

CANADA / JUDGMENT

Verma v. Nunez

2026 BCSC 14

COURT

Supreme Court of British Columbia

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2026 BCSC 14 Verma v. Nunez

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Verma v. Nunez,

2026 BCSC 14

Date: 20260112

Docket: E67912

Registry: New Westminster

Between:

Ketan Verma

Claimant

And

Patricia Del Sol Calatrava Nunez

Respondent

Before: The Honourable Justice Norell

Reasons for Judgment

Counsel for Claimant:

P. Dhaliwal

No further appearances

Place and Date of Hearing:

New Westminster, B.C.

August 8, 2025

Place and Date of Judgment:

New Westminster, B.C.

January 12, 2026

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Introduction

- [1] These are reasons on the claimant's summary trial application in this family law case. The issues to be determined are:
- a) Issue 1: Suitability for Summary Trial. Is this matter suitable for determination by way of summary trial?
 - b) Issue 2: Dates of the Relationship. What are the commencement and termination dates of the relationship?
 - c) Issue 3: Property and Debt Division. What is the family property and debt, and excluded property, and how should the family property and debt be divided?
 - d) Issue 4: Guidelines Incomes. Should income be imputed and what are the parties' Guidelines incomes?
 - e) Issue 5: Spousal Support. Is the respondent entitled to spousal support, and if so, what is the quantum and duration?
 - f) Issue 6: Costs.
- [2] Before addressing the issues, I will review the background facts, the procedural history, and the respondent's failure to attend this hearing.

Background Facts

- [3] The claimant and respondent are both 34 years old. They were married in 2018, separated in 2023, and divorced in 2024. There is a small difference in their evidence as to the commencement and termination dates of their relationship. On either version of events, the parties had a relationship of just over four and a half to five years.
- [4] The claimant is a business analyst. During the relationship, the respondent trained as a medical office assistant ("MOA") and worked as one. They do not have any children.
- [5] There is a modest amount of property to divide. The main assets were two properties - the matrimonial home and a rental property - both of which have been sold, and the proceeds of which (\$73,143) are being held in trust. However, there is more than \$80,000 in family debt associated with those proceeds. There are also two vehicles and some savings. The respondent's claim for spousal support is contested, both as to entitlement and, alternatively, quantum and duration.

Procedural History

- [6] The claimant filed the notice of family claim on July 19, 2023. The pleadings were closed when the claimant filed his response to the respondent's amended counterclaim on September 29, 2023.
- [7] On August 2, 2023, in chambers, the claimant and the respondent entered into a consent order (the "Consent Order"), which provided that: (a) the claimant will have exclusive occupancy of the matrimonial home for six months; (b) the parties will abide by mutual conduct orders; (c) commencing August 1, 2023, the claimant will pay to the respondent spousal support of \$400 per month on an interim without prejudice basis; (d) commencing the date of the order, the claimant will pay to the respondent \$2,100 per month for six months on an interim without prejudice basis; and (e) the respondent may attend at the matrimonial home on two occasions to retrieve her personal belongings. The \$2,100 per month was intended to cover the respondent's rent. The balance of the parties' competing applications for other orders was adjourned generally.
- [8] The parties attended a judicial case conference on January 8, 2024, and an order was made (the "JCC Order"), which provided that: (a) the parties are to jointly list for sale the matrimonial home and the rental property, with the net sale proceeds to be held in the claimant's lawyer's trust account; (b) the Consent Order will continue in effect until the earlier of a written agreement between the parties or further court order; (c) the parties have liberty to apply to vary the Consent Order without having to show a material change of circumstances; (d) the trial is set for five days commencing April 28, 2025; and (e) the claimant will transfer one of the parties' vehicles (the "Kia"), to the respondent.
- [9] On April 24, 2024, the claimant set down an application to obtain financial disclosure from the respondent and to vary the Consent Order regarding the payments of \$400 and \$2,100 per month. On the day of the hearing, the respondent consented to the financial disclosure order, and the claimant adjourned generally the balance of his application due to lack of court time.
- [10] The claimant reset the balance of his April 24, 2024, application to be heard on May 30, 2024. The respondent brought a cross-application to be heard on the same day seeking 19 orders, including for contempt. The respondent had counsel. The two applications could not be heard together within two hours in regular chambers, and the matter was adjourned with a direction by the court that the matters be set for a one-day hearing, and an order that the parties file updated F8 financial statements not less than seven days prior to any further hearing. That same day, the respondent filed a notice of intention to act in person.

- [11] On July 17, 2024, the claimant set down an application to finalize the parties' divorce so he could remarry. The claimant sought the respondent's consent several times, but she did not respond. On the day of the hearing, the respondent consented to the divorce order, and the respondent was ordered to pay costs of the application to the claimant in any event of the cause.
- [12] On July 22, 2024, the claimant notified the respondent that he secured September 17, 2024, for a summary trial to resolve the remaining issues of division of family property and debt, and spousal support. Shortly prior to the September 17, 2024, hearing, the respondent sought an adjournment stating that she wished to retain legal counsel and conduct an examination for discovery of the claimant. The claimant consented to the adjournment on the condition that the respondent provide her availability immediately to reschedule the summary trial. Subsequently, he requested her to conduct the examination for discovery to avoid further delay. The respondent neither provided her availability to reschedule the summary trial, nor did she conduct an examination for discovery. It took the claimant a while to reschedule the summary trial given court availability for long chambers dates. Once that was obtained, on December 17, 2024, the claimant's counsel advised the respondent of the new February 25, 2025, summary trial date.
- [13] There was no judge available to hear the summary trial on February 25, 2025, and it was adjourned to May 16, 2025. In the meantime, the parties agreed to adjourn the April 25, 2025, five-day trial. Claimant's counsel states this was because neither party could afford a trial and the cost was not proportionate to the amount in issue. At the May 16, 2025, hearing date, the parties were again advised that there was no judge available to hear the matter. The parties together attended court scheduling and obtained the date for this hearing of August 8, 2025.
- [14] On May 16, 2025, counsel for the claimant emailed the respondent at her email address for delivery confirming that at their attendance in court that day, the summary trial had been reset to August 8, 2025, and that he would provide her with a filed requisition. On May 21, 2025, a legal assistant of claimant's counsel emailed the respondent providing her with the requisition resetting the summary trial to August 8, 2025, and stating that she will be required to attend in person. On May 23, 2025, the respondent replied by email stating "hi yes for Aug 8". On July 31, 2025, the legal assistant emailed the respondent providing her with a further affidavit from the claimant, and an application record index.

Respondent Did Not Attend Hearing

- [15] Despite the respondent filing a response to this application and supporting affidavits, she did not attend this hearing. Based on the events above, I was satisfied that the respondent had direct knowledge of and was given notice of the hearing date.

- [16] When this case was called on the day of the hearing, court was stood down to see if the respondent could be located. She did not respond to emails to her. The hearing therefore proceeded in her absence pursuant to Rule 21-6(1) of the Supreme Court Family Rules, B.C. Reg. 169/2009 [SCFR] which provides that if a party fails to attend at a hearing at the time appointed time, the court may, after receipt of any evidence of service it considers appropriate, do one or more of the following:
- (a) proceed with the trial or hearing;
 - (b) draw any inference from the failure to attend that the court considers appropriate, including attributing an amount of income to the party;
 - (c) grant some or all of the relief sought.
- [17] Despite not attending the hearing, I have considered the respondent's affidavits and arguments as set out in her response to application in determining the issues. I turn to the issues to be decided.

