.
- [35] Their son was born on October 7, 2006, and the respondent put her nursing career on hold to stay at home and look after his needs while the claimant continued to run Picture Paradise.
- [36] The couple's relationship had its difficulties and was often in turmoil. Arguments were commonplace, usually because of the claimant's business and travel commitments and his failure to consult with the respondent on family financial matters.
- [37] In 2007, Picture Paradise's business started to deteriorate. Canadian suppliers' costs were rising and cheaper imports were arriving from China. It was becoming hard for the business to compete. The claimant attempted to sell Picture Paradise but there were no takers.
- [38] Meanwhile, back in Vancouver, an Iranian friend of the claimant's had started a coffee shop business called "Waves Coffee House" and was selling franchises. While in Toronto, the claimant decided to invest in three such coffee shops, initially spending some \$700,000 for shares in three stores. He owned his interest in these coffee shop franchises through 0806430 BC Ltd., ("430 BC Ltd.") a company he incorporated for that purpose and that he held all the shares of. He later traded his interest in the initial three coffee franchises for three new franchises that 430 BC Ltd. owned outright.
- [39] In 2008, the couple moved back to Vancouver and rented the Brampton House to tenants. They lived in a rented apartment in West Vancouver. They also purchased a house in North Vancouver on Bowser Street ("Bowser Street House"), initially renting it to one of the claimant's friends. In 2009, the Bowser Street House became their residence.

- [40] In 2009, the respondent put their son in daycare so she could help run 430 BC Ltd.'s coffee shop franchises. She says she managed two of the stores for about five and a half months. On occasion, she used her own credit card to pay invoices for the coffee shops.
- [41] In 2010, the respondent accepted a position at a private surgical center and worked as a nurse three to four days per week until the end of 2010 when she became pregnant with the couple's second child.
- [42] The three Waves Coffee franchises owned by 430 BC Ltd. did not do well financially. In 2010, the claimant decided to list them for sale. He was also in the midst of a lawsuit brought by Xerox in connection with leased photocopy equipment for another business he had invested in.
- [43] The claimant and respondent decided to liquidate their assets and move to Kelowna where the claimant's brother Farshad Sharifpour ("Farshad") and his family lived.
- [44] In early 2012, they listed the Bowser Street House. It sold in March 2012 for \$845,000, netting the parties \$109,287. The claimant says he lent \$100,000 of that sum to his wealthy Iranian friend Mr. Jalil Sadeghian ("Mr. Sadeghian") of Santco Trading Inc. ("Santco Trading"). This arrangement was not documented.
- [45] In March 2012, the family moved to Kelowna and into temporary rental accommodation. They looked for a house to purchase and very quickly settled on 3511 Lakeshore Rd, a large seven bedroom house. The purchase agreement was signed on April 12, 2012, for a purchase price of \$715,000. The purchase was set to close on June 25, 2012. The respondent was to be the registered owner. Mortgage financing was arranged through the claimant's Toronto mortgage broker Mr. Babak Jafary ("Mr. Jafary") and the claimant was the guarantor of the mortgage. In order to qualify for the mortgage, the claimant arranged for Farshad to sign a letter falsely suggesting he gifted \$30,000 to the respondent.
- [46] Because they had over two months before the purchase was due to close, the couple decided to visit their families and friends in Iran. The trip was paid for by the claimant using his credit cards.
- [47] On their return, 3511 Lakeshore closed on time and they moved in.
- [48] Within days, the parties had formally separated. The respondent began living on the main floor of 3511 Lakeshore and the claimant lived in the downstairs portion.
- [49] On August 29, 2012, the respondent was hired by Interior Health as a nurse at the Kelowna General Hospital.
- e. The Claimant's Post-Marriage Business Activities
- i. Picture Paradise

[50] Prior to 2008, Picture Paradise earned sufficient money to pay the claimant an annual salary of between \$80,000 and \$110,000 per year, depending on the year, which in turn was used to fund the family's living expenses.

[51] In 2008, there was a rumor going through the HBC that the claimant's consignment licence would not be renewed. He decided to move the family back to Vancouver to become more involved in the Waves Coffee House franchises he had become a partner in the year before. Gradually the Picture Paradise inventory was sold and the company wound down.

ii. Waves Coffee House - 0806430 BC Ltd.

[52] As the Picture Paradise business was winding down, the claimant decided to get involved in the coffee shop business, a venture that was new to him. A typical Waves Coffee House franchise costs between \$225,000 and \$250,000 to set up. In 2007 the claimant bought into a Waves Coffee House located at Richards and Hastings Streets in Vancouver as a partner. In 2008, he purchased an interest in a second Waves Coffee House located in the China Town area of Vancouver and a third coffee shop located in Port Coquitlam.

[53] In early 2009, the claimant sold his partnership interest in the initial three coffee shops and with the proceeds bought two Waves Coffee House franchises in Vancouver that he owned completely. One was at Main and Cordova Street ("Cordova Store") and the second was at Bute and Pender ("Pender Store"). For each of these stores, the claimant paid between \$250,000 and \$300,000. He then bought a third, much smaller, Waves Coffee House at the Stadium Sky Train station ("Stadium Store") for which he paid about \$150,000.

[54] 430 BC Ltd. sold the Pender Store in June 2010, netting \$252,887. From that amount, the claimant took \$240,000 personally. He says that Mr. Pourhassen, an Iranian friend and businessman, had lent him \$100,000 in February 2010, because the franchises were not doing well and so \$100,000 of the proceeds from the Pender Store were used to repay that loan. Neither the alleged loan nor its payback was documented.

[55] He says that an additional \$40,000 was used to pay taxes owed to Canada Revenue Agency ("CRA"). He does not explain, however, the apparent inconsistency in the cheque to CRA being dated March 17, 2010, months before the sale of the Pender Store was completed.

[56] He says the rest of the money was used to pay ongoing expenses related to 430 BC Ltd.'s remaining two Waves Coffee franchises.

[57] The claimant says he was desperate to sell the Cordova Store and the Stadium Store because they were losing significant amounts of money and he had to inject cash into them on a monthly basis.

[58] In July 2011, he sold the Cordova Store and the Stadium Store together to Urban Coast Investing Ltd. ("Urban Coast"). The sale and closing documents are somewhat convoluted, but as best as I can determine, the breakdown was:

- a) \$195,000 gross for the Stadium Store. After real estate commissions, adjustments and closing costs, 430 BC Ltd. received: \$125,000 USD, \$36,201 cash and \$25,000 in vendor financing (evidenced by a promissory note payable \$1,056 per month for two years); The claimant admits to receiving the \$125,000 USD, the \$25,000 and the \$36,210 personally and says it was spent on living expenses; and
- b) \$430,000 gross for the Cordova Store. After real estate commissions of nearly \$38,000, adjustments and closing costs, franchisee transfer fee of \$34,000, franchisee holdback of \$15,000 and a further holdback of \$43,000 to ensure suppliers were paid ("Holdback"), 430 BC Ltd. received approximately \$200,000 in cash and \$100,000 in vendor financing to be paid over five years at \$1,666.67 per month plus interest ("Urban Coast Loan"), secured by a registered General Assignment.

[59] For the purposes of these reasons, I will adopt \$186,000 as the net sale proceeds 430 BC Ltd. received from the sale of the Stadium Store and \$300,000 as the net sale proceeds (not including the Holdback) received from the sale of the Cordova Store.

[60] No financial statements for 430 BC Ltd. or other accounting records were provided in evidence so it is impossible to know the state of its financial affairs in the years leading up to the sale of the Waves Coffee franchises.

[61] In 2012, the claimant received the Holdback of \$43,000 which he decided to use to start another venture, APA Motors, and buy 12 vehicles for resale.

iii. Mega Copy & Print Shop Inc.

[62] In 2010, the claimant went into partnership on a Vancouver print shop incorporated under the name Mega Copy & Print Inc. ("Print Shop"). The claimant says that his partner, Mr. Farid, had no money so he invested the entire \$50,000 - \$60,000 necessary to open the Print Shop himself. Although the respondent knew that the claimant was involved in the Print Shop, the claimant did not share any of the details with her including the amount of his investment.

[63] The Print Shop leased Xerox copy equipment. Unbeknownst to the respondent, the lease was guaranteed by the claimant. The Print Shop could not sustain itself and after one year, Xerox repossessed the leased equipment and sued the claimant for the balance of the lease payments.

[64] On September 20, 2013, Gropper J. granted Xerox judgment against the Print Shop and the claimant jointly and severally for \$99,314.24 plus costs ("Xerox Debt").

[65] This Xerox Debt remains unpaid and no meaningful collection efforts have been taken by Xerox to date.

iv. "Supplements" Business in the Middle-East

[66] With the sale of the Waves Coffee House franchises, the claimant was looking for another business opportunity to venture into. He says that in 2011, his Iranian friend Mr. Sadeghian and he came up with the idea of starting a vitamin supplements business in the Middle East ("Iran Supplements business"). He went to Iran twice in 2011 but after investing some \$200,000 into the venture, decided the bureaucratic red tape was too much and the idea never got off the ground. He says the \$200,000 was made up of \$100,000 from the Waves Coffee franchise sales proceeds and \$100,000 from the sale of the Bowser House.

[67] The claimant did not provide any accounting for where this money went and has produced no documentary evidence for this venture or for the money he says he invested into it.

v. APA Motors

[68] After the Waves Coffee franchises were sold and he received the Holdback, the claimant saw an opportunity to buy and sell used cars. Farshad was in the used car business in Kelowna. In the spring of 2012 the claimant started APA Motors (named after his Children and the respondent). After the family's move to Kelowna he bought twelve cars for approximately \$43,000, but was only able to sell two of them. He gave the other ten to Farshad to sell while he took his family to Iran in May 2012. Although the claimant says Farshad sold these ten cars and paid him the proceeds, no accounting has been produced.

vi. Mr. Rubbles Gravel and Recycling Ltd.

[69] This is the business that ultimately brought the claimant down. After the claimant and respondent separated, he invested \$400,000 into an existing gravel pit business known as Mr. Rubbles Gravel and Recycling Ltd. ("Mr. Rubbles"). He had three partners. Mr. Rubbles leased a gravel pit in the Black Mountain area east of Kelowna. Although the claimant had no experience in the gravel business, his ex-father-in-law did. The claimant says each of the four partners invested \$400,000 into Mr. Rubbles. Where the claimant's \$400,000 investment came from is confusing. It involves the claimant purportedly borrowing \$200,000 from Mr. Sadeghian and \$200,000 the claimant invested directly.

[70] The plan was to use the partners' investments, borrow additional money to buy heavy equipment and sell gravel products to customers in BC and Alberta. Initially, prospects for the sale of gravel looked good but many of the large contracts they thought they had secured were either delayed or cancelled. The equipment they purchased was expensive - each in the \$200k - \$500k range - and included loaders, excavators, bob-cats and recycling equipment. To operate, Mr. Rubbles borrowed from the Royal Bank of Canada ("RBC") and financed some equipment purchases through GE Leasing. The claimant says that Mr. Rubbles needed cash flow of at least \$67,000 per month to meet its obligations which it ultimately could not sustain.

[71] In 2014, the Royal Bank of Canada ("RBC") placed Mr. Rubbles into receivership and on July 15, 2014, the RBC obtained a default judgment against the claimant in the sum of \$408,829.78 plus assessable costs ("RBC Judgment").

- [72] While the claimant has been negotiating with agents of the RBC, no money has been paid on the RBC Judgment.
- [73] At roughly the same time as the RBC receivership, the equipment leased from GE Canada Leasing Services Company ("GE Canada") was also seized and sold. On November 21, 2014, GE Canada obtained a joint and several default judgment against the claimant and his partners for \$188,797.51 ("GE Canada Judgment").
- [74] In addition, as a director of Mr. Rubbles, the claimant has been assessed \$11,694.20 for Mr. Rubbles' unremitted source deductions to CRA.

vii. Ownership and Sale of Five Vancouver Condominiums

- [75] In 2004, the claimant decided to enter the Vancouver condominium market and purchased options to buy three condominiums on Halifax Street in Vancouver ("Halifax Street Condos") that were planned to be built. In 2007, the claimant traded the position he held in the Halifax Street Condos for an inventory of books valued at \$150,000 which he sold over the next two years through Picture Paradise.
- [76] Later, the claimant purchased two additional Vancouver condominiums that he sold prior to the family's move to Kelowna in 2012. The first was civically described as #3605 - 602 Citadel Street ("Citadel Street Condo"), that he sold in March 2012 for \$425,000, netting \$117,000. The second was civically described as #2404 - 1255 Seymour St. ("Seymour Street Condo"), that he sold in May 2012 for \$375,000, netting \$21,893.
- [77] The claimant could not recall when he purchased the Citadel Street Condo, but recalls purchasing the Seymour Street Condo in the 2008 timeframe. He could not recall the details of the purchase. Because the claimant and respondent had planned their trip to Iran in May 2012, and because the claimant would not be available to sign the closing documentation, he gave Farshad a power of attorney for the sale of the Seymour Street Condo. The claimant did not receive the net sale proceeds from Farshad until August 8, 2013, over one year later when he received \$21,893 from K.F.M. Auto. He says he used \$12,904 of that sum to pay taxes and the rest was used for living expenses.

viii. Claimant's loans and borrowings from and to friends and relatives

- [78] The claimant says that over the years, he routinely borrowed from and lent money to Mr. Pourhassen, Mr. Sadeghian, Farshad and other family members.
- [79] For example, he says that he borrowed \$100,000 from Mr. Pourhassen when Picture Paradise was cash strapped and he needed to pay business debts, credit card debts and personal taxes. Mr. Pourhassen owned a furniture store named Edmil Furniture ("Edmil"). The claimant says that he purchased Chinese art through Edmil. The respondent says that the claimant never dealt with or sold Chinese art of any kind and money the claimant paid to Edmil is family money that the claimant is attempting to hide. The respondent points to cheques written to Edmil Furniture on January 20, 2011, for \$50,000 and February 14, 2011,

for \$47,104, for a total of \$97,104. No invoices were ever produced. The claimant says these cheques were in payment of Chinese paintings. The respondent requested details of these purchases but the claimant was unable to provide them.