Issue 1: Suitability for Summary Trial

- [18] Pursuant to Rule 11-3(15) of the SCFR, the court may grant judgment on an issue or generally, on the hearing of a summary trial application, unless:
- (i) the court is unable, on the whole of the evidence before the court on the application, to find the facts necessary to decide the issues of fact or law, or
 - (ii) the court is of the opinion that it would be unjust to decide the issues on the application,
- [19] Conflicting affidavits are not necessarily fatal to a summary trial application. A judge cannot decide an issue solely because she prefers one affidavit over another without a basis for doing so. However, other evidence may provide that basis. This could be, for example, documentary evidence, or evidence of independent witnesses: *Inspiration Management Ltd. v. McDermid St. Lawrence Ltd.* (1989), 36 B.C.L.R. (2d) 202 at 219, 36 C.P.C. (2d) 199 at 216 (C.A.) [*Inspiration Management*]; *Cory v. Cory*, 2016 BCCA 409 at para. 10.
- [20] Factors relevant to whether it is unjust to decide the issues include: the amount involved; the complexity of the matter; any urgency or prejudice from delay; the time and cost of a conventional trial in relation to the amount involved and the time and cost of a summary trial; the course of the proceedings; whether credibility is a significant issue; and whether the summary trial would introduce unnecessary complexity to the dispute or result in litigation in slices: *Inspiration Management* at para. 49; *Gichuru v. Pallai*, 2013 BCCA 60 at paras. 28-31.
- [21] I conclude that I am able to find the facts necessary to determine the issues of fact and law, and that it would not be unjust to decide them on this application. Credibility is not a significant issue. There are some conflicts in the evidence, but they can either be determined by reference to objective evidence or are not material. This is not a complex

case. There are no children, this was a short relationship, and the amounts in issue are modest. Both the procedural history and the time and cost of a conventional trial is not proportionate to the amount involved and the nature of the issues.

Issue 2: Dates of the Relationship

Commencement

- [22] Section 3 of the Family Law Act, S.B.C. 2011 c. 25 [FLA], governs when a person is a spouse for the purposes of that Act. For parties who are not married, a relationship between spouses begins on the date they began to live together in a marriage-like relationship: s. 3(3). There is a wide variability in marriage-like relationships, and the determination of that issue requires a "holistic approach", in which all relevant indicia that society may associate with a marital relationship are considered: *Austin v. Goerz*, 2007 BCCA 586 at paras. 58, 62; *Weber v. Leclerc*, 2015 BCCA 492 at paras. 7-25, leave to appeal to SCC ref'd, 36812 (21 April 2016). The assessment is contextual and involves the subjective intentions of the parties and objective evidence: *Jones v. Davidson*, 2022 BCCA 31 at para. 24.
- [23] The claimant states that he first met the respondent in 2017 on a brief encounter of three days in another country. Their subsequent interactions were intermittent and getting to know each other by speaking virtually through social media. He proposed to the respondent August 11, 2018, and they began living together when they married on August 19, 2018.
- [24] The respondent states that the parties initiated their relationship in 2016. In 2018, the respondent sponsored her to come to Canada. She gave up her Venezuelan citizenship to become a permanent resident of Canada. They began living together in a marriage-like relationship on July 1, 2018.
- [25] There is no basis to prefer one parties' affidavit evidence over the other on this issue. The only evidence is each parties' bald statement as to when the marriage-like relationship began. However, the two potential dates are very close and whichever date is chosen, it makes no difference to any of the conclusions except division of CPP credits. Even for the CPP credits, the difference will likely be of minimal value and less than it would cost to litigate the issue further. In the circumstances, I find that the marriage-like relationship commenced sometime between July 1, 2018, and August 19, 2018. If the parties cannot agree on a date for division of CPP credits, they have liberty to apply.

Termination

- [26] Spouses may be separated despite continuing to live in the same residence. The court may consider as evidence of separation, communication by one spouse to the other of an intention to separate permanently and an action taken by a spouse that demonstrates an intention to separate permanently: s. 3(4). A physical separation, combined with one party's intention to live separate and apart, and an action consistent with that intention is sufficient: *Nearing v. Sauer*, 2015 BCSC 58 at para. 54.
- [27] The claimant states that he first discussed separation with the respondent on March 18, 2023, and they separated on March 23, 2023, when the claimant went to Miami to be with her family. The claimant attaches to his affidavit text messages dated March 18, 2023, where he states "hello everyone we are proceeding for separation thank you everyone . Please confirm." The respondent then texts, "ladies and ladies, Ketan and I decided to separate." At the time, the respondent was in India. She had been temporarily residing with the claimant's parents while undergoing in vitro fertilization ("IVF") treatments.
- [28] The claimant states he initially retained a mediator to reach an agreement. He attaches email correspondence with Mr. Kevin Moye, an arbitrator, commencing March 28, 2023. After it appeared that mediation would not take place, on April 10, 2023, the claimant retained his current counsel to obtain a divorce and attempt to reach a settlement. On April 19, 2023, his counsel wrote to the respondent to this effect. The claimant states that the respondent returned to Canada and the matrimonial home on June 18, 2023.
- [29] The respondent pleads that the parties separated on June 20, 2023, but she has given inconsistent evidence regarding the date of separation, and her evidence is not consistent with the emails and correspondence above. She states that while in India in March 2023, she phoned the claimant and told him she was unwell and depressed and that she wanted to visit her parents who live in Miami. On March 23, 2023, she flew to Miami where she sought medical care. While she was in Miami, the claimant arranged for her to be in contact with a "counsellor" named Kevin who suggested there was a possibility of reconciling their differences. This was accepted by her. However, shortly after, she received a letter from a lawyer containing divorce papers. In her April 2024 affidavit, the respondent states that she remained in Miami until about June 17, 2023, when she returned to the matrimonial home, at which point she and the claimant recommenced marital relations for a week prior to her discovering that the claimant was in another relationship. In her April 23, 2024, affidavit she states the date of separation was June 17, 2023. In her May 16, 2025, affidavit she states that the date of separation was July 20, 2023.
- [30] I find that March 23, 2023, is the date of separation. The objective contemporaneous evidence supports that the claimant formed an intention to separate permanently by then. This is consistent with the text messages both parties sent on March 18, 2023, the respondent leaving to be with her family on March 23, 2023, the subsequent retaining by the claimant of an arbitrator to try to reach a settlement, the April 10, 2023 retainer of his

current counsel, and the April 19, 2023 letter sent by that counsel to the respondent. Further, the respondent's evidence is inconsistent on the separation date, and I conclude it is not reliable on this issue.

Issue 3: Property and Debt Division

- [31] Section 81 of the FLA provides the general rule that spouses are both entitled to family property and responsible for family debt regardless of their respective use or contribution. Upon separation, each spouse is presumptively entitled to an undivided half interest in all family property as a tenant in common and is equally responsible for family debt.
- [32] Section 84 of the FLA defines family property. It includes all property that on the date of separation is owned or beneficially owned by at least one spouse, but not "excluded" property: s. 84(1)(a). Family property includes: a share or interest in a corporation; investments and bank accounts; and the amount by which the value of excluded property has increased since the later of the date the relationship began or the date the property was acquired: ss. 84(2)(a), (d), and (g).
- [33] Sections 1 and 85 of the FLA define excluded property which, subject to s. 96, is not divided. This includes property acquired by a spouse before the relationship began and property derived from the disposition of excluded property: ss. 85(1)(a) and (g). The spouse claiming that property is excluded property bears the burden of proof on a balance of probabilities: s. 85(2); *Pisarski v. Piesik*, 2019 BCCA 129 at para. 24; *Shih v. Shih*, 2017 BCCA 37 at paras. 42-44. While mathematical precision is not required to establish excluded property, there must be clear and cogent evidence: *Shih* at paras. 40, 43.
- [34] Section 87 of the FLA provides the general rule that unless an agreement or order otherwise provides, the value of family property must be based on its fair market value as of the date of the trial. Accounts which are subject to regular use post-separation, for example a chequing account into which post-separation income is deposited and living expenses are withdrawn, are usually valued at the date of separation: *Asselin v. Roy*, 2013 BCSC 1681 at para. 171.
- [35] Although the presumptive rule is for equal division of family property and debt, s. 95 of the FLA states that a court may order unequal division if it would be "significantly unfair" to divide family property and debt equally.
- [36] The parties' evidence establishes that they had the following family property and debt at separation:
- a) the matrimonial home registered in the name of the claimant and encumbered by a mortgage. This was also purchased with loans from the claimant's father that have yet to be repaid. The claimant claims excluded property in relation to the matrimonial home;
 - b) the rental property registered in both parties' names and encumbered by a mortgage;

- c) two vehicles - the Kia with no debt, and a Tesla with an associated debt;
- d) bank accounts and credit card debt in the names of the parties, alone or jointly;
- e) registered accounts, being a UBC "pension" and an account at Wealthsimple in the claimant's name; and
- f) CPP credits of the parties during the relationship.

[37] Although the claimant pleads unequal division of property and debt, he does not press this, because he submits that after taking into account family debt and his excluded claim, there is no remaining family property in the money in trust to divide. He seeks an order that all the money currently held in trust from the sale of the two properties be paid to him, and that he will be responsible for paying the remaining debt to his father. He claims reimbursement for various expenses he has incurred before and since separation in connection with the two properties. The respondent claims occupational rent and half the rental revenue the claimant has received since separation. Otherwise, the claimant seeks orders that each party keep all other property, including vehicles, bank accounts, RRSP and pension, household chattels and jewellery, in their current respective possession without any claim by the other against them, and that the parties each be responsible for any other debts in their own name. Finally, he seeks an order that the parties not divide their CPP credits. I will address each of the categories of property and debt below.

Matrimonial Home and Associated Debt

- [38] The claimant states, and I find, that on April 25, 2018, he entered into an agreement to purchase property on 89A Avenue in Delta, BC, for the price of \$445,000, paid by a down payment of \$47,842 and a mortgage for the balance. The claimant appends to his affidavit the contract of purchase, and the buyer's statement of adjustments.
- [39] The claimant claims, and I find, that the equity in the 89A Avenue property was excluded property as it is property acquired by a spouse before the relationship began. The closing date was May 23, 2018, prior to the earliest alleged commencement date of the marriage-like relationship. There is no evidence that the claimant's equity in the matrimonial home increased prior to the commencement of the relationship on either alleged date. The claimant's excluded equity in the property was \$47,842.
- [40] The claimant states that his father provided loans totalling \$108,078.50. He appends to his affidavit five documents entitled "Self-Declaration by Mr. Vijay Parkash" which were attested to before a notary in India, and which are contemporaneously dated. Each document states that on a certain date Mr. Parkash loaned a sum to the claimant for the purpose of assisting him to purchase a house, and that this is a loan to be repaid without interest. The claimant also attaches his bank statements showing transfers to his account which are identified on the statements as being transfers from Mr. Parkash, and which match the declarations both as to amounts and dates. The loans are in varying amounts. One is in the amount of \$20,972

and is dated April 4, 2018, prior to the relationship, so it is not family debt, but the debt of the claimant alone. The other four are dated between March 2020 and April 2021, in amounts between \$15,965, and \$25,111.50 for a total of 87,106.50. As these are debts incurred during the relationship, they are family debt. While I accept the claimant's father lent him \$108,078.50, only \$87,106.50 is family debt. These funds were used to assist in purchasing the matrimonial home.

- [41] The claimant states, and I find, that in June 2021, he sold the 89A Avenue property for \$480,000. After discharge of the mortgage and associated fees, the net sale proceeds were \$67,229. The contract of sale, statement of adjustments, and order to pay are appended to the claimant's affidavit.
- [42] The claimant states, and I find, that he subsequently used his "pre-marriage down payment excluded property" toward the purchase of the matrimonial home. The purchase price was \$715,000, with a down payment of \$143,000. The remaining down payment was sourced from the money loaned over time by the claimant's father to him. The claimant does not provide the contract for purchase or statement of adjustments, but the June 2021 order to pay for the sale of the 89A Avenue property states that the \$67,229 net sale proceeds were transferred to the "purchase file." The respondent does not dispute any of this evidence or the loans from the claimant's father.
- [43] In summary, while the matrimonial home is family property, I am satisfied that the \$143,000 down payment was derived from: (a) the \$67,229 net sale proceeds from the 89A Avenue property, which in turn was made up of (i) the claimant's excluded \$47,842, and (ii) \$19,387 of family property (i.e. the increase in equity in the 89A Avenue home); and (b) approximately \$75,771 in loans from the claimant's father, which are family debt.
- [44] However, for the following reasons, I find that the claimant's exclusion in the matrimonial home was subsequently dissipated and lost. The claimant states, and I find, that following the separation, in May 2024, the matrimonial home was sold for \$870,000. The net sale proceeds after payment of the mortgage, but before repayment to Mr. Parkash, are \$60,661. The claimant supports this with the statement of adjustments. Again, the respondent does not challenge any of this evidence. There is no explanation of how a \$155,000 increase in value of the property (\$870,000 less \$715,000) resulted in less equity than the original down payment, other than the order to pay shows that the mortgage balance that had to be paid was \$778,000. The onus is on the claimant to prove the exclusion, and I can only conclude that the mortgage increased while the parties owned the property. The mortgage payout statement shows that some of the increase in the mortgage was pre-payment penalties. After the loans provided by Mr. Parkash are taken into account, which loans were used to purchase the home, there is no remaining equity in the property. I conclude that any excluded funds and any family property that formed part of the original equity in the matrimonial home were dissipated by the parties. The result is that the claimant has not established an excluded property claim to the net sale proceeds from the matrimonial home.