- [80] He also says he borrowed \$100,000 from Mr. Sadeghian in 2011 when he went to Iran to look at starting the Iran Supplements business. Because he was the one paying for the family expenses in Vancouver, including the \$3,777 monthly mortgage on their Bowser Street Home and the Waves Coffee franchises' expenses, he wanted to leave enough money behind to ensure the bills were paid in his absence. He called it a "peace of mind" loan.
- [81] None of these loans were documented and there is nothing other than the claimant's evidence that was offered in support of them.
- [82] The respondent says the claimant never mentioned any of these transactions to her. Her position is that there were no such loans and the claimant is simply attempting to hide family money from her. The claimant does not deny that he did not discuss his business dealings with the respondent. He says his past attempts to do so simply resulted in arguments with her.
- [83] The claimant could not explain a number of deposits into his bank accounts between 2013 and 2016. He stated that it could have been money he borrowed from a "friend" or monies received from Farshad.
- [84] Likewise, the claimant suggests that deposits shown in his TD Bank account statements in 2014 were loans from a brother in Iran (also not documented) so he could pay off his credit cards.
- [85] Both pre and post-separation, the claimant appears to have used credit he had available on numerous credit cards and operating lines to pay suppliers, debts and make loans respecting various businesses and loans to and from friends and family and transfers between bank accounts. Pre-separation, the claimant also used the respondent's credit cards to pay business and other invoices when there was a shortage of funds. It appears this was a case of robbing "Peter to pay Paul". The evidence about these transactions was convoluted, confusing and difficult to follow.

V. Post-Separation

a. The Claimant

- [86] The claimant lived in the downstairs portion of 3511 Lakeshore from July 2012 to September 2013. He paid the respondent \$2,000 per month, comprising \$1,425 per month "rent" and \$575 per month for the Children's day care.

- [87] He moved out of 3511 Lakeshore on September 17, 2013, and into a nearby fully furnished suite in a lakeside resort paying \$1,700 per month. He stayed there until the summer of 2014 when he moved into a small rental unit on Francis Avenue nearby. He found it quite undesirable.
- [88] Following Mr. Rubbles' collapse in 2014, the claimant thought about becoming a realtor and took real estate courses. He says he found the courses too difficult and he could not pass the assignments. He dropped out.
- [89] The claimant says he was next inspired to open an Air B&B business. He talked to Mr. Dehaghi about it and after 649 Buck Road was purchased by Mr. Dehaghi in 2015, the claimant moved in. He says he has paid Mr. Dehaghi \$2,000 per month rent since he moved in. To get the Air B&B business started he purchased new furniture, bedding, TV's and other necessities using \$50,000 he says he got from Farshad in repayment of money he lent him in July 2012. He also purchased a fully equipped trailer that he parks in the yard and stays in when the Air B&B is fully occupied.
- [90] The claimant testified that he worked for Farshad at K.F.M. Auto for about one year in 2014, but decided selling cars wasn't for him. The evidence shows that in 2014 the claimant was earning \$2,000 per month from K.F.M. Auto. A T4 issued by K.F.M. Auto for 2014 shows income of \$18,000.
- [91] In 2015 and 2016 and while setting up his Air B&B business, the claimant obtained part-time employment as a janitor through another Iranian friend involved with Evergreen Cleaning. He says he worked for Evergreen for just over one year, working 40 hours per week earning \$15.00 per hour.
- [92] He opened the Air B&B and got his first guest in May 2016.
- [93] In conjunction with the Air B&B business, the claimant says he is interested in and is hoping to get involved in hypnotherapy. He thinks he could either open a private hypnotherapy business in Kelowna or obtain employment in that capacity with Interior Health. He is waiting for this litigation to conclude before he embarks on that venture.
- [94] Meanwhile, he says he is content to live off his Air B&B income.

b. The Respondent

- [95] In late August 2012, the respondent obtained employment as a registered nurse at the Kelowna General Hospital. She took operating room training and obtained a part-time shift but was working nearly full-time hours. During one of her shifts, she injured her back while lifting a patient. She was only able to manage part-time hours while she recovered.

- [96] With mounting expenses related to 3511 Lakeshore, child care expenses, day-care expenses and only working part-time hours, she was feeling financially overwhelmed. She decided she had to sell 3511 Lakeshore and listed it for sale on January 24, 2014. She says she was getting no financial support from the claimant and the house was too much for her to manage on her own.
- [97] On July 23, 2014, she was involved in a single vehicle rollover accident on the Coquihalla Highway while returning home from a trip to Vancouver. She lost consciousness in the mishap. Her injuries included a concussion (resulting in memory loss, vertigo and cognitive issues for a number of months), a broken left clavicle, broken nose, damage to her bladder and an exacerbation of her previous work-related lower back injury. She required two surgeries, the first in September 2014, to repair her left clavicle and the second in October 2014, to repair her bladder injury.
- [98] On August 5, 2014, she accepted an offer to purchase 3511 Lakeshore for \$785,000. The closing was set for October 28, 2014. From August 2014 through October 2014, the respondent cashed in her RRSPs and took cash advances from her credit cards. She says she spent this money on general living expenses and on painting, repairing, renovations and other expenses related to the house pending its closing. At that time she was still recovering from her injuries, was not working and she was getting no financial help from the claimant.
- [99] On October 28, 2014, the respondent received net sale proceeds of \$200,628.41 from the sale of 3511 Lakeshore ("Net Sale Proceeds"). She used some to pay off her credit cards but immediately upon receipt, wired the lion's share of the Net Sale Proceeds, \$160,000, to her brother in Iran.
- [100] Despite court orders that the Net Sale Proceeds be placed in trust, they have never been accounted for. I will address this issue later in these reasons.

VI. 649 Buck Road Purchase

- [101] When the claimant and respondent separated, Mr. Dehaghi says he knew the claimant was unhappy, stressed and anxious.
- [102] To help him out, Mr. Dehaghi says he decided to purchase a home and rent it to the claimant. He settled on 649 Buck Road at a purchase price of \$512,500. The down payment was \$110,000 which Mr. Dehaghi says he borrowed mostly from his brother in Iran (an undocumented loan) as he says is normal in the Iranian culture. He testified that he understood his brother got \$23,000 from a "business associate" and his brother lent him a further \$45,000 for a total of \$68,000.
- [103] He says the rest of the down payment (some \$42,000) came from credit card cash advances, miscellaneous unnamed friends and other sources.

- [104] Through the claimant's Toronto mortgage broker, Mr. Jafary, Mr. Dehaghi secured a \$410,000 first mortgage with TD Bank. In order to qualify for the mortgage, Mr. Dehaghi was required to confirm employment information provided in his mortgage application and it was conditional on him:
- a) providing confirmation of his employment and annual salary including providing pay stubs; and
 - b) paying off his then existing various credit card balances.
- [105] In order to meet TD Bank's conditions, he provided, through Mr. Jafary, a fictitious letter from Farshad on K.F.M. Auto letterhead saying he was K.F.M. Auto's full-time general manager, had held that position since August 18, 2014, and earned \$74,800 per annum. Fictitious pay stubs were also provided to TD Bank. During his testimony, Mr. Dehaghi confirmed that he has never earned more than \$12,000 per year since 2009 as is evidenced by his tax returns and that what was provided to TD Bank was false.
- [106] Mr. Dehaghi denies ever seeing the mortgage application documents and denies being a party to the fraud on TD Bank. He suggests that Mr. Jafary obtained and provided this information on his own without Mr. Dehaghi's knowledge, input or consent.
- [107] Despite his evidence that the claimant has paid him \$2,000 per month since purchasing the house in 2015, Mr. Dehaghi has never declared any rental income on his tax returns.
- [108] Mr. Dehaghi denies that the claimant was in any way involved or provided any portion of the down payment for 649 Buck Road.

VII. Transfer of Shares of 430 BC Ltd. to Dehaghi

- [109] 430 BC Ltd. was the corporate vehicle by which the claimant owned and ran the Waves Coffee House franchises.
- [110] Both the claimant and Mr. Dehaghi testified that in 2009, Mr. Dehaghi had decided to wind down his picture business at the Cherry Lane shopping center in Penticton and arranged for the claimant to take his remaining picture inventory and sell it through Picture Paradise. They both testified that they agreed on the valuation of Mr. Dehaghi's picture inventory at \$20,000. They say the arrangement was that the \$20,000 inventory was to be treated as a loan from Dehaghi to the claimant ("\$20,000 Dehaghi Debt") and that the claimant would sell it through Picture Paradise's HBC outlets and pay him back when he could. This arrangement was not documented at the time.
- [111] On August 31, 2012, some two months after the claimant and respondent separated, the claimant and Mr. Dehaghi entered into a written agreement purporting to transfer the claimant's shares of 430 BC Ltd. in satisfaction of the \$20,000 Dehaghi Debt ("August 31, 2012 Agreement").

- [112] At the time of the August 31, 2012 Agreement, 430 BC Ltd. had a secured receivable of \$80,000 owed by Urban Coast representing the balance of the Cordova Store sale proceeds that were vendor financed. It also had a debt owing to CRA for \$43,000 plus interest arrears for HST.
- [113] On July 23, 2013, Urban Coast paid out the balance then remaining on the Urban Coast Loan of \$59,340.25. The next day, 430 BC Ltd. caused \$57,500 of that money to be sent to K.F.M. Auto (one cheque for \$45,000 and one cheque for \$12,500). Both cheques were written and signed by the claimant. Mr. Dehaghi says he "lent" this money to Farshad. Once again, this "loan" was undocumented.
- [114] 430 BC Ltd. has not filed annual reports since 2011. Shortly after Urban Coast paid its loan in full, 430 BC Ltd. was struck from the register.
- [115] The claimant and Mr. Dehaghi say that the transfer of 430 BC Ltd.'s shares was a legitimate transaction simply recognizing the \$20,000 Dehaghi Debt.
- [116] The respondent says that the share transfer is a sham designed to shield the Cordova Store's sale proceeds from her.

VIII. Issues

[117] The issues for determination are:

- a) Should a divorce be granted?
- b) Is either party entitled to spousal support and if so, how much and for what duration?
- c) What orders should be made respecting guardianship and child support respecting the Children?
- d) What are the parties' family assets and liabilities and how should they be apportioned?
- e) Is the claimant bound by the Iranian Marriage Contract?

IX. Discussion

- [118] As is usually the case, the core dispute between the parties is over money.
- [119] As mentioned at the outset of these reasons, a common theme that permeated this litigation was lack of financial disclosure and violations of court orders.
- [120] The claimant and respondent are intelligent and educated. They both have strong and unyielding personalities. They are both proud and stubborn. The respondent claims to have always been under the claimant's control. I do not accept that she was. She came across as intelligent and perfectly capable of looking after her own interests. She has a strong personality and I find is not the type of person who would let the claimant control her.

- [121] The claimant has been in business, mostly successfully, for over 30 years. For the first five years or so of their relationship, the claimant's business ventures provided a respectable living for the couple and their young family. The claimant ran his businesses independently of the respondent and didn't discuss much of his business dealings with her. Ultimately, his businesses failed, leaving a trail of debt and judgments against him that he cannot pay.
- [122] The respondent is convinced that Farshad, Mr. Dehaghi and the claimant's Iranian friends have conspired with the claimant over the years, pre and post-separation, to hide significant amounts of family money from her.
- [123] The cumulative effect of the mistrust between the parties was litigation that was emotionally charged, time consuming and expensive. Had the parties spent less time trying to hide the facts from each other and more time cooperating, most if not all of the issues could have been resolved in a more orderly fashion. The parties have themselves to blame for the situation in which they find themselves and for the findings I am making.
- [124] For the most part, much of the evidence regarding the claimant's financial dealings, employment, businesses and how he earned money and paid bills was extremely difficult to follow. It is clear that he used available credit from various bank operating lines and credit cards to pay suppliers, himself and inject money into his businesses. To the extent there was a paper trail produced, it was at best confusing and at worst impossible to follow. Many documents were either not produced at all or produced mid-trial.
- [125] The various transactions, loans, deals and other arrangements the claimant claims he had with his business partners, friends, Farshad and Mr. Dehaghi were based on agreements that, if indeed they existed, were undocumented. The claimant did things as he saw fit, without regard to any interest the respondent might have in the transactions he was engaged in.
- [126] The claimant's evidence regarding the various financial transactions he was involved in was not persuasive. I am simply not able to determine with any degree of confidence that any of what the claimant says he has been doing, or what his income has been since separation, what his expenses were, and what credit card and other debts he suggests were family debts, is legitimate. What was produced was a hodgepodge of papers that typically raised more questions than they answered.
- [127] Therefore I will do the best I can with the evidence I have in determining the claimant's actual earnings, income earning ability, and division of assets and debts.
- [128] However, before dealing with the issues that I am to decide, I will deal with credibility issues and what I have determined as the date of cohabitation and the date of separation.

a. Credibility Issues

[129] After watching and hearing the claimant, respondent, and Mr. Dehaghi testify, I found myself troubled with their credibility, sincerity and trustworthiness as witnesses. Each of their testimonial reliability was severely damaged by the cumulative effect of a number of things. In many respects, their evidence was not believable.

[130] In the end, I am not satisfied that any of them were completely truthful on many key points.

i. The Claimant's Credibility

[131] The claimant prides himself as a businessman. He struck me as shrewd, intelligent and hardworking. He also struck me as being prepared to take whatever steps he thought he needed to avoid disclosing his income and assets.

[132] He has had financial success for most of his business life. If the past is any indication of his abilities, and I find it is, he will be successful once again after this case is concluded.

[133] Regrettably, I have no confidence that he has declared all of the income he has earned since separation and it is likely that he is either earning undeclared income or is living off the proceeds of past business deals that he has not disclosed.

[134] He has had a habit of transferring and receiving large amounts of cash with little or no record keeping. There is no point in piling example upon example. The short of it is that I did not believe most of what he said relating to the dispositions of his assets including APA Motors, the loans to and from Farshad and friends and the purchase of 649 Buck Road. I am not prepared to rely on his evidence concerning either 649 Buck Road, 430 BC Ltd., or the business transactions and/or loans he made with his Iranian friends.

ii. The Respondent's credibility

[135] The respondent was not much better. She presented as an intense, bitter and high-strung woman who allowed her distrust of the claimant to get the better of her. She is impatient and demanding, even attempting to take over the courtroom on occasion.

[136] She too was prepared to say whatever she thought was convenient to help her cause. I cite, as one example, her position on the date of separation. Her pleadings initially stated that the date of separation was June 23, 2012. That changed in subsequent pleadings to February 23, 2012. Despite the questionable importance of the separation date and for reasons that are unclear, she was not prepared to give up her position that the parties separated in February 2012. It appears she felt she had to maintain a separation date that pre-dated the couples' move to Kelowna and the purchase of 3511 Lakeshore, thus, she thought, insulating her from having to account for the Net Sale Proceeds. Her position on this point was not persuasive. It affected her credibility on other points.

[137] She also seems to have little regard for court orders. The same day she received the Net Sale Proceeds, she transferred \$160,000 of them to her brother in Iran. Less than one week later, Master Young's First Order restrained her from using any of the Net Sale Proceeds unless agreed to in writing by the parties or by further court order. She was also ordered to pay the Net Sale Proceeds to her then counsel to be held in trust pending agreement or court order.

[138] She did not do so.

[139] On November 13, 2014, she sent this email to the claimant:

"Ok Cyrus, for the first time I want to listen to you. Money of the lakeshore house is gone as the money of business and half proceeds of sold properties is gone ."

[140] On November 19, 2014, Master Young's Second Order directed her to indicate "where the net sale proceeds were deposited, where, when and how much of those funds were transferred and where those funds are currently held."

[141] The best she did was provide an email she claims to have sent to her brother in Iran in February 2015, some three months after Master Young's orders requesting return of the Net Sale Proceeds and her brother's suggestion by return email that the money was gone.

[142] I did not believe her explanation for failure to retrieve the Net Sale Proceeds in defiance of Master Young's Orders. Her explanation that her brother used the money to pay his debts was not credible. I am satisfied that she continues to have access to the Net Sale Proceeds in violation of Master Young's Orders in a deliberate attempt to hide them from the claimant and this court.

[143] I also do not accept her explanation for not producing her National Card in defiance of my August 31, 2016 order. I find that she refused to comply with my order to prevent the claimant from finding out information related to assets she holds in Iran.

[144] Unfortunately for the respondent, this placed a black cloud over her evidence in general.

iii. Mr. Dehaghi's credibility

[145] Mr. Dehaghi's evidence was also not believable. His loyalties are clearly with the claimant. His evidence respecting his ability to purchase 649 Buck Road was pure fancy.

[146] He did not comply with orders to produce bank documents respecting his application for the TD Bank mortgage that were used to finance the purchase of 649 Buck Road. His suggestion that he left everything to Mr. Jafari does not stand up to scrutiny.

[147] What I find from Mr. Dehaghi's evidence is that, whatever the arrangement he had with the claimant regarding the purchase of 649 Buck Road, he falsified employment, income and other information in order to deceive TD Bank into thinking that he could qualify for a mortgage when he plainly could not.

[148] Further, his explanation that in addition to credit card advances, he borrowed money from his brother in Iran to help with the down payment was not credible and I reject it.

[149] He claims that the claimant paid him \$2,000 per month rent but he failed to include that sum as income on his tax returns. Indeed, there is no mention on his tax return of income or expenses relating to 649 Buck Road.

[150] Mr. Dehaghi demonstrated that he is the type of person who was prepared go to extraordinary lengths, including lying under oath, to protect the claimant.

[151] In short, Mr. Dehaghi was not a truthful witness.

b. Date of cohabitation

[152] Section 3(3) of the FLA provides that:

(3) A relationship between spouses begins on the earlier of the following:

(a) the date on which they began to live together in a marriage-like relationship;

[153] The claimant and respondent cannot agree on the date they began living together in a marriage-like relationship. The claimant says it was August 2004. The respondent says it was September 2003.

[154] The claimant's evidence is that when they started dating, he had an apartment on Bidwell Street in Vancouver. The respondent resided in Surrey while attending school. He says he gave up the Bidwell apartment at the beginning of 2004 when he moved to Ontario. He had a temporary address in Waterloo, Ontario and travelled for his business. When in Vancouver, he stayed with the respondent in Surrey. He says that when the respondent completed her schooling in August 2004, he persuaded her to move to Ontario where they bought the Brampton House together. That, he says, is when they began cohabiting in a marriage like relationship.

[155] The respondent says they began living together in September 2003, when she started her nursing program in Surrey and they rented a townhouse there. While the claimant admits assisting the respondent in finding rental accommodation in Surrey that was close to her school, and admits staying with her from time to time, he denies living together with her in a marriage-like relationship at that point. The respondent's mother was living with the respondent at that time and he had no interest in living there also. Additionally, the Picture Paradise business was expanding and he was constantly travelling between Vancouver and Halifax servicing the stores.

[156] I am satisfied that the parties began living in a marriage-like relationship in August 2004, when they moved to Ontario and purchased the Brampton House. I accept the claimant's evidence on this point.

c. Date of Separation

- [157] The parties also cannot agree on when they separated.
- [158] The claimant says that they separated on July 1, 2012, shortly after the couple and the Children returned from their trip to Iran at the end of June 2012. He says that prior to then, they had moved to Kelowna and agreed to purchase 3511 Lakeshore as a family. He asserts that on July 1, 2012, the respondent attacked him physically and he then made the decision that he no longer wanted to be married to her.
- [159] The respondent says that they separated in February 23, 2012, as a result of a heated argument at their Bowser Road House. She says that the claimant was very upset that he had no job and no business opportunities. He was unable to get the proposed Iran Supplements business off the ground and he was being sued by Xerox. She says the claimant was verbally abusive to her and she decided that she was no longer willing to continue the relationship. That is the day, she says, when they both decided to separate and they made an agreement on how their money and remaining assets would be split. She says that they agreed she could keep the Brampton House and the sale proceeds of the Seymour Street Condo. It is with that money, she says, that she was able to buy 3511 Lakeshore. She explains her moving to Kelowna with the claimant after the February 23, 2012, "separation" was to shelter the Children from any conflict.
- [160] The respondent agrees that in 2012 she and the claimant travelled to Kelowna on a regular basis to look at buying a home. She had seen an ad for nursing employment at the Kelowna General Hospital so knew she could get work. Further, at her examination for discovery she stated that she wanted to buy property in Kelowna. This evidence is contrary to what she testified to at trial that she did not want to move to Kelowna and did not want to buy a house.
- [161] I accept the claimant's evidence that the couple separated on July 1, 2012. I do so because:
- a) I do not accept that the respondent would have purchased 3511 Lakeshore after the parties separated with the claimant guaranteeing a substantial mortgage. It makes far more sense that the couple moved to Kelowna, agreed to purchase a house together as a couple and completed the purchase before separation;
 - b) The respondent's response to family claim and counterclaim filed June 2, 2014, prepared by her then counsel states that the date of separation was June 23, 2012, and sought retroactive spousal support only from July 1, 2012. In her amended counterclaim, filed November 25, 2016, she changed the separation date to February 23, 2012. She did not amend the separation date set out in her response to family claim. I find that the separation date set out in her amended counterclaim was an after-thought; and

- c) The evidence of the respondent's friend Ms. Mahhadi is consistent with the parties continuing to live together as a couple until July 1, 2012. During their many telephone and text message conversations leading up to and after the couple's move from North Vancouver to Kelowna, the respondent never mentioned to her that they were separated, only that they were having some relationship problems.

[162] While there may well have been a bitter argument on February 23, 2012, while the couple still lived in North Vancouver, it was likely no different than the many arguments the couple had throughout their relationship. I find that the respondent's position that they separated in February 2012, was motivated by her ill-conceived attempt to exclude 3511 Lakeshore as a family asset so that she could shelter the Net Sale Proceeds from the claimant.

X. Issue #1 - Divorce

[163] It is common ground that I should grant a divorce.

[164] Having heard the parties testify and given their personalities, it is likely that this marriage was doomed from the beginning. The claimant married the respondent only because she was pregnant with their first child.

[165] The claimant testified, and I accept, that he was never truly happy with the respondent as a partner.

[166] I am satisfied, considering s. 8 of the Divorce Act, R.S.C. 1985 c. 3 (2nd Supp.), that all the requirements for a divorce have been met.

[167] There will be an order that the parties who were married at Brampton, Ontario, on April 14, 2006, be divorced from each other, such order to take effect 31 days from the date of these reasons.

XI. Issue #2 - Spousal Support

[168] The claimant and respondent each claim spousal support from the other commencing from the date of separation.

[169] The claimant says he has been attempting to get back on his financial feet since the failure of Mr. Rubbles in 2014 and needs spousal support from the respondent until he is able to do so. The respondent believes the claimant hid income from her over the years they were together, continues to do so, and is deliberately underemployed in order to avoid paying spousal and child support.

a. Entitlement

[170] The first step is to determine whether either party has proven entitlement to spousal support. Subsections 15.2(4) and (6) of the Divorce Act set out the factors and objectives that govern an award of spousal support:

15.2 (4) In making an order under subsection (1) or an interim order under subsection (2), the court shall take into consideration the condition, means, needs and other circumstances of each spouse, including

- (a) the length of time the spouses cohabited;
 - (b) the functions performed by each spouse during cohabitation; and
 - (c) any order, agreement or arrangement relating to support of either spouse.
- (6) An order that provides for the support of a spouse should
- (a) recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown;
 - (b) apportion between the spouses any financial consequences arising from the care of any child of the marriage over and above any obligation for the support of any child of the marriage;
 - (c) relieve any economic hardship of the spouses arising from the breakdown of the marriage; and
 - (d) in so far as practicable, promote the economic self-sufficiency of each spouse within a reasonable period of time.

[171] Sections 160 to 162 of the Family Law Act, contain similar provisions. I must consider all of these factors. No one factor is paramount: *Moge v. Moge*, [1992] 3 S.C.R. 813 at para. 52.

[172] In *Bracklow v. Bracklow*, [1999] 1 S.C.R. 420, the Supreme Court established as the basis for entitlement to spousal support either contractual, compensatory or non-compensatory factors. Neither party makes a contractual claim in this case. The claimant seeks spousal support on a non-compensatory, or needs, basis. The respondent seeks spousal support on both a compensatory basis (putting her nursing career on hold while she looked after the Children) and non-compensatory basis because of her inability to financially fend for herself at the moment.