- [45] In addition to the above, the claimant states that since separation in March 2023, he has been solely responsible for the expenses of the matrimonial home, including the utilities and the mortgage. The monthly mortgage amount was \$2,664.77. In total, the claimant paid \$39,972 to preserve this property. He claims one half of this amount, being \$19,985 from the respondent.
- [46] Related to this, the respondent claims occupancy rent from the claimant. She states that when she returned to Canada, she had no place to live and no money or job. She wished to stay in the matrimonial home, but the claimant obtained an order for exclusive occupancy.
- [47] In family law proceedings, where one spouse leaves the matrimonial home after separation, a claim for occupational rent is not treated as a stand alone claim but is considered in deciding whether to order an unequal division of family property: *Storey v. Terry*, 2020 BCCA 30 at para. 27. In *Storey*, the appellant argued that the trial judge had ordered equal division of the family home without any reapportionment for the appellant's contribution to the expenses of that property after separation. The appellant argued that the effect of the order was to unequally divide family debt. The trial judge considered the expenses incurred by the appellant, but also that the respondent had to provide for his own accommodation once he left the home, and the benefit the appellant received in residing in the home without paying rent to the respondent. The trial judge concluded that dividing the equity in the home would not result in a situation that was unjust in an important or substantial sense. The Court did not find any error in that reasoning.
- [48] For the same reasons, I dismiss the claimant's claim for half of the mortgage payments, and the respondent's claim for occupational rent. The claimant obtained an order for exclusive occupancy of the matrimonial home, and the respondent had to move elsewhere. The claimant had the benefit of that home, while the respondent had to find and incur the expense of rental accommodation and utilities. I find that not allowing either claim and (as will be discussed below) dividing the family property equally, will not result in a situation that is significantly unfair. The two amounts are not materially different, especially considering the claimant had the benefit of their furnished home.

Rental Property and Associated Debt

- [49] The claimant states, and I find, that in February 2022, he and the respondent purchased the rental property for \$575,000. This was financed with a mortgage.
- [50] The claimant states, and I find, that the property was sold in May 2024 for \$510,000, and the net proceeds of sale after payment of the mortgage and expenses is \$12,483. This is supported by the statement of adjustments and order to pay. The mortgage payout statement shows there were pre-payment penalties. The respondent does not dispute any of this. The \$12,483 is family property.

- [51] In addition to the above, both the claimant and respondent make claims regarding the revenue and expenses related to the rental property. The claimant states that since the date of separation and until the rental property was sold, there was a tenant residing in the property who paid \$2,260 per month which "assisted with the mortgage payments". He therefore does not make a claim for the mortgage payments he alone made. However, he paid other expenses for which he claims one half from the respondent.
- [52] Related to this, the respondent states that the claimant has been the sole recipient of the rental revenue, and she claims half of this from the claimant.
- [53] In my view, for the reasons below, both claims must be dismissed. The claimant does not state what the mortgage payments and monthly strata fees were, but the bank discharge statement shows that the principal and interest payments were \$1,550.37 per month, which matches the claimant's bank statements, and the statement of adjustments shows that the monthly strata fees were \$430.36. This leaves a net positive amount of \$279 per month before adjusting for other expenses, and principal payments which would not be deductible as an expense. However, as best as I can determine from the mortgage payout statement, there was little if anything being paid to the principal. The respondent does not account for these expenses when claiming half of the revenue, and as I discuss below, in my view the rental income should be addressed as part of Guidelines income.
- [54] The claimant states that there was a flood in the property in January 2023 (prior to separation) and he covered the cost of \$8,260.79. The invoices produced are Airbnb receipts for the tenant while repairs were being done. I do not permit the claim for two reasons. First, all these Airbnb costs, except one, were invoiced and paid prior to separation. The last payment for \$1,188 was shortly after separation. Second, this is an expense that can be claimed against revenue, and there was a net income that year from the rental.
- [55] The claimant also states that he paid the 2023 property taxes, which were \$2,021.83, and incurred \$755.24 in required repairs for the sale to take place. The only receipts or documents to support the repairs are \$302.99 plus \$200 = 502.99. However, because this is a rental property, these are also expenses that can be claimed against revenue.
- [56] Consistent with all the above, the claimant's 2022 and 2023 tax returns show that he declared a small amount of rental income each year (\$3,922 in 2022 and \$976 in 2021).
- [57] I therefore do not allow any of the claimant's claim for reimbursement of expenses for the rental property. He actually had a small net income from the rental. I also do not allow the respondent's claim for half of the rental revenue. She has not accounted for the expenses. The small net income received by the claimant will be accounted for when determining Guidelines income.
- [58] Finally, the claimant states, and I find, that between the Consent Order and July 2, 2024, he provided the respondent with \$2,100 per month toward her own rental accommodation. This is supported by his bank statements which show 13 transfers to the respondent for a

total of \$27,300. The claimant is seeking one-half of those payments be reimbursed to him. The respondent opposes this, stating she needed this assistance as she was without a home after the Consent Order which gave the claimant exclusive occupancy of the matrimonial home, and she had no job.

- [59] The claimant addressed the claim for \$2,100 per month as part of property division. However, in my view, this is a form of support and is more appropriately addressed under spousal support. The claimant's 2023 tax return shows that he claimed these payments as spousal support. I will therefore address it there.

Company

- [60] The claimant states, and I find, that in October 2021 he incorporated a numbered company (the "Company") through which to do freelance consulting work in addition to his full-time work at UBC. He states the Company has operated at a deficit. I will return to this during the discussion of Guidelines income, where I analyze the Company's financial records. As will be discussed, I find that the Company did not always operate at a deficit. However, for now, I am simply addressing the value of the Company.
- [61] I find that the Company does not have any value. The evidence and financial records show that it is simply a vehicle through which the claimant did consulting work. To the extent there may be remaining funds in the Company, I have accounted for them when addressing Guidelines income. I have included all the pre-tax Company income in the claimant's Guidelines income and imputed post-separation income to him.

Bank Accounts and Credit Cards

- [62] The claimant states and I find that at separation he had the following accounts at separation: two at Simplii Financial, two at Coast Capital, and one at CIBC. Only the Simplii Financial accounts had funds. The total was \$10,707. At the date of separation, the claimant states and I find that he had credit card debt of \$1,856. The respondent does not challenge these amounts.
- [63] The respondent's only F8 sworn in August 2023 does not list any bank accounts or unsecured debts. However, the respondent's first amended list of documents appended to her April 2024 affidavit shows that the following bank documents were listed as accounts in her name at separation: one at Coast Capital; one at CIBC; a CIBC Visa account; and a CIBC line of credit. In addition, she listed a joint account with the claimant at Coast Capital. None of these documents were in evidence except excerpts from the CIBC account which had no funds as of August 1, 2023. This was tendered by the claimant. Otherwise, there is no evidence from the respondent on this application of bank account balances or personal debt at the time of separation.

- [64] In the absence of evidence from the respondent, I conclude that she did not have any material family credit card debt at the time of separation that she seeks to be divided; and in the absence of evidence from the claimant, I conclude that the respondent did not have any material family bank account property that he seeks to be divided.
- [65] At separation, the parties had a joint Coast Capital line of credit with no balance. Post-separation in September 2023, the respondent withdrew the sum of \$5,000. The claimant did not want his credit to be impacted, so he paid off this debt, removed himself from the account, and asked the respondent to repay him. The respondent acknowledges that she took these funds and that the claimant paid this debt. To date, the respondent has not repaid the claimant for her post-separation debt. I find that the respondent must reimburse the claimant for this.
- [66] In summary, the proven family property for bank accounts is \$10,707, and the proven family debt for credit cards is \$1,856, and the respondent must account to the claimant for the \$5,000 she took from their joint line of credit after separation.