[173] Respecting the claimant, I am not satisfied he has proven entitlement to spousal support. He is a self-described businessman who has had business successes and failures over his life. He is confident that he will be able to succeed in the future. I am satisfied that his standard of living is currently as high, and likely higher than, the respondent's. I am also satisfied he has income that has not been disclosed. Further, I find that the claimant is simply "treading water" pending the resolution of this case.

[174] Respecting the respondent, I am satisfied that she has proven entitlement to spousal support.

- [175] This is a case where the respondent put her nursing career on hold while she stayed at home to provide for the Children's daily needs, allowing the claimant to continue with business. She was a wife, mother and sometimes helped with Picture Paradise and the Waves Coffee House franchises. She had just completed her qualifications to work as a registered nurse in Canada and had started her career when she became pregnant with their son.
- [176] She has always been the Children's primary caregiver including after they moved back to the Vancouver area and she began working part-time.
- [177] When the claimant and respondent separated on July 1, 2012, their daughter was an infant. Yet the respondent obtained employment as a nurse on August 29, 2012, and did her best to work as many hours as she could without much, if any, support from the claimant after he left 3511 Lakeshore in September 2013. In November 2013, she injured her back at work and was only able to work part time hours. In July 2014, she was involved in a single-vehicle rollover that caused serious injuries. As a consequence, she is unable to work full-time and is now working casual shifts. She says she has no benefits from work. It remains unclear if she will ever be able to return to full-time work although it is more likely than not that she will.
- [178] She currently works when the claimant has the Children and takes off alternating weeks when she has the Children.
- b. The Claimant's Income
- [179] The claimant asserts that he has not been able to earn much money since the collapse of Mr. Rubbles in 2014. However, I am satisfied that as a result of the failure of the Print Shop, Mr. Rubbles' receivership, and the resulting judgments against him in excess of \$800,000, he does not want to earn income that is traceable for fear of any earnings he makes being garnished.
- [180] He suggests his earnings in 2017 were \$23,000 from a combination of Air B&B net revenues and Evergreen Cleaning. I do not accept that sum. Firstly, he has deducted from his Air B&B income a large portion of the "rent" he claims to be paying Mr. Dehaghi. He shows the gross Air B&B revenues for 2017 were \$28,235 with expenses of \$17,000 (including "rent" of \$15,000). In order to determine his true income, the \$15,000 "rent" must be added back, returning his Air B&B income to the \$26,000 range. His income from Evergreen Cleaners must be added to this sum which brings his reported income closer to the \$41,000 range.
- [181] Secondly, the relationships between the claimant, Farshad, Mr. Dehaghi and his Iranian friends persuade me that he has significantly higher income than he suggests and is simply not reporting it.
- [182] The claimant's income tax returns from 2008 to 2016 are in evidence and disclose the following income (rounded for convenience):

Tax Year

Income

Source

2008

\$118,000

Business and Rental Income

2009

\$97,000

Business and Rental Income

2010

\$75,000

Business and Rental Income

2011

\$49,000

Business and Rental Income

2012

\$58,000

Capital Gains and Rental Income

2013

\$40,000

RRSP Income

2014

\$34,250

T4 - \$18,000; RRSP - \$16,250

2015

\$23,011

T4 - \$12,000;

Net business income - \$11,011

2016

\$22,086

T4 - \$10,394;

Net business income - \$11,692

2017

\$41,000

T4 (Evergreen - \$15,000);

Air B&B (\$26,000)

[183] It is important to note that this income is what he reported on his tax returns. It does not account for any income he may have earned that wasn't reported.

[184] Going forward, he testified that he is confident his Air B&B business will pick up and he will earn significantly more than he did in the last two years. The claimant has been an entrepreneur and businessman all of his working life and I am satisfied he continues to be so.

[185] The respondent urges me to impute income to the claimant of \$100,000 per year. She believes that the claimant is earning income from Evergreen Cleaners, KFM Auto or other sources that he is not disclosing for fear of having to pay spousal and child support, and/or for fear of steps being taken by creditors to realize on their judgments.

[186] The respondent points out that the claimant's reported income does not match his present lifestyle, says that she knows he could not survive on less than \$100,000 per year, and that he therefore must be getting that money from hidden income or assets. She says he is physically and mentally healthy and there is no reason he cannot work. If he isn't working (and she believes he is) he is deliberately underemployed and/or not reporting income likely due to this litigation.

[187] I am persuaded that more likely than not, there is truth to the respondent's assertions and that the claimant has not been frank with his financial disclosure. It is impossible for me to know with any confidence what the claimant actually earns. I am confident, however, that he is capable of earning much more than he suggests and on the evidence I can only use my best judgment to assess what that is.

[188] I impute the claimant's income at \$70,000 per annum for the years following separation.

c. The Respondent's Income

[189] When the claimant and respondent first met in 2002, the respondent had just begun her schooling. She first obtained nursing employment when she moved to Brampton, Ontario, in 2004 to live with the claimant. Save for time taken off for maternity leave, she has worked

as a nurse in various facilities, public and private, since. Following her accident and subsequent surgery, she started a graduated return to work program in November 2014, and then worked casual shifts. By June 2015, she was able to get a .62 full-time shift. She is currently employed in a .5 full-time position because she wants to be home with the Children during the weeks they are with her. She says that she can barely function after working five days in a row and needs rest periods. Ideally, she says she would like to work no more than 3 days in a row without a break.

[190] The respondent's income tax assessments are in evidence and disclose that she made the following line 150 income:

Year

Income

2012

\$37,547

2013

\$80,334

2014

\$64,422

2015

\$50,877

2016

\$70,022

2017

\$49,889

[191] The respondent made it clear that she does not wish to work more than .5 full-time because of the Children who are at school during weekdays. I find that despite her claimed ongoing physical issues, she could work more than the casual hours she currently works and, similar to the claimant, is letting this case interfere with her income earning ability.

[192] Going forward, I impute the respondent's income at \$55,000 per year.

d. Spousal Support

[193] I find that a sound case for spousal support payable by the claimant from the date of separation has been made out in this case.

[194] Using DivorceMate and using the incomes I have imputed, I have calculated spousal support owing by the claimant to the respondent since July 1, 2012, using the high range of the tables as follows:

Year

Calculation

Spousal Support

2012

6 months at \$424 per month

\$2,544

2013

12 months at \$0 per month

\$0

2014

12 months at \$0 per month

\$0

2015

12 months at \$234 per month

\$2,808

2016

12 months at \$129 per month

\$1,548

2017

12 months at \$215 per month

\$2,580

2018

4 months at \$132 per month

\$528

Total Arrears of Spousal Support:

\$10,008.00

Rounded: \$10,000.00

- [195] The claimant is not entitled to deduct the \$1,465 per month he paid the respondent from July 1, 2012 to September 30, 2013 ($\$1,465 \times 14 = \$20,510$) while he "rented" the basement portion of 3511 Lakeshore because the respondent paid all expenses related to that residence and the amount the claimant paid was in the nature of rent, not spousal support.
- [196] This case is not typical of family law cases where the calculation of spousal support is relatively straight forward. The Spousal Support Advisory Guidelines ("SSAG") formulas were devised for "typical" cases to assist in their resolution. They are informal and, as the name suggests, advisory. This means that departures from the formulas can take place in exceptional situations.
- [197] This is one such exceptional situation where, in my view, the SSAGs do not fit and this Court is required to think "outside the formula ranges". Going forward, I have chosen to order spousal support outside the high range of the SSAGs because of what I am satisfied is the respondent's need for the time being and in an effort to better equalize the claimant's and respondent's net disposable incomes from the date of separation to trial.
- [198] Accordingly, I order that commencing May 1, 2018, ongoing spousal support payable by the claimant to the respondent will be \$500 per month.
- [199] Respecting duration of spousal support, I am satisfied that because it is now approaching six years since the parties separated, the Children are older and in school, and the respondent can work sufficient hours so that she is self-supporting, her need for spousal support is not as great as it was in the years first following the parties' separation. I am satisfied that by the end of 2019, she will no longer require spousal support and the claimant's obligation to pay spousal support will end. In any event the claimant is 59 years old and reaching the end of his future in the work force.
- [200] The respondent argues that whatever order I make for spousal support, the claimant will not honour it. She also says the claimant will never be truthful about his income. He has shown that telling the truth is irrelevant if it interferes with what he wants to accomplish.
- [201] There is a ring of truth to what the respondent says and she is probably correct.
- [202] I am satisfied that the way around this is to order that the respondent is entitled to lump sum spousal support which will take the form of the claimant's interest in family assets. The claimant's conduct indicates that he would likely not make periodic spousal support payments despite any order I make.
- [203] Therefore, from May 1, 2018 to December 31, 2019, the claimant's obligations for spousal support will be \$500 per month for a total of \$10,000 ($\$500 \times 20$ months) which, for the reasons that follow, will be paid as a lump sum payment out of the claimant's share of family assets. Because the claimant will not be able to deduct the lump sum spousal support payment and the respondent will not have to report it in her income, the \$10,000

must be adjusted for income tax. I have assessed that adjustment at \$2,500. Therefore, the net amount payable by the claimant to the respondent as lump sum future spousal support will be \$7,500.

- [204] Given my findings as to the claimant's means, I am satisfied that a retroactive lump sum support order will not cause him undue hardship. My comments regarding a lump sum spousal support order also apply to spousal support arrears and will be paid for through his equity in family assets.

XII. Issue #3 - Orders respecting the Children

a. Guardianship and Primary Parenting

- [205] The Children are currently aged 11 and 6 and are in school. According to the claimant, they are both healthy, happy and, although they struggled initially post-separation are now doing well. They are active in swimming and soccer.
- [206] An interim order was made by Betton J. on May 6, 2015, that dealt with guardianship and parenting time ("Betton Order"). Since that order took effect, the parties have had equal parenting time, one week on and one week off with the exchange taking place on Saturdays.
- [207] The claimant says that this arrangement has been working well and there has been little difficulty. He says the Children enjoy being with him. They walk the dog he bought for them, go for hikes and he takes them swimming. The claimant has no desire to make any changes to the current parenting schedule.
- [208] He would like joint guardianship and shared parenting time to continue. He says the Children are doing well under that arrangement. While admitting he is not perfect, he says he is a good father. He says the Children are very happy in his care and that the respondent inflates normal and minor inconsequential incidents and turns them into problems simply to discredit him as a parent.
- [209] The respondent is not happy with the current parenting arrangement. She wants full guardianship with limited parenting time to the claimant. She says the current shared parenting arrangement is not in the Children's best interests. She is concerned about the Children's safety and hygiene. She cited examples of what she considered health and safety issues while the claimant was exercising parenting time in the year or two after separation and after the Betton order. She is concerned that the claimant is not protecting them from strangers and monitoring their hygiene.
- [210] She says the claimant doesn't discipline the Children. She says he has too many of his friends visit while the Children stay with him.
- [211] She says that the Children are not the claimant's first priority. She says that under her care, the Children's needs will be met, they will be safe and well taken care of. She says that of the two of them, she is the only one who keeps accurate tabs on their homework, deadlines,

doctor's appointments and other scheduled activities. She says she manages the Children's schedules even when they are staying with the claimant and, under the current parenting arrangement, she has to continually send the claimant reminders. She asserts that the only reason the claimant continues to have the Children half-time is to minimize his child support obligations. She believes it is in the Children's best interests that they reside with her full-time and only spend every second weekend with the claimant.

- [212] She suggests the claimant should have parenting time with the Children every second weekend. She also wants to be the Children's primary decision maker and make the final educational, medical and other decisions.
- [213] While the claimant has no significant issues with the respondent's parenting abilities he says she is somewhat of an "umbrella parent" who is overly and unnecessarily concerned about the Children's health and safety while with him. Having heard the respondent during nearly four weeks of trial, I accept that this is an apt description of her.
- [214] On June 1, 2016, Cole J. ordered a s. 211 full report under the FLA.
- [215] The s. 211 report was completed on March 23, 2017, and disclosed that the Children love both parents and have no issues or concerns with the current parenting schedule.
- [216] It would appear the parties have so far successfully kept the Children sheltered from the conflict related to their separation and divorce. The s. 211 report notes that the Children seem relaxed and comfortable in both parent's homes and show no signs of unease. It says that both Children have a close bond with both parents and want to continue spending time with both. The report's author opined that the Children should continue to follow the current shared parenting plan and that the parties continue to share parenting responsibilities.
- [217] The respondent did not give any recent examples of parenting or safety issues respecting the Children. She disagrees with the recommendations in the s. 211 report and wants to be the parent primarily responsible for the Children. At the same time, she says she has no issue with the claimant visiting the Children whenever he chooses.
- [218] In contrast to her evidence, a series of text messages from the respondent to the claimant were filed in evidence, the gist of which are that she acknowledges that the claimant is a good father.
- [219] Section 37(1) of the FLA provides that any order I make respecting guardianship and parenting arrangements must consider the best interests of the Children only.
- [220] Section 39 of the FLA provides that in the circumstances that exist here, both parties are the Children's guardians. In my view, it is in the best interests of the Children that they both continue to be so.

- [221] It is also my view that the current arrangement protects to the greatest extent possible the Children's physical, psychological and emotional well being. Such an order will keep the status quo and will have minimal disruption to the Children and their schedules.
- [222] In passing, I also note that in the respondent's counterclaim she seeks an order that she and the claimant "share equally all of the parental responsibilities as guardians, as defined by the Family Law Act ...", with her having the final say on major decisions respecting the Children. The respondent's apparent change of heart is, in my view, disingenuous.
- [223] There is no evidence that the claimant is not a good father. To the contrary, the evidence, including third party evidence of Ms. Mahhadi, is that he is a kind, caring and doting father.
- [224] Accordingly, I accept the recommendations in the s. 211 report and I accept the claimant's evidence about his ability to properly parent the Children. I do not accept the respondent's evidence. She came across as an over-protective parent that is fearful of the Children's safety unless she is constantly with them. I also accept the claimant's submission that the primary reason for the respondent's desire to be the primary guardian is improperly based on her desire to have the claimant pay increased child support.
- [225] Accordingly, the parties will have joint guardianship of the Children which shall be defined to mean:
- a) the parties are to be joint guardians of the estates of the Children;
 - b) each party will have the obligation to advise the other of any matters of a significant nature affecting the Children;
 - c) during a guardian's parenting time, that guardian may exercise the parental responsibility of making day-to-day decisions affecting the Children provided that such guardian must advise the other guardian of any matters of a significant nature affecting the Children occurring during his/her parenting time;
 - d) the parties will have the obligation to communicate and discuss with each other any significant decisions that have to be made with respect to the Children, including significant decisions regarding non-emergency health, education, religious instruction and general welfare of the Children, and the parties will have the obligation to try to reach an agreement with respect to those major decisions;
 - e) in the event the parties cannot reach an agreement with respect to any major decision despite their best efforts, either party shall be at liberty to apply to the Court;
 - f) each party shall have the right to obtain information concerning the Children directly from third parties including teachers, counsellors, health care providers and third party caregivers, without the consent of the other party; and

g) if either child requires emergency medical or dental care, and reasonable efforts are made to contact the other party, and if, notwithstanding those efforts, the other party cannot be located for consultation, the party with the care of the child is authorized to make a unilateral decision regarding the child's emergency medical or dental health care. The party authorizing the emergency medical or dental health care will notify the other party as soon as reasonably possible of the circumstances of the emergency including the reason and nature of the medical or dental health care along with treatment recommendations of the attending health care professional.

[226] Each party will be entitled to have "the first right of refusal" to have parenting time with the Children, or each child as the case may be, should the party with scheduled parenting time on a particular day be unable to parent the Children, provided that the first right of refusal shall only take effect if the party knows at least 6 hours in advance that he or she will be unable to be with the Children for a period of no less than 2.5 hours.

[227] Until written agreement or further order, parenting time will continue as it has since the Betton Order on a one week on, one week off basis with the exchange occurring on Saturday mornings.

[228] In making my determination, I have no doubt that the claimant and respondent both love the Children very much. Regrettably, they have let their dislike of each other and this fight cloud their judgment and ability to determine what is in the Children's best interests.

b. Child Support

[229] As a result of the orders I have made respecting joint parenting and the parties' incomes, the claimant is obliged to pay the respondent child support.

[230] In accordance with the Federal Child Support Guidelines, going forward the claimant shall pay the respondent \$232 per month commencing May 1, 2018, and on the first day of each month thereafter until the Children are no longer children of the marriage within the meaning of the Divorce Act.

c. Arrears of Child Support

[231] Since the date of separation, the Children have resided with the claimant and respondent on more or less an equal basis.

[232] I have calculated arrears of child support based on shared parenting and the claimant's income being imputed at \$70,000 per annum and the respondent's line 150 income. Those calculations are as follows:

Year

Calculation

Child Support

2012

6 months at \$486 per month

\$2,916

2013

12 months at \$152 per month (respondent pays claimant)

(\$1,824)

2014

12 months at \$85 per month

\$1,020

2015

12 months at \$291 per month

\$3,492

2016

12 months at \$0 per month

\$0

2017

12 months at \$307 per month

\$3,684

2018

4 months at \$232 per month

\$ 928

Total Child Support Owing:

\$10,216

[233] The arrears of child support as calculated above (\$10,216) shall be paid by the claimant as a lump sum payment from family assets.

[234] The claimant will pay the respondent child support of \$232 per month from May 1, 2018 until further order.

d. Special and Extraordinary Expenses

- [235] The evidence respecting special and extraordinary expenses incurred by each of the parties since separation is sparse.
- [236] Although I am satisfied that the respondent paid the lion's share of the Children's clothing and personal expenses, there is very little evidence about the amount. I am satisfied that these expenses were minimal and the parties each casually paid expenses as and when incurred without discussion with the other party and without expectation of being reimbursed.
- [237] The respondent's claim for s. 7 expenses is therefore dismissed.
- [238] Going forward, however, the parties will pay their proportionate share of the Children's special and extraordinary expenses in accordance with the Federal Child Support Guidelines which will be defined as:
- a) the portion of medical and/or dental insurance premiums attributable to the Children;
 - b) health-related expenses that exceed insurance reimbursement by at least \$100 annually, including orthodontic treatment, professional counselling provided by a psychologist, social worker, psychiatrist or any other person, physiotherapy, speech therapy and prescription drugs, glasses and/or contact lenses;
 - c) extraordinary expenses for primary or secondary school education or for any other educational programs that meet the child's particular needs including piano lessons, swimming lessons, trampoline, sports and summer camp costs as agreed in writing by the parties and expenses for such other sports or cultural activities including music lessons as agreed in writing by the parties;
 - d) expenses for post-secondary education; and
 - e) extraordinary expenses for extracurricular activities.
- [239] For 2018 and until further order, the claimant shall pay 56% of the Children's special and extraordinary expenses and the respondent shall pay 44%.

XIII Issue #4 - Division of Family Assets and Family Debt

a. The Claimant's Position

- [240] The claimant says that his net worth was \$455,000 in 2004, when he began a marriage-like relationship with the respondent. He says that he should be credited for that sum before the family assets are divided. He points out that the respondent brought no assets into the relationship.
- [241] He asserts that everything he has done in terms of acquiring and disposing of assets before and after separation was above board. He denies hiding money or family assets.

- [242] He attempts to account for the money he received from the sales of his various businesses and properties. For example he says he received \$252,000 from the Pender Store sale in June 2010, and deposited \$240,000 of that into his personal account to pay loans and other debts. One such loan, he says, was \$100,000 he borrowed from Mr. Pourhassen in February 2010, to keep the Waves Coffee House franchises operating. He says he also paid \$40,000 to Canada Revenue Agency for taxes he owed, put \$21,000 into his RRSP and paid other business debts. He could not account for the remaining \$79,000 but says it was likely for personal expenses.
- [243] With the sale of the Waves Coffee franchises, he was looking for a business to invest in and settled on the Iran Supplements idea. He travelled to the Middle-East twice in 2011 to investigate its potential. He says that while he was away, he needed to ensure his personal and business expenses would be paid so on May 4, 2011, he borrowed \$100,000 from Mr. Sadeghian which he says he paid back on July 8, 2011, from the sale proceeds of the Cordova Store and Stadium Store. Again, this "loan" was not documented.
- [244] Then in September 2011, he says he invested further into the Iran Supplement business by "lending" Mr. Sadeghian \$100,000. That \$100,000, he says, was eventually part of Mr. Sadeghian's investment into Mr. Rubbles.
- [245] 430 BC Ltd. received approximately \$486,000 from the sale of the Cordova Store and the Stadium Stores (\$186,000 from Stadium; \$300,000 from Cordova). Additionally, there was the Holdback of \$43,000. The claimant accounts for that money as follows:
- a) \$100,000 to pay back Mr. Sadeghian (undocumented loan);
 - b) Another \$100,000 was given to Mr. Sadeghian for the Iran Supplement business that failed;
 - c) \$200,000 invested into Mr. Rubbles;
 - d) \$43,000 (the Holdback) was invested in APA Motors;
 - e) The balance (approximately \$86,000) was used to pay bills and for personal living expenses.
- [246] Respecting debts, he says that on separation, his credit card debts were \$59,700; there was the Xerox judgment of \$99,314.24; the GE Capital judgment of \$188,797.51; \$191,000 owing to Mr. Sadeghian; the RBC judgment of \$408,829.78; and the CRA debt for Mr. Rubbles' source deductions of \$11,694.20. These debts total \$959,335.73 excluding post-judgment interest. He says these are all family debts that the respondent is equally responsible for.
- b. The Respondent's Position
- [247] The respondent says that the claimant owned and sold various properties and businesses during their relationship that kept evolving and changing. All of these businesses and money realized from them were family assets and the claimant has never properly explained or accounted for them.

[248] Accordingly, the respondent seeks the following which, although mostly arbitrary, she says would fairly compensate her for her share of family assets that either exist or were improperly disposed of by the claimant:

- a) \$500,000 as her share of the three Waves Coffee House franchises;
- b) 100% ownership of the Brampton House;
- c) 100% of the claimant's RRSPs earned since cohabitation;
- d) a declaration that 649 Buck Road is a family asset purchased with family money hidden by the claimant;
- e) \$800,000 pursuant to the Iranian Marriage Contract; and
- f) \$25,000 towards legal fees she was required to spend in an effort to determine what happened to the family assets.

c. Mr. Dehaghi's Position

[249] Mr. Dehaghi says that the evidence proves he is the legal and beneficial owner of 649 Buck Road and not the claimant. He says the suggestion by the respondent that 649 Buck Road belongs to the claimant "is a dream". He says he has proven the source of the down payment to purchase the property came from legitimate sources including family, friends and credit cards, none of which involved the claimant.

[250] He says the claimant is his tenant and pays him rent of \$2,000 per month. He explains not declaring that rental income on his tax returns by suggesting 649 Buck Road never made money so therefore he isn't required to. He is incorrect.

[251] He claims he had nothing to do with duping TD Bank to give him a mortgage so he could purchase 649 Buck Road. He maintains that all of the mortgage details were handled by Mr. Jafary, the claimant's Toronto mortgage broker, behind his back and without his knowledge.

[252] Mr. Dehaghi also argues that the evidence proves that the transfer of 430 BC Ltd.'s shares from the claimant to him on August 31, 2012, was a legitimate business transaction. He is adamant that the inventory the claimant bought from him in 2009 on consignment was discounted from \$30,000 to \$20,000 because the claimant agreed to take it all. He denies agreeing to the sum of \$2,000 as the respondent suggests.

[253] He answers his failure to document this transaction by saying that he has known the claimant for 39 years, trusts him, and has never required anything in writing. He asserts that he has lived his life with integrity and trust and that his agreement is his word.

[254] He seeks \$30,000 in costs for two years of the respondent interfering with his life.

[255] As previously discussed, I reject Mr. Dehaghi's evidence.

d. Family Assets

- [256] Both parties say that the other has deliberately hidden money and/or lied about the disposition of cash assets.
- [257] Much of the evidence led by the parties centered on various transactions, financing, re-financing, business loans, use of various bank credit lines and credit card transactions. To say that these transactions were difficult to follow would be an understatement. It was a hodgepodge of disorganized documents including bank records, credit card statements, credit line statements and after-the-fact emails related to undocumented "loans".
- [258] The respondent describes the claimant's business relationships with Farshad, Mr. Dehaghi and the claimant's other business associates and friends as a "boy's club" where money is transferred back and forth by way of loans or other transactions that are undocumented and untraceable.
- [259] My assessment is that the respondent's characterization of these dealings is correct.
- [260] The respondent suspects the claimant has hidden and/or given to his friends money he received from the disposition of various businesses in an attempt to hide it from her. She says that his lifestyle and ability to buy the Children electronics does not match his stated income so he must be living off hidden money.
- [261] The claimant says the respondent sent the net sale proceeds of 3511 Lakeshore to Iran for safekeeping and that her suggestion the money has been spent by her brother is false. He also suspects the respondent owns real estate in Iran which was purchased using family money. He accuses the respondent of deliberately refusing to produce her National Card to prevent him from obtaining particulars.
- [262] Having heard the evidence, I am satisfied that there is substance to both claims. I have attempted to trace money, transactions, credit card advances, and line of credit advances through the voluminous financial records that were filed as exhibits. It was a futile exercise.
- [263] The respondent seeks an adjustment of the family assets to reflect what she thinks the claimant has not accounted for when he disposed of Picture Paradise, the Waves Coffee House franchises, condominiums and other assets. If the claimant spent family money inappropriately during the marriage, that cannot be the subject of a remedy in these proceedings: *J.S.R. v. P.K.R.*, 2017 BCSC 928 at para. 296.
- [264] On a balance of probabilities, I am satisfied that the claimant has hidden family money through Farshad and various Iranian friends in the hopes it would go undetected by the respondent. The numerous "loans" and other transactions back and forth between the claimant on the one hand and Mr. Dehaghi, Farshad, Mr. Sadeghian and Mr. Pourhassen on the other, are all suspect. It is impossible on the evidence to differentiate legitimate transactions from those that are made up.