Registered Accounts

- [67] In the claimant's two F8 financial statements, he states that he has a registered account at Wealthsimple, with the most current F8 valuing that at \$27,471. I can see from his bank statements that the claimant has contributed \$900 (\$150 x 6 transfers) to the Wealthsimple account since separation, so I deduct that, for a net amount of \$26,571. The claimant also lists a UBC "pension" valued at \$19,000. The claimant does not claim an exclusion with respect to either of these. The respondent does not challenge these values. I therefore find both are family property.

Vehicles

- [68] The parties owned the Kia, and a Tesla with associated debt. The vehicles are family property, and the vehicle debt is family debt.
- [69] The claimant estimates that the Kia is worth approximately \$36,500. The respondent estimates it is worth \$32,800. In the absence of expert evidence, and considering what is proportionate, I take the mid-point and find the value is \$34,650. The claimant transferred the vehicle to the respondent pursuant to the JCC Order.
- [70] In his 2023 F8, the claimant estimates that the value of the Tesla is \$57,250, and in his 2025 F8 values it at \$55,000. In the respondent's 2023 F8, she values the Tesla at \$65,000. Again, in the absence of any expert evidence and considering what is proportionate, I take the mid-point value of each party's most recent estimate, and find the Tesla is worth \$60,000. The respondent states that the loan was \$59,448 at separation, and he has solely made the payments since then. The claimant does not challenge this. I find that this is the amount of the family debt associated with the Tesla.

Household Chattels and Jewellery

- [71] The claimant seeks an order that the parties each keep the household chattels and jewellery they have in their respective possession. The claimant does not list any household chattels or jewellery in his F8 financial statements.
- [72] The respondent states that the claimant "took all of the jewellery out of the safe in our house and sold it" and sold much of the gym equipment and electronics while she was away in India. In her 2023 F8, the respondent estimates the value of jewellery at \$15,000 and furniture at \$10,000. She claims a \$7,500 exclusion for wedding jewellery, family jewellery, a gym walking machine, and a gym elliptical machine. The respondent states that she sold her wedding ring and received \$1,100.
- [73] The claimant states that he is "unsure of which jewellery she is referring to" as the claimant had disposed of the rings. Otherwise, he does not respond to the claim regarding the household chattels and jewellery or challenge the claimant's estimate of their value.
- [74] The evidence concerning household chattels and jewellery is sparse, but considering what is proportionate, I find it is adequate to decide the issue. The respondent has the onus of proving the exclusion, and I find that she has not done so. She has not provided any evidence of why some of the household chattels and jewellery are excluded. As a result, all the household chattels and jewellery are family property, and I accept the values given by the respondent. There is no conflicting evidence from the claimant.

CPP

- [75] The claimant seeks an order that the parties not divide their respective CPP pensionable earnings. The basis for this is: he seeks a clean break and to have all matters finalized between the parties: his allegation that the respondent has not disclosed her bank accounts, and; that he will be responsible for the shortfall in the debt owed to his father.
- [76] In my view, both parties' CPP pensionable earnings during the relationship should be divided equally, and I order that. I am not persuaded that the respondent has not produced her bank accounts. They are listed on her amended list of documents. The full amount of the family debt owing to the father will be accounted for in dividing the property and debt so the claimant will not be solely bearing any shortfall. The order the claimant seeks would result in unequal division as he earned more than the respondent during the relationship. I am not persuaded that it would be significantly unfair not to divide them equally. As there is a small disagreement on the exact date of commencement of the marriage-like relationship, a difference of three weeks either way, the parties will have to agree on the date. If they cannot, they have liberty to apply to seek that determination.

Summary

- [77] I set out in the table below, the family property and debt based on the above conclusions:

Claimant

Respondent

Matrimonial home net sale proceeds (before loan from Mr. Parkash taken into account)

\$60,661

Rental property net sale proceeds

\$12,483

Loans from Mr. Parkash

(\$87,107)

Company

\$0

Bank accounts

\$10,707

Credit cards

(\$1,856)

Wealthsimple

\$26,571

UBC "Pension"

\$19,000

Vehicles

\$60,000

\$34,650

Vehicle loan

(\$59,448)

Household Chattels and Jewellery

\$23,900

\$1,100

Family property to be divided after exclusions

\$64,911

\$35,750

Assuming equal division, amount owing by claimant to respondent before accounting for \$5,000 taken from line of credit.

\$14,580

Amount owing by respondent to claimant for line of credit withdrawal

(\$5,000)

Assuming equal division, net amount owing by claimant to respondent

\$9,580

[78] Upon the division above, which is equal division, the claimant owes the respondent \$14,580 before taking into account the \$5,000 the respondent took from the line of credit. The claimant does not pursue unequal division, and the respondent has not put forth any basis for unequal division. I find that it would not be significantly unfair to divide the family property and debt equally. This was a short marriage, with a modest amount of net family property to divide. There is no evidence of any of the factors in s. 95 of FLA upon which a Court might find there should be unequal division. After taking into account the \$5,000 owed by the respondent and setting it off against the property division, the claimant owes the respondent \$9,580 if all the funds in trust are paid out to him. I will make that order because as I discuss below, the respondent owes the claimant other funds that completely set off that amount. I also note that the registered accounts are not on the same tax footing as other property, however, neither party has asked for a spousal rollover, and it is a modest amount of funds.

[79] I therefore conclude that all the funds remaining in trust shall be paid out to the claimant, however, the claimant owes the respondent \$9,580 which will be set off against other amounts owed by the respondent to the claimant. The claimant shall also keep, without claim of the respondent, the following: the Company; the Tesla; and bank accounts and credit cards in his name; the Wealthsimple account and the UBC "pension"; and the household chattels and jewellery in his possession. The respondent shall keep, without claim of the claimant, the following: the Kia and bank accounts and credit cards in her name, and the household chattels and jewellery in her possession. As between themselves, the parties are each responsible for debt in their own names, without a claim to the other for payment. As between themselves, the claimant is solely responsible for the repayment of the Tesla loan and the loans from Mr. Parkash. The parties shall equalize their unadjusted pensionable earnings under the Canada Pension Plan, with a commencement date of the relationship to be agreed upon between the parties or as determined by further court order, and a termination date of March 23, 2023.

Issue 4: Guidelines Incomes

- [80] The Federal Child Support Guidelines, SOR/97-175 [Guidelines], provide the framework for determining income for the purpose of spousal support. The relevant provisions are set out in ss. 16 to 20. Pursuant to s. 16, the calculation commences with a spouse's total income from line 15000 of their personal tax return and is adjusted in accordance with Schedule III: *Brown v. Brown*, 2014 BCCA 152 at para. 16; *Vincent v. Vincent*, 2012 BCCA 186 at para. 35. The court must then consider if the circumstances in ss. 17 to 20 are present and whether there should be an adjustment to arrive at the fairest determination of income available for support.
- [81] The claimant seeks to impute income to the respondent based on intentional underemployment. The respondent seeks to impute income to the claimant based on intentional underemployment or that he is hiding income from his consulting business.
- [82] Section 19(1)(a) of the Guidelines allows a court to impute income to a spouse where the spouse is "intentionally under-employed or unemployed" other than as required by the needs of a child or by reasonable educational or health needs of the spouse. In determining whether a party is intentionally underemployed, the court must consider whether the spouse has taken reasonable steps to obtain employment commensurate with their age, health, education, skills and work history: *Marquez v. Zapiola*, 2013 BCCA 433 at para. 37. The onus is on the person seeking to impute income to show an evidentiary basis on a balance of probabilities: *Marquez* at para. 36.
- [83] Section 19(1)(f) of the Guidelines also allows a court to impute income where a spouse has failed to provide income information when under a legal obligation to do so.