[265] Accordingly, the division of family assets in this case can only be based on my assessment of what has taken place pre and post-separation respecting family assets and making a division based on that assessment. Before I can do so, I must first determine what the family assets are. This was not an easy exercise. The candidates are:

- a) the Brampton House;
- b) proceeds from the sale of 3511 Lakeshore Road;
- c) the shares of 430 BC Ltd.;
- d) 649 Buck Road;
- e) the claimant's RRSPs;
- f) the respondent's Nurse's Pension;
- g) the parties' Canada Pension Plans;
- h) the Iranian Investments; and
- i) household contents.

[266] I must also determine if there ought to be any excluded assets or reapportionment of assets to take into account assets brought by the claimant into the relationship.

[267] Under the FLA, the starting proposition is that each party is entitled to an undivided one-half interest in all family assets.

[268] I will commence with an analysis of what assets I have concluded exist.

i. Brampton House

[269] The parties purchased the Brampton House in August 2004. It was, and continues to be, registered in the respondent's name. The down payment of approximately \$36,000 was paid using the claimant's funds. The respondent says it should be an excluded asset because the down payment was a "gift" from the claimant and because she has been paying all expenses related to it since separation.

[270] The Brampton House served as the couple's matrimonial home until they moved back to Vancouver in 2009. Since then it has been rented. The respondent is currently receiving gross rentals of \$1,650 per month. She has been paying the Brampton House's mortgage, taxes, insurance, repairs and maintenance. There is a shortfall of about \$300 per month which the respondent has been paying.

[271] The Brampton House was refinanced by the claimant in 2009 in order to pay Picture Paradise's suppliers, outstanding credit card balances and credit lines. I am satisfied that the funds from the refinancing went into the claimant's business and that the respondent did not send money from the refinancing to her family in Iran as the claimant suggests.

- [272] There is no evidence valuing the Brampton House. The parties did not bother to obtain any appraisal or other satisfactory evidence upon which I can determine its fair market value. The claimant arbitrarily places its value in the \$600,000 to \$700,000 range. The respondent says the Brampton House requires significant maintenance and repairs, is currently in poor condition and there is little or no equity in it.
- [273] The claimant and respondent are both in favour of selling the Brampton House but the respondent says she should get all of its net sale proceeds.
- [274] There is no doubt that the Brampton House is a family asset and that, subject to the adjustments and lump sum awards I am making, the parties are each entitled to a one-half interest in any equity that may exist.
- [275] Because there is no admissible evidence before me to assist me in valuing the property, it will be ordered sold. The parties will likely not be able to agree on a listing price. They are therefore to each consult a realtor of their choice in the Brampton area and obtain from that realtor a letter setting out what that realtor believes the house should be listed for. The realtor who provides the highest price will be given the listing and the Brampton House will be listed at that price. Any offers to purchase the Brampton House will be subject to court approval.
- [276] The respondent will receive \$22,000 from the net sale proceeds after commissions and closing costs, which is the amount I have assessed as the money she has put into the home since separation (\$4,000 in repairs and maintenance and \$18,000 in monthly top-ups (\$300 per month x 5 years). The balance will be paid into court to the credit of this action.

ii. Proceeds of the sale of 3511 Lakeshore

- [277] The evidence satisfies me that 3511 Lakeshore was purchased by the claimant and respondent using family money. It was a family asset as were the Net Sale Proceeds.
- [278] As previously stated, I reject the respondent's explanation for failing to comply with Master Young's Orders. Her evidence about what happened to the \$160,000 she sent to Iran was not true and I am satisfied that she lied to the Court when she stated the money was gone. Other than paying lip-service to Master Young's Orders, she made no effort to retrieve the Net Sale Proceeds choosing instead to defy them in the interests of keeping the money out of the jurisdiction of this Court.
- [279] I arrived at this conclusion because:
- a) the respondent struck me as an intelligent and shrewd person. She would not risk losing the only liquid asset she then had;

- b) the NOFC was filed in May 2014, in which the claimant made a claim for an interest in 3511 Lakeshore Road. She would have been served with it and retained counsel because her response to family claim was filed June 2, 2014. Her suggestion that she did not know that he was making a claim against the house is not believable;
- c) her explanation that her brother took her money and spent it to cover his debts is also not believable. I infer from her evidence that her family would have circled the wagons and done their best to protect the respondent and her money and would not have put it at risk, especially considering she was separated from the claimant and looking after two young children;
- d) she knew from Master Young's First Order that she was required to immediately place the proceeds of the sale in trust yet the only documentary evidence of an attempt to have her brother return the money is in February 2015, some three months later. She claims that she made numerous telephone calls to her brother and parents in Iran but that they would not return her calls. This evidence is not believable given her earlier evidence of how close her family is; and
- e) she emailed the claimant on November 13, 2014, saying "the money is gone"; this is inconsistent with her earlier evidence that she tried to get the money back from her brother and made numerous phone calls to her brother and family and did not know that money was gone until February 2015.

[280] In sum, I am satisfied that the \$160,000 the respondent sent to Iran continues to be held there for her. Subject to the other orders I make, the claimant is entitled to credit of \$80,000 of the Net Sale Proceeds.

iii. 430 BC Ltd.

[281] The claimant says that in early 2012, he had been talking to Mr. Dehaghi about the \$20,000 Dehaghi Debt. He decided that he would transfer ownership of 430 BC Ltd. in satisfaction of that debt which was documented in the August 31, 2012 Agreement.

[282] The respondent says that the August 31, 2012 Agreement is a sham created to hide the proceeds of sales of the Waves Coffee franchises from her. She says that she was present in 2009 in Penticton when discussions between the claimant and Mr. Dehaghi took place. She says they agreed to value the remaining store inventory at \$2,000 and not \$20,000 as they suggest. She says that when she was there, Mr. Dehaghi's store had very little inventory and only items that no one was prepared to buy after he had a closing out sale. She also says that it is more likely than not that the claimant paid Mr. Dehaghi for the inventory when it was sold through Picture Paradise.

[283] She points to the August 31, 2012 Agreement as another example of improper dealings between the claimant and Mr. Dehaghi designed to hide family assets and frustrate her attempt to be treated fairly.

- [284] The evidence discloses that after the purported transfer of 430 BC Ltd.'s shares to Mr. Dehaghi, the claimant remained the company's bank signatory and after Urban Coast paid out its loan in July 2015, wrote cheques to Mr. Dehaghi for \$2,063.15 per month for almost one year.
- [285] Mr. Dehaghi's explanation for these cheques is that his mortgage broker said it was needed to prove on-going cash flow to continue to fool TD Bank. Firstly, I don't believe his explanation. Secondly, his suggestion that this scheme was orchestrated by his mortgage broker would not absolve him of responsibility for being an active participant in the fraud.
- [286] It is clear to me, and I find, that the purported transfer of 430 BC Ltd.'s shares to Mr. Dehaghi was a sham transaction designed to hide family money. I reject the claimant's and Mr. Dehaghi's evidence on the value of the inventory and that there was any money owing to Mr. Dehaghi. The cheques of \$2,063 per month paid to Mr. Dehaghi from July 2015 to May 2016, were prepared in an ill-conceived effort to improperly syphon the sale proceeds from the Waves Coffee franchises out of 430 BC Ltd. and hide the money from the respondent. I am satisfied that the claimant was the end recipient of that money.
- [287] The August 31, 2012 Agreement was not prepared by the claimant's lawyer Mr. Zaseybida or signed in his lawyer's office as the claimant and Mr. Dehaghi suggest. It was created by the two of them on their own for improper purposes.
- [288] There was no credible evidence led by either Mr. Dehaghi or the claimant justifying the money taken out of 430 BC Ltd. At the time of the purported transfer of ownership of 430 BC Ltd. in August 2012, there was approximately \$80,000 still owing by Urban Coast which was fully secured. There was little risk of the debt not being paid. It was a five-year loan and was being paid at the rate of \$1,667 per month plus interest. In July 2015, Urban Coast paid out the then remaining balance of the loan of \$59,340. The claimant says that 430 BC Ltd. lent \$57,500 of this money to Farshad. Again, no loan agreements or other documents were produced to confirm this loan and I do not accept that such a loan existed.
- [289] 430 BC Ltd. is a family asset and continues to be owned by the claimant as was the money paid by 430 BC Ltd. to Mr. Dehaghi, which I have determined to be \$60,000 after allowances for taxes and other expenses. The respondent is entitled to \$30,000 of this sum.

iv. 649 Buck Road

- [290] In short, the documentary evidence and testimony Mr. Dehaghi presented in support of his argument that he provided the down payment for 649 Buck Road is unsatisfactory. Given the circumstances, the very close relationship between Mr. Dehaghi and the claimant, and the fact that TD Bank was misled into granting a mortgage based on fictitious employment information, I draw an adverse inference against Mr. Dehaghi and the claimant.

- [291] Similar to 430 BC Ltd., I find that the purchase of 649 Buck Road was part of the claimant's and Mr. Dehaghi's joint scheme to try to hide and launder family money to avoid detection by the respondent. I reject their evidence to the contrary.
- [292] I infer that the claimant wanted to buy 649 Buck Road, but did not want to put it in his name, either because of the judgments against him or to hide it from the respondent, or both.
- [293] As the claimant's long time friend, Mr. Dehaghi agreed to the registration of 649 Buck Road in his name. He had no income that would come close to satisfying TD Bank's mortgage approval requirements. I find that the claimant and Mr. Dehaghi approached Farshad who participated in the deception by falsifying letters and pay stubs to dupe TD Bank.
- [294] Additionally, I am satisfied that the majority of the funds used as a down payment did not come from Mr. Dehaghi's brothers or other persons, but from the claimant.
- [295] The evidence is overwhelming that 649 Buck Road was purchased in part using money directly or indirectly derived from family assets. While it is difficult to be precise, I assess that 70% of the down payment for the purchase of 649 Buck Road came from the claimant's resources and 30% came from Mr. Dehaghi's resources.
- [296] I have therefore determined that the claimant owns 70% of 649 Buck Road which is a family asset of which the respondent is entitled to 50%.
- [297] 649 Buck Road will be appraised by a qualified appraiser to be agreed by the parties or failing agreement, by an appraiser to be appointed by the court. The respondent will be entitled to 35% of the equity in the property to be determined by agreement of the parties or failing agreement, by the court. The claimant and Mr. Dehaghi will have 60 days from the date of the determination of the equity in the property to pay the respondent out, failing which 649 Buck Road will be ordered sold.

v. Claimant's RRSPs

- [298] At the time the claimant and respondent began cohabiting, the claimant had approximately \$42,000 in RRSPs.
- [299] As at the July 1, 2012 separation date, his RRSP had increased to approximately \$177,000 and by December 31, 2017, it had increased to \$197,000. By the claimant's own admission, some of that increase was due to contributions he made to his RRSP using money he realized from the disposition of family assets.
- [300] Under the FLA, the valuation date of family assets is the date of trial.
- [301] Accordingly, I have determined that during the relationship, the claimant's RRSPs increased in value by some \$155,000. That increase is a family asset of which the respondent is entitled to 50%, or \$77,500.

[302] There will be an order that the claimant transfer \$77,500 of his RRSP into the respondent's RRSP.

vi. Respondent's Nurse's Pension

[303] There is no evidence before me regarding the details of the pensions the respondent has as a result of her employment as a registered nurse. I have no doubt that she has one and that the claimant is entitled to his proportionate share from the date the parties cohabited in August 1, 2004 to July 1, 2012, when they separated.

[304] There will be an order that the respondent's nurse's pension will be divided accordingly.

vii. Canada Pension Plans

[305] No evidence was offered from either the claimant or respondent regarding their respective Canada Pension Plans ("CPP").

[306] During submissions, each seemed to agree that these pensions should be split in accordance with the FLA.

[307] Accordingly, I direct that the claimant shall have a 50% interest in the respondent's CPP from August 1, 2004 to July 1, 2012, and the respondent shall have a 50% interest in the claimant's CPP for the same period.

viii. Iranian Investments

[308] The claimant says that in 2007 he sent \$67,000 to the respondent's family to invest in condominiums there. He says this money was intended as an investment to be shared between the claimant, respondent, and the respondent's family. He acknowledges that the investment arrangement was very loose and was not documented. He says that since 2007 these condominiums have increased in value to approximately \$200,000.

[309] He says the respondent has refused to cooperate with his attempts to prove that these investments exist by refusing to provide a copy of her National Card as she was ordered to do. He says that this refusal has frustrated his attempts to obtain evidence.

[310] Additionally, the claimant says that the respondent wrote cheques on her personal account totaling approximately \$37,000 under the guise of paying invoices owed by Picture Paradise's suppliers and instead sent the money to her family in Iran.

[311] While the respondent admits that money was sent to Iran, she says it was not \$67,000 but far less and the money was in the nature of small gifts to her family from time to time. She denies owning any property or having any interest in property in Iran.

[312] Respecting the National Card, the respondent's explanation for refusing to provide it was two-fold. Firstly, she claims not to have one. Secondly, she refused to apply for one at the claimant's request because it would have meant she would have to give up her original birth certificate which she was not prepared to do.

[313] I did not believe either explanation.

[314] Despite these failings on the respondent's part, I find that the claimant has not met the onus on him to establish that the Iranian investments exist. Simply put, there is no credible evidence before me upon which I can find that the respondent has an interest in condominiums or other realty in Iran.

ix. Household contents

[315] The claimant left 3511 Lakeshore with his personal belongings and two Persian carpets. The respondent kept the rest of the household contents.

[316] The claimant argues that the household contents were valuable. He says he paid \$10,500 in moving costs to move the household contents from North Vancouver to Kelowna in April 2012. Therefore, he says, I should infer that the couple had a lot of household furniture and other belongings. He says I should value the contents at \$20,000 and order that the respondent pay him \$10,000 in lieu of his half.

[317] The respondent says their household furniture and contents were old and worth very little.

[318] The evidence concerning the value of household and personal items said to be at issue and their value is very scant. There is nothing upon which I can base any assessment on value.

[319] I infer that had the household belongings been worth what the claimant suggests, he would have made some effort to itemize and value them. I conclude that he took no such steps because the contents were not worth the effort.

[320] In sum, I can only give the household contents a nominal value. There will be an order that the claimant is entitled to all the household and other belongings from 3511 Lakeshore currently in his possession to the exclusion of the respondent and the respondent is entitled to all household belongings currently in her possession to the exclusion of the claimant.

e. 856853 BC Ltd.

[321] The respondent mentioned this company for the first time during submissions. She says that the claimant made an insulting settlement proposal to her three years ago and that this company was mentioned in that proposal. There was no evidence led on what this company was involved in or what involvement the claimant may have had in it. The respondent did not cross-examine the claimant on this company.

[322] Accordingly, I have nothing with which make a decision on one way or the other respecting this company.

f. Summary of Family Assets

[323] To summarize, the family assets I have found to exist and their values (to the extent I can determine them) are as follows:

- a) Brampton House: To Be Determined;
 - b) 3511 Lakeshore Net Sale Proceeds: \$160,000;
 - c) 430 BC Ltd.: \$60,000;
 - d) 649 Buck Road: To Be Determined;
 - e) Claimant's RRSPs: \$155,000;
 - f) Respondent's Nurse's Pension: To Be Divided;
 - g) Claimant's and respondent's CPP: To Be Divided;
 - h) Iranian Investments: nil; and
 - i) Household contents: nil.
- g. Family Debts

[324] At the time of separation, the claimant says that his debts were:

- a) Credit card debt: \$59,700;
- b) Xerox judgment: \$99,314;
- c) GE Canada judgment related to Mr. Rubbles: \$188,797;
- d) Royal Bank judgment related to Mr. Rubbles: \$408,829;
- e) Santco Trading debt related to Mr. Rubbles: \$191,000; and
- f) Canada Revenue Agency debt related to Mr. Rubbles for unremitted source deductions: \$11,694.

[325] The claimant has paid nothing on the various judgments against him. He says that periodically he gets calls from collection agencies trying to negotiate with him. He feels that eventually the judgments will disappear or that he will be able to settle them for as little as ten cents on the dollar.

[326] Respecting the Santco Trading debt of \$191,000, he says Mr. Sadeghian is a good friend who is wealthy and he is not concerned about it. The only evidence of this "debt" are bank drafts and a letter from Mr. Sadeghian dated February 1, 2013 (after separation), stating that he received from the claimant \$100,000 on September 9, 2011; a further \$100,000 on March 13, 2012; that he sent the claimant \$400,000 on May 5, 2012; and that he received \$9,000 from the claimant on January 25, 2013. He then suggests a balance owing of \$191,000. Given my findings about the claimant's propensity to send family money to his friends, I have no confidence that these transactions were legitimate loans and I do not accept that this debt is owing as the claimant suggests. Simply put, the claimant has not proven that this debt exists.

- [327] Respecting the CRA debt of \$11,694, he has had no communications from CRA since March 2016.
- [328] Respecting the \$59,700 credit card debt, the claimant attempted to explain what it related to.
- [329] His explanation was not persuasive.
- h. Division of Assets and Debts
- [330] Pursuant to s. 81 of the FLA, the claimant and respondent are presumptively entitled on separation to an undivided half interest in all family property as tenants in common, unless they can establish under s. 95 that it would be "significantly unfair" to divide those assets equally.
- [331] The determination of what is significantly unfair turns on the individual facts of the case. The court should take into account factors such as the parties' respective contributions to the purchase, preservation, maintenance, expenses, length of cohabitation and the reasonable expectations of each party: *V.J.F. v. S.K.W.*, 2015 BCSC 593, aff'd 2016 BCCA 186, at paras. 81-83.
- [332] The claimant argues that because his net worth entering the relationship was \$455,000, he should get \$455,000 of assets excluded from the property division because it would be substantially unfair not to do so.
- [333] The onus is on the party seeking an unequal division to prove the significant unfairness relied upon: *Jaszewska v. Kostanski*, 2016 BCCA 286; *Walburger v. Lindsay*, 2015 BCSC 341. This Court has expressed reluctance to rely on unequal contributions alone as a foundation for a finding of significant unfairness: *Slavenova v. Rangelov*, 2015 BCSC 79. In that case, *Savage J.*, as he then was, stated as follows (at para. 60):
- [60] The "significant unfairness" contemplated by s. 95 [of the FLA] requires much more than differing financial contributions in a relationship. Exactly equal contribution is more likely exceptional than commonplace. The new regime under the FLA recognizes that partners will come to a relationship in differing circumstances and accounts for those in the concepts of "family property" and "excluded property". The starting point in the division of property analysis already applies significant exclusions.
- [334] In this case, other than respecting the claimant's RRSPs, there is simply a lack of evidence or detail that would allow a finding that it would be significantly unfair to divide the family assets other than equally, not the least of which is my findings against the claimant's unfair dealings with the respondent both before and after separation. As mentioned throughout these reasons, in light of my credibility findings, this is not a case where fairness requires an unequal distribution of property.

[335] In coming to this determination I have considered ss. 95(2)(a),(c), and (i) of the FLA in particular. Despite there being an unequal contribution to the asset base at the beginning of the relationship, the claimant has not come to court with clean hands and has not demonstrated it would be substantially unfair not to divide the family property equally.

i. The Xerox Debt

[336] I find that the Xerox Debt is a family debt that must be taken into account in the overall division of assets.

[337] However, no portion of this debt has been paid since the judgment was granted and it is probable that Xerox has written it off. I assess the likelihood of this debt being collected as small. For the purpose of these reasons, I do not take this debt into account. If and when Xerox initiates steps to collect the Xerox Debt, a realistic negotiated settlement between Xerox and the claimant is reached and the claimant is obliged to pay on it, the matter can be revisited.

j. Mr. Rubbles' Debt

[338] To repeat, the claimant owes the following respecting Mr. Rubbles:

- a) RBC judgment: \$408,829.78 plus costs and post-judgment interest;
- b) GE Canada judgment: \$188,797.51 plus post-judgment interest;
- c) Santco Trading Loan: \$191,000; and
- d) Canada Revenue Agency for failure to remit source deductions: \$11,694.20;

(collectively the "Mr. Rubbles' Debt").

[339] The total Mr. Rubbles' Debt is \$800,321.49. With post-judgment interest, the Mr. Rubbles' Debt is significantly more.

[340] The claimant says the Mr. Rubbles' Debt is a family debt for which the respondent must account in the division of family assets/debts.

[341] The respondent says that the claimant invested into Mr. Rubbles after separation without her knowledge or consent. She says that she had no idea that he was working with Mr. Rubbles and had no idea that he had invested \$400,000 (\$200,000 of family assets) into the business. Accordingly, she says that the claimant should be 100% responsible for the financial fallout of Mr. Rubbles' failure.

[342] The person alleging a family debt has the burden of proving its existence, and that it arose during the relationship or to preserve family property. Amounts owed that solely represent a corporate obligation, or which are no longer legally enforceable, do not constitute family debt. The erosion of a company's value by a single spouse is not fairly placed on the other spouse, and does not constitute family debt: *Chatha v. Uppal*, 2018 BCSC 6.

[343] Recalling the onus rests on the claimant to prove the debts were incurred post-separation for the purpose of maintaining or preserving family property, I conclude that he has not satisfied that onus. To the contrary the Mr. Rubbles' Debt was incurred after the parties separated, was incurred without the respondent's knowledge or consent, and was not incurred to preserve family assets.

[344] In my view, it would be entirely unfair to saddle the respondent with any portion of the Mr. Rubbles' Debt in the circumstances of this case. The claimant involved himself in this venture after the parties separated using family money and without consulting the respondent. The Mr. Rubbles' Debt is not a family debt and lies entirely at the claimant's feet.

k. Summary of Division of Family Assets

[345] To summarize, the division of family assets is to be as follows:

Asset

Claimant's Share

Respondent's Share

1.

Brampton House

50% of the balance of the net sale proceeds after payment of \$22,000 to the respondent for past carrying costs, and payment of lump sum past and future spousal support (\$17,500) and (\$10,216) arrears of child support

From the net sale proceeds, the respondent receives \$22,000 plus lump sum past and future spousal support (\$17,500) and arrears of child support (\$10,216) plus 50% of the balance then remaining

2.

Proceeds of 3511 Lakeshore

\$80,000

\$80,000

3.

430 BC Ltd.

\$30,000

\$30,000

4.

649 Buck Road

35% of equity

35% of equity

5.

Claimant's RRSP

\$77,500

77,500

6.

Respondent's nursing pension

To be split

To be split

7.

CPP

To be split

To be split

8.

Iranian Investments

0

0

9.

Household contents

To retain what is currently in his possession

To retain what is currently in her possession

[346] If there is insufficient equity in the Brampton House to pay the respondent lump sum spousal support and arrears of child support, the shortfall will be paid from the claimant's interest in the proceeds of 3511 Lakeshore or 649 Buck Road, at the respondent's discretion.

[347] Once the equity in the Brampton House and 649 Buck Road has been determined, I will be able to finalize the allocations of and adjustments to the family assets.

[348] This division is of the family assets I have determined either exist or did exist at the date of separation. To the extent the parties speculate that there are other family assets that have been hidden, there is simply insufficient evidence upon which I can find they exist or, if they do exist, determine their value. The onus is on the party asserting the existence of hidden assets to prove the assertions on a balance of probabilities. Here, the assertions have not been proven.

[349] Accordingly, I am not satisfied on the evidence that there are any other family assets in existence.

I. Summary of Family Debts

[350] To summarize, the division of family debts is to be as follows:

Debt

Claimant's Share

Respondent's Share

1.

Xerox

To be revisited

To be revisited

2.

Mr. Rubbles

100%

0%

3.

Credit card debts

100% of the debts in his name

100% of the debt in her name

XIV. Issue # 5 - Is the Claimant bound by the Iranian Marriage Contract?

[351] The respondent relies on the Iranian Marriage Contract that she argues contractually obliges the claimant to pay her 2,000 Iranian Full Bahar Azadi Gold coins ("2000 Gold Coins"). She says those coins are worth in the order of \$800,000 today. She says the Iranian Marriage Contract is an obligation on the claimant that is separate from his obligations under the Family Law Act. In the Iranian culture, it is known as a Mehrieh, a form of reverse dowry.

- [352] The Iranian Marriage Contract was signed in March 2006, during the first marriage ceremony. The respondent says it was a standard form of "fill-in-the-blanks" marriage agreement that the officiant had in his office and is needed for the couple to be considered married in Iran.
- [353] The respondent testified that the intention behind these types of contracts, which are standard in Iranian culture, is to protect her and the Children and provide security in the event of divorce because men have all the power and resources in Iran. Even today, she says, women have no rights in Iran and cannot even show their faces in public. She considers the Iranian Marriage Contract as a business contract that, because they have separated, creates a debt owing to her by the claimant of, she submits, \$800,000.
- [354] The claimant admits signing the Iranian Marriage Contract but says the reference to the 2000 Gold Coins was simply to symbolize his respect for the respondent. The amount of the Mehrieh depends on how much the man values the woman. It is more of a status symbol and a symbol of respect within the Iranian culture and society. It is, he says, often a matter of competition within Irani families. In 2006 when he signed it, his net worth was only \$455,000 so there is no chance he would have committed to such a debt other than as a symbolic gesture to allow their marriage to be recognized in Iran. He says the idea of the Mehrieh is to make it hard for men to consider getting divorced because of the financial penalty it could create in Iran. Protections similar to the Divorce Act and FLA in Canada are often not available to women in Iran.
- [355] There have been a number of cases in British Columbia that have dealt with the nature of contracts and Mehriehs similar to the Iranian Marriage Contract. For example, in *Delvarani v. Delvarani*, 2012 BCSC 162, Powers J. commented at paras. 201-209:
- [201] Documents similar to this have been recognized and enforced in British Columbia where the evidence supports those findings. They have been recognized as valid and binding marriage agreements as contemplated by the Family Relations Act, R.S.B.C. 1996, c. 128 [FRA]:

Nathoo v. Nathoo, [1996] B.C.J. No. 2720 (S.C.)