Claimant's Income

- [84] The claimant produced his tax returns and/or notices of assessment from 2020 to 2023. They show line 15000 income as follows:
- a) 2020 - \$120,251;
 - b) 2021 - \$139,088 (notice of assessment). The tax return states he had line 15000 income of \$127,588.69. There is no explanation for the difference between the notice of assessment and the tax return, but I accept the notice of assessment as being the more accurate document;
 - c) 2022 - \$131,113. This includes net rental income of \$3,922; and
 - d) 2023 - \$144,523. This includes net rental of \$976 and "other income" of \$1,291.42, less union or professional dues of \$637.93.
- [85] The claimant states that on November 30, 2023, he was notified that his employment at UBC would be terminated without cause as of November 30, 2024. He attaches the termination letter he received. Since then, he has looked for work in similar roles but, as of the date of

this hearing, he had not yet found a job. He appends to his affidavit listings of some of the jobs for which he has applied. To the extent those job advertisements show annual salaries, they range from \$85,000 to \$160,000. The claimant states that in the meantime, his new spouse is supporting him. Despite his unemployment, the claimant submitted that if the court found that the respondent was entitled to spousal support, to have this matter finally determined, he was agreeable to the having that support determined on an imputed annual income to him of \$130,134. In his affidavit, he provided a 2025 Divorcemate calculation using that figure. I will return to this when discussing spousal support.

- [86] That leaves consideration of any Company income. Pursuant to s. 18 of the Guidelines, where a spouse is a shareholder, director or officer of a corporation and the court is of the opinion that the amount of the spouse's annual income as determined under section 16 does not fairly reflect all the money available to the spouse for the payment of support, the court may include all or part of the pre-tax income of the corporation in the spouse's income.
- [87] The claimant states that he has disclosed all his income. The only financial documents in evidence from the Company are for the years 2021 and 2022, which are pre-separation. In his February 2025 affidavit the claimant states that these are the "latest" financial records. The claimant states that the Company did not do well financially and operated at a deficit. The revenue is entirely dependent on him obtaining consulting contracts.
- [88] For 2021, the Company financial records show revenue of \$20,800, operating expenses of \$5,436, and pre-tax income of \$15,364. For 2022, the records show revenue of \$141,525, expenses of \$123,953, and pre-tax income of \$18,472. Of the expenses, \$60,000 is a management salary. The balance sheet shows that this was not paid to the claimant, as it is recorded as an account payable. It was not declared on the claimant's personal income tax return. Of the remaining expenses, some are those that often have a personal component to them, such as automobile expenses, meals and entertainment, "occupancy costs", office expenses, and telephone. The assets were nearly \$60,000 in cash (which had not been paid to the claimant), and computer equipment. At the hearing the claimant stated that he was never paid the \$60,000 and the company's expenses eventually consumed all but \$11,500 in the bank account. However, there is no affidavit to this effect from the claimant, and no financial statements or Company bank records after 2022, and just the statement that the Company operated at a deficit.
- [89] The respondent states that she is aware the claimant was employed by a U.S. company as he worked on his computer at home from 6:00 a.m. to 11:00 a.m. every day and then started his regular job at UBC. She states that she believes the claimant "makes close to double what he earned from UBC" but provides no basis for this other than the claimant: (a) having a Tesla; (b) visiting Mexico; (c) proposing to his new spouse with a diamond ring; and (d) having a wedding with his new spouse; and (e) that when applying for a mortgage, the claimant represented that his income was \$250,000. In my view, only the latter could be significant.

- [90] The claimant states that he has never been an employee of a U.S. company (as opposed to consulting for one) and did not ever represent to the bank that he earned \$250,000. Correspondence in evidence shows that his counsel contacted the bank and forwarded the information received from the bank to respondent's counsel and also invited the respondent and her counsel to contact the bank to obtain the bank file if they were not satisfied.
- [91] The claimant has not set out in admissible evidence any basis for not including Company income, and I therefore include it in his pre-separation Guidelines income. I accept the \$60,000 was not paid to the claimant in 2022 as this is supported by the financial statements. I therefore find the claimant's pre-separation Guidelines income for 2020 to 2022 to be:
- a) 2020 - \$120,251;
 - b) 2021 - \$154,452 (\$139,088 + \$15,364 pre-tax Company income); and
 - c) 2022 - \$149,585 (\$131,113 + \$18,472 pre-tax Company income).
- [92] As for the period post-separation, there is no admissible evidence from the claimant that other Company expenses eventually used up almost all the \$60,000 in the Company. The claimant has not produced more recent Company financial records, but I accept that what he has produced are the latest records. He did not append to his affidavit the Company bank account statements. The claimant swears that the Company has operated at a deficit. In the absence of fuller financial disclosure from the claimant, I would conclude that the \$60,000 must be imputed to him in the post-separation period. However, as already noted, for the purpose of calculating spousal support the claimant provided calculations and submissions on an imputed income in 2025 of \$130,134, which I find subsumes the \$60,000.
- [93] The claimant's declared income for 2023 - the year of separation - is \$144,523, including a small amount of rental income and "other income". He continued to work at UBC until November 30, 2024. Although the claimant's 2024 tax return was not in evidence, I impute \$130,410 to him for 2024, calculated as the 2023 income of \$144,523, less the net rental and other income (which he no longer receives after the rental property was sold), being $\$142,256 \times 11/12$ months (to November 30, 2024 at UBC) = \$130,410. For 2025, as of the hearing date, the claimant has not yet found a job and states that he does not have any income. However, based on his submissions on spousal support, I impute \$130,134 to him. In my view, that is a very fair concession to the respondent.
- [94] I find that the respondent has not proven that the claimant has been intentionally unemployed, nor has she met the burden on her to impute income to the respondent in the range \$250,000. Her statements as to the claimant's income are speculation and not supported by any objective evidence. The jobs the claimant has been applying for do not indicate a salary anything close to this range. The evidence shows that during the relationship, the respondent earned in the range of \$130,000 per year from UBC before any income from his Company, and that when he was able to get consulting contracts and work (that on the respondent's evidence was another 25 hours per week on top of full-time work),

he made up to another \$60,000 which was not, immediately at least, paid to him. In my view, on the facts of this case, the claimant is not required work more than full-time. Even if he were able to find consulting work now, rather than work as an employee, there is no evidence that he would earn greater than what he could earn if he were employed full-time as an employee.

[95] I therefore find that the claimant's post-separation Guidelines incomes to be:

- a) 2023 - 144,523;
- b) 2024 - \$134,410 (imputed in the absence of the tax return but with knowledge of his UBC employment to November 30, 2024); and
- c) 2025 - \$130,134 (imputed).

Respondent's Income

[96] The respondent produced her tax returns and notices of assessment from 2020 to 2022. They show line 15000 income as follows, which I also find was her pre-separation Guidelines income:

- a) 2020 - \$32,759;
- b) 2021 - \$28,249 (\$28,446 less \$197 union or professional dues); and
- c) 2022 - \$32,977.