Amlani v. Hirani, 2000 BCSC 1653

N.M.M. v. N.S.M., 2004 BCSC 346

- [202] The Marriage Portion has been interpreted to be in the nature of a reverse dowry or sum of money agreed upon by the parties, which is to be paid by the husband to the wife in the event of a separation. However, the evidence must support that conclusion in each case.

[203] In *Amlani*, the Court characterized the Mehr amount as a separate property interest that exists independently of the matrimonial or family assets, and crystallizes upon the breakdown of the marriage. In that case, the Court found that Mr. Amlani had agreed and undertook to pay the amount and that Ms. Hirani had confirmed her acceptance of that amount.

[204] In the *Amlani* case, the document did not state when the money would become payable, but the court accepted oral evidence to determine that it became payable upon the breakdown of the marriage. The Court found this was an implied term in the agreement. In British Columbia as well as other provinces, the courts have tried to be flexible in accommodating the traditions of other countries and cultures where it is feasible to do so: *Aziz v. Al-Masri*, 2011 BCSC 985, para. 3, and *Nathoo*, paras. 24-25.

[205] I note in *Nathoo* the evidence was that the husband had proposed a \$10,000.00 amount. The wife requested \$40,000.00 and they agreed upon \$20,000.00. The court found there was nothing unfair about enforcing that agreement.

[206] In *Amlani*, the agreement itself specified that this was an amount to be paid in addition to and without prejudice, or in substitution of any other obligations provided for by the law of the land. The amount was \$51,000.00, and the court dismissed the husband's application for a declaration that it was not enforceable as a marriage agreement under the FRA.

[207] In *N.M.M.*, the amount was \$51,250.00. The agreement specified payment upon breakdown of the marriage. The parties separated after 13 years, and the husband asserted that he had not read the document when he signed it and believed it was merely symbolic. However, the court found that he was aware and understood the content of the agreement, the amount stipulated, and had accepted it as a legally binding document.

[208] The amounts in these cases were modest as they were in other cases decided in other jurisdictions, including: *Khanis v. Noomohamed*, [2009] O.J. No. 2245 - \$20,000.00; *Ghaznavi v. Kashif-UI-Haque*, 2011 ONSC 4062 - \$25,000.00; *Nasin v. Nasini*, 2008 ABQB 219 - \$10,000.00.

[209] In this case, I am not satisfied on the balance of probabilities that in fact the parties had any agreement that Mr. Delvarani would pay these 3,000 gold coins to Ms. Javadi. I am not satisfied that this part of the document was completed at the time it was signed by Mr. Delvarani. Mr. Delvarani may have been infatuated with Ms. Javadi at the time of the marriage, but it is difficult to accept he would have committed himself to paying such a large amount of money in addition to any other obligations he might have under the laws of British Columbia.

[356] For similar reasons, I am not satisfied that the Iranian Marriage Contract binds the claimant. In my view, it was essentially a pre-nuptial agreement within the meaning of s. 93 of the FLA.

- [357] In the circumstances that exist in this case, I accept the claimant's evidence that the Iranian Marriage Contract was prepared to allow the couple to enter and exit Iran and be considered a married couple.
- [358] I am not satisfied on a balance of probabilities that the claimant would have committed to paying 2000 Gold Coins valued at almost double his then worth to the respondent in addition to any other obligations he might have had under Canadian or provincial law. This is especially the case given what I accept was a tumultuous relationship the parties had from the outset of their relationship and the number of separations they had early on. I am satisfied that the Iranian Marriage Contract was entered into only because the respondent was pregnant with the couples' first child and they wanted to be able to travel to Iran with their family and be treated as a married couple. The 2000 Gold Coins was an amount placed in the Iranian Marriage Contract purely for symbolic reasons so that the respondent would be considered worthy in the Iranian culture.
- [359] Even if the Iranian Marriage Contract was binding, I would set it aside as being significantly unfair. It was made in 2006 when they decided to get married and while the claimant's Picture Paradise business was doing relatively well. The respondent did not rely on it either during the marriage or after the parties separated. To enforce the Iranian Marriage Agreement on the claimant in the circumstances of this case would be significantly unfair: *Hartshorne v. Hartshorne*, 2004 SCC 22.

XV. Additional Orders

- [360] There will be additional orders as follows:

a. Income Disclosure and Document Production

- [361] The claimant and respondent will exchange income tax returns (together with all attachments) annually by June 1 of each year, and will exchange annual notices of assessment upon receipt. Either party shall be at liberty to apply for a variation of child support upon a material change in circumstances of either party or the Children.

b. Children's Passport

- [362] On February 15, 2015, Master Harper ordered that the Children's passports be delivered to the respondent's then counsel, Benson Law LLP, and that the Children's passports be held by Benson Law LLP until further order or written agreement.
- [363] On May 6, 2015, Betton J. ordered that the Children's Iranian and Canadian passports ("Children's Passports") be held by the claimant's then counsel, Mr. Zaseybida, and that they not be released to either party unless there was an agreement in writing witnessed by counsel for either the parties, or court order.

- [364] The respondent argues that she should have the responsibility for keeping the Children's Passports because she fears the claimant will kidnap them and take them to Iran where the law is that the father is granted custody of children. She is fearful of losing the Children. The claimant makes the same argument in reverse.
- [365] The claimant is concerned that the respondent threatened in 2015 to take the Children to Iran and wants the Court to continue to hold the Children's Passports.
- [366] In the circumstances, I am ordering that the Children's Passports be kept by the Court and not given out to either party without court order.

c. Party's Address Change

- [367] For so long as the Children are children of the marriage within the meaning of the Divorce Act, each party shall provide the other party with written notice of any changes to his/her residential address and mailing address along with residential telephone number and cellular telephone number.

d. Travel

- [368] The claimant and respondent may remove the Children from the Province of British Columbia for travel provided a minimum of 2 months' notice has been given to the other party. The Children's Passports will be delivered to the travelling party on approval of the court. The Children's Passports will be returned to the court's custody upon completion of the travel. Each party will provide the other with the itinerary for any travel at least 24 hours in advance of travel, provided that travel is in Canada. If travel is to be international, the itinerary will be provided by the travelling party to the other party two months in advance of the travel.

XVI. Parting Comments - Non-Disclosure

- [369] Full and frank disclosure of assets and income is an obligation each party in a family law proceeding has. Section 5 of the FLA makes that clear. It requires parties to a family law dispute to provide each other "full and true information" for the purpose of resolving the dispute. As Fraser J. put it in *Chuna v. Chuna* (1994), 99 B.C.L.R. (2d) 93 at para. 9:

Non-disclosure of assets is the cancer of matrimonial property litigation. It discourages settlement or promotes settlements which are inadequate. It increases the time and expense of litigation. The prolonged stress of unnecessary battle may lead weary and drained women simply to give up and walk away with only a share of the assets they know about, taking with them the bitter aftertaste of a reasonably-based suspicion that justice was not done. Non-disclosure also has a tendency to deprive children of proper support.

- [370] Regrettably, for their own self-interest, all three parties to this dispute chose to ignore court orders for document disclosure, secreted away family assets and generally failed to come to court with clean hands. I am therefore left with a great deal of uncertainty about the parties' financial circumstances and dealings, particularly since the date of separation.
- [371] The FLA strives to assist parties in resolving conflicts in a timely and cost effective manner. This case has been anything but. All three parties have gone to extraordinary lengths to avoid full and frank disclosure which has resulted in numerous pre-trial applications, numerous pre-trial orders, extreme bitterness and a nineteen-day trial. Had the parties complied with their disclosure obligations, I am satisfied this case could easily have been resolved with far less time, expense and emotional turmoil.
- [372] I have found that the claimant, the respondent and Mr. Dehaghi have all deliberately lied under oath. All three have improperly withheld important financial information and attempted to conceal facts in order maximize recovery and/or reduce exposure in this litigation. All three are guilty of misconduct and I have taken that into account in my assessment of the evidence and the orders regarding the division of the family property, debt, spousal and child support both retroactive and ongoing.
- [373] Because the conduct of all three of them is deserving of rebuke, I have concluded that no award to any of them is appropriate under s. 213 of the FLA.

XVII. Summary of Decision

[374] To summarize, I make the following orders:

- a) The claimant and respondent will be divorced from each other effective 31 days from the date of these reasons.
- b) The claimant's claim for past and prospective spousal support from the respondent is dismissed.
- c) The respondent's claim for past spousal support from the claimant is allowed in the form of a lump sum payment of \$10,000 to be paid by the claimant's share of the remaining equity in the Brampton House, after the adjustments I have made, or if that equity is insufficient, from his share of other family assets.
- d) The respondent's claim for prospective spousal support from the claimant is allowed in the form of a lump sum payment of \$7,500 to be paid by the claimant's share of the remaining equity in the Brampton House, after the adjustments I have made, or if that equity is insufficient, from his share of other family assets.
- e) The claimant's annual income is imputed at \$70,000 from July 1, 2012 to April 1, 2018. His income from and after May 1, 2018, shall be imputed at \$70,000 per annum until further order.

- f) The respondent's annual income is imputed at \$55,000 from and after May 1, 2018 until further order.
- g) The claimant and respondent are joint guardians of the Children and will share all parental responsibilities with respect to the Children.
- h) The claimant and respondent will share parenting in accordance with Betton J.'s Order, on a one week on/one week off basis.
- i) The claimant shall pay the respondent child support in the sum of \$232 per month commencing May 1, 2018 and continuing on the first day of each month thereafter until further order or until the Children are no longer children of the marriage as defined by the Divorce Act.
- j) The claimant shall pay the respondent arrears of child support in the amount of \$10,216 to be paid by the claimant's share of the remaining equity in the Brampton House, after the adjustments I have made, or if that equity is insufficient, from his share of other family assets.
- k) The claimant shall retain all personal assets currently in his possession to the exclusion of the respondent.
- l) The respondent shall retain all personal assets currently in her possession to the exclusion of the claimant.
- m) Special and Extraordinary expenses for 2018 shall be paid proportionately in accordance with the incomes I have imputed to the parties, with the claimant paying 56% and the respondent paying 44%. For ensuing years, these expenses shall be shared between the claimant and respondent proportionately to their respective annual incomes as I have imputed until further order. Special and extraordinary expenses must be agreed between the parties in writing prior to any expense being incurred.
- n) Child support shall be reviewable on an annual basis with each of the claimant and respondent exchanging their respective income tax returns and notices of assessment by June 30 of each year, commencing in 2019. Child support will be adjusted annually in accordance with the Federal Child Support Guidelines subject to the proviso that the claimant's income shall be imputed at \$70,000.
- o) The Brampton House will be sold on the conditions set out in these reasons, and the net sale proceeds shall be paid first to the respondent in satisfaction of the lump sum spousal support, arrears of spousal support and arrears of child support orders I have made, with the balance, if any, to be paid into court pending final determination and adjustments of family assets.
- p) The claimant is entirely responsible for the entire Mr. Rubbles' Debt as defined above.

- q) The respondent's obligations respecting the Xerox Debt will be determined as set out in these reasons.
- r) Except as otherwise provided in these reasons, the claimant and respondent shall retain for their respective use all other assets in their possession including but not limited to bank accounts, investments, RRSPs and personal items without further claim from the other.
- s) The parties' Canada Pension Plan credits shall be equalized in accordance with sections 55, 55.1 and 55.2 of the Canada Pension Plan Act.
- t) For the purpose of dividing the parties' Canada Pension Plan Credits, the parties commenced cohabitation on August 1, 2004 and separated on July 1, 2012.
- u) The parties shall forthwith exchange copies of their social insurance cards and birth certificates to facilitate division of their Canada Pension Plan Credits.
- v) The respondent's nurse's pension shall be divided in accordance with these reasons.

XVIII. Further Submissions

[375] The parties are at liberty to apply for further directions as may be necessary to implement these Reasons for Judgment.

XIX. Costs

[376] Given the divided success of this trial and given my findings respecting the parties conduct, I am not inclined to make any order as to costs.

"G.P. Weatherill J."

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