[97] In the respondent's F8 financial statement sworn in August 2023, she states that her income was \$14,560. At the time, she was working at a bridal shop for \$19 per hour plus commission. This is the only F8 financial statement the respondent has filed. In her latest affidavit sworn in May 2025, the respondent states that she has been working as a pet groomer at Pet Smart since April 2024. She earns \$18 per hour and is training to become a pet stylist, which would pay \$24 per hour plus commission. She enjoys this job.

[98] The claimant seeks to impute annual income to the respondent of \$56,417. He states that during the relationship, the respondent earned an income of \$32,970 and wished to earn a higher income. To that end, the respondent enrolled in college and obtained a certificate to be an MOA in October 2020. The claimant appends pages from the Indeed website which states that the BC average base earning of MOAs is \$50,419, with highest reported income of \$56,647 per annum. In another affidavit, the claimant attaches a webpage from Glassdoor.ca which states the average base pay is \$18 to \$22 per hour in BC for MOAs. At 40 hours per week that would be \$37,440 to \$45,760 per year including statutory holiday pay. In another affidavit, the respondent attaches website pages from the Government of Canada website "Job Bank". It states that the average pay for an MOA is \$22 per hour, with the lower end of the range being \$17.40 per hour.

- [99] The claimant argues that the respondent has not made full financial disclosure. He argues that the respondent has not produced information of her job searches, but I note that her amended list of documents states there are 43 pages of documents concerning this.
- [100] The respondent states that it was the claimant's idea for her to become an MOA. It was never a job she wanted to pursue or felt comfortable doing. She states her health is "rather delicate". In the past she has worked at an eye clinic, an eye surgery centre, a COVID-19 testing centre, and a COVID-19 vaccination centre. She was always sick when she worked, which she attributes to the jobs.
- [101] In my view, the claimant has not met the burden of imputing income of \$56,647 to the respondent. The information in the websites is hearsay and presumptively inadmissible. It is possible that the Government of Canada Job Bank data could be admissible under s. 29 of the Evidence Act, R.S.B.C. 1996, c. 124, but this was not argued. However, even if this is admissible evidence, at an average of \$22 per hour, which both parties refer to, the respondent's tax returns prior to separation show income below that amount, even when she was working as an MOA. I conclude that as a relatively new MOA, the respondent's income was at the lower end of the hourly rate scale. I see no basis to impute to her the highest reported income of an MOA.
- [102] I also find that the respondent was not capable of earning any income until she returned to and was settled again in Canada. She was not working when undergoing IVF treatment, something both parties wanted, and was afterward in Miami and then returned to Canada. She needed to find a new job, and I have allowed a total of four months from separation to do that. The respondent was working at a bridal shop by August 2023. She states that she does not wish to work as an MOA.
- [103] I therefore impute the following Guidelines incomes to the respondent for 2023 to 2025, on the basis that the respondent was capable of earning minimum wage commencing in August 2023, which is consistent with the low end hourly rate of MOAs, and what she was earning prior to separation. Those amounts are:
- a) 2023 - \$14,517 (\$16.75 per hour from August 1, 2023 to the end of the year);
 - b) 2024 - \$35,516 (\$16.75 per hour until May 31, 2024, and \$17.40 thereafter); and
 - c) 2025 - \$36,660 (\$17.40 per hour until May 31, 2025 and \$17.85 thereafter).

Issue 5: Spousal Support

- [104] In determining whether there is entitlement to spousal support, the court must consider the objectives of spousal support in s. 15.2(6) of the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.) [DA]. That section states:
- (6) An order made under subsection (1) or an interim order under subsection (2) that provides for the support of a spouse should

- (a) recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown;
- (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.

[105] If entitlement is established, in determining the amount and duration of support, the court must also consider the factors in s. 15.2(4) of the DA. That section states:

- (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.

[106] There are three bases upon which a spousal support award may be made: compensatory, which is based on economic advantage or disadvantage resulting from the marriage or its breakdown; non-compensatory, which is needs-based; and contractual: *Bracklow v. Bracklow*, [1999] 1 S.C.R. 420 at paras. 15, 49, 1999 CanLII 715. In determining if there is entitlement to support, the court begins with the objectives of spousal support. No objective is paramount, and all must be considered: *Bracklow* at paras. 35; *Moge v. Moge*, [1992] 3 S.C.R. 813 at 850-852, 1992 CanLII 25. In this case, there is no evidence of a contractual basis for support.

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

- [108] Non-compensatory support is intended to provide needs-based support where compensatory principles do not apply. Its goal is to narrow the gap between the needs and means of spouses upon marital breakdown. Need is a relative concept which goes beyond the basic necessities of life. It is informed by the circumstances of the parties, including the length of the relationship and the standards of living enjoyed during and after the relationship: Chutter at paras. 54-59; Bracklow at paras. 36, 41.
- [109] The respondent claims entitlement to spousal support. She states that she "sacrificed" her job to take IVF treatments in India. When she returned to Canada, she did not have a job. She argues that the claimant's income is much more than she makes. She claims high end support, and in her response to application, argues that the claimant is in arrears of the Consent Order because it has not been terminated, and the claimant ceased paying after July 2024.
- [110] The claimant argues that the respondent has not established entitlement on either a compensatory or needs basis, and in the alternative, if she has, the amount he has already paid to her satisfies any obligation, and the claim should be dismissed. For this, he points to the Divorcemate calculation he appends to his affidavit, in which he has imputed himself income of \$130,134 for 2025. He argues that if the respondent is entitled to support, it should be in the low end of the range. The claimant states the respondent resigned from her job in December 2022 to attend her sister's wedding. The IVF treatment began at the end of January 2023 and concluded with her departure from India in March 2023. He submits that the respondent does not have need, pointing to a \$20,000 deposit to the respondent's bank account in March 2024 after separation. These monies were then spent or transferred, and he argues that the court should conclude this was an attempt to hide her true financial situation. He also argues that the Court should draw an adverse inference against the respondent for failure to make full financial disclosure. The claimant attaches copies of photographs from the respondent's social media account which shows she is in a relationship, again arguing that she does not have need.
- [111] In response to the claimant's argument regarding a \$20,000 deposit to her bank account, the respondent states this was financial assistance from her family.
- [112] The claimant states that pursuant to the Consent Order, he paid the respondent \$400 per month commencing August 2023. This continued to July 2, 2024, at which point he stopped after the respondent did not provide financial disclosure as ordered on April 24, 2024, and he was thwarted in his ability to have his application to terminate the Consent Order heard. Bank statements show that the claimant made 13 payments of \$400 for a total of \$5,200, on an interim without prejudice basis for spousal support.

- [113] As noted above, the claimant argued that the \$2,100 per month he paid the respondent toward rent should be counted as part of property division. In my view, this is more properly considered a form of support and should be taken into account as part of the spousal support claim. The claimant claimed this as spousal support on his tax return. The claimant made 13 payments of \$2,100 for a total of \$27,300. I also treat this as interim without prejudice spousal support.
- [114] I interpret the respondent's evidence and arguments for entitlement to spousal support to be based primarily on need, but she also raises a compensatory component, being that she quit her job to take IVF. In my view, it makes no difference if the respondent quit her job to go to her sister's wedding, as contended by the claimant. Even if she had, she was in India for three months for IVF treatments that both parties wanted, and she could not work at a job in Canada during that time.
- [115] I find that the respondent has established an entitlement to spousal support, primarily based on need for a relatively short transitional period after the breakdown of the marriage. The only basis advanced for compensatory support is the respondent quitting her job to take IVF, and in my view, this is subsumed within the needs basis for entitlement, because this ultimately resulted in the respondent not having a job when she returned to Canada. The respondent states that she did not like working as an MOA. Given that the respondent wished to change careers in any event, I find that the interruption in her work life for three months did not have any lasting impact on her earning capacity. Otherwise, the respondent does not allege that her earning potential was negatively affected by the marriage or its breakdown; nor does she allege that she positively contributed to the claimant's earning potential.
- [116] In *Lee v. Lee*, 2014 BCCA 383, there was no compensatory basis for support, but one spouse had a greater ability to earn income than the other spouse, and the other spouse had re-partnered. The issue on appeal was stated in para. 1:
- [1] This appeal tests the meaning and limits of the principle of non-compensatory spousal support in a 20-year 'modern' marriage to which neither spouse was found to have sacrificed in any material way, and from which both emerged entirely self-sufficient, albeit with disparate earning abilities.
- [117] The Court concluded that case authority supports a "transitional" award of some financial assistance to a spouse to adjust to his or new financial situation (one income), where that spouse experiences a marked decline in standard of living due to separation or divorce: at paras. 65-66. In my view, that principle is applicable here.
- [118] The fact that \$20,000 was deposited to the respondent's bank account does not mean that the respondent does not have need. Further, the recent social media pictures of the respondent with a new romantic partner do not prove that she is in a marriage-like relationship and receiving support. However, the pictures support that the respondent is travelling with her friend suggesting a lifestyle that is beyond basic necessities. The

claimant argues that he and the respondent were separate financially, but there is no persuasive evidence to support this. There is no basis to conclude that the respondent did not share in the claimant's greater income during the marriage.

[119] As for duration and quantum, I have considered the factors discussed in chapter 9 of the Spousal Support Advisory Guidelines: The Revised User's Guide (Ottawa: Department of Justice, 2016) [SSAG]. The non-exhaustive list includes: the strength of any compensatory claim; the respondent's needs, the needs and ability of the claimant to pay; the work incentives of the payor; the parties' modest assets; and self-sufficiency incentives for the respondent.

[120] In my view, given the short relationship with no children, the respondent's young age, no evidence of any ongoing health or other difficulties that would impair her ability to work, and that entitlement is needs based and a transitional award, the duration of the spousal support should be toward the lower half of the range. Based on my findings as to commencement and termination dates, the range is 2.375 to 4.75 years, and I conclude that it should be 2.5 years. That should provide the respondent with adequate time to transition to having access to only a single income. Given the above and the disparity in incomes, the quantum should be at the high range.

[121] On the parties Guidelines incomes and assuming a 4.75 year relationship, I determine high range spousal support to be:

- a) 2023 - \$1,029 per month for nine months = \$9,261;
- b) 2024 - \$783 per month for 12 months = \$9,396; and
- c) 2025 - \$740 per month for 9 months = \$6,600.

[122] The total of these payments is \$25,257. The claimant has paid to the respondent a total of \$32,500. This is a \$7,243 overpayment which I conclude the respondent owes to the claimant.

[123] The parties agreed to interim without prejudice payments of \$2,500 (\$400 + \$2,100) per month which is above what the spousal support amounts are under the SSAG. However, in my view, that was an appropriate, although likely unintentional, restructuring of how spousal support should be paid. As discussed in chapter 7 of the Revised User's Guide, the without child support formula "relies heavily upon length of the relationship to determine both the amount and duration of support". The formula is constructed around the concept of merger of the parties' finances over time. Sometimes the without child support formula generates limited awards for short marriages, even when there is a significant disparity in income. In "many cases the modest amounts generated by the formula will be restructured into a lump sum or a very short transitional award. This result is consistent with current law and generally raises no problems". In this case, on the parties 2023 Guidelines incomes, high end spousal support under the SSAG was \$1,029 per month, which would not have been sufficient for the respondent to secure housing when she returned to Canada and did

not yet have a job. The result was the Consent Order for \$400 plus a \$2,100 month payment for six months intended to be used for rent, and then the parties agreed to extend that until further order or agreement.

[124] I find that the claimant has satisfied his spousal support obligation to the respondent. The total amount he has paid for support is more than what he would have to pay her if spread out more evenly over three years. It follows that the JCC Order with respect to the \$400 and \$2,100 payments is retroactively terminated effective the day after the claimant made his last payments on July 2, 2024. There are no arrears owing pursuant to that order. The claimant has attempted since April 2024 to have that order varied or terminated and was thwarted by lack of court resources and the conduct of the respondent in seeking other orders, then an adjournment, and then not ultimately taking the discovery steps that she said she wanted to take. The claimant should not be penalized for this.

[125] The \$7,243 owing by the respondent to the claimant for overpayment of spousal support shall be set off against the \$9,580 owing by the claimant to the respondent for property division, with the resulting net amount owing by the claimant to the respondent of \$2,337. However, that too is subject to further set-off for costs.

Issue 6: Costs

[126] The claimant has been substantially successful on this application and is entitled to his assessable costs of this application. The claimant has already been awarded his assessable costs of the divorce application in any event of the cause. The assessable costs and disbursement of both applications will certainly be greater than the remaining \$2,337 owing by the respondent to the claimant. I therefore order that the \$2,337 is set off against the costs owing by the respondent to the claimant, with the result that no funds are payable by the claimant to the respondent. If the claimant wishes, he is free to pursue assessing his costs and seeking payment from the respondent of the amount owing after the above set-off.

Orders

[127] The marriage-like relationship commenced between July 1, 2018 and August 18, 2018. If the parties cannot agree on the exact commencement date, they have liberty to apply. The parties separated on March 23, 2023.

[128] The parties' family property and family debt shall be equally divided as follows:

- a) The net proceeds currently held in trust (approximately \$73,143) from the sale of the matrimonial home and rental property shall be paid to the claimant.
- b) The claimant shall keep, without claim of the respondent: the Company; the Tesla; all bank accounts in his name; the Wealthsimple account and the UBC "pension"; and all household chattels and jewellery in his possession.

- c) The respondent shall keep, without claim of the claimant: the Kia; all bank accounts in her name; and all household chattels and jewellery in her possession.
 - d) The parties are each responsible for debt in their own names, without a claim against the other for payment. As between the parties, the claimant is solely responsible for payment of the loans to his father and the Tesla loan.
 - e) The claimant owes the respondent \$9,580 as an equalization payment for property division, however, that shall be set off against the overpayment of spousal support (\$7,243) and assessable costs owing by the respondent to the claimant (which will be greater than the remaining \$2,337).
- [129] The claimant has satisfied the respondent's entitlement and claim to spousal support, and over-paid that amount by \$7,243. The further claim of spousal support by the respondent is dismissed.
- [130] The respondent owes the claimant \$7,243 for the overpayment of spousal support, however, that shall be set off against the amount the claimant owes the respondent for property division (\$9,580).
- [131] The JCC Order requiring the claimant to pay the respondent \$400 plus \$2,100 per month is retroactively terminated effective immediately after the date of the claimant's last payments to the respondent on July 2, 2024.
- [132] The parties' unadjusted pensionable earnings under ss. 55, 55.1, and 55.2 of the Canada Pension Plan, R.S.C. 1985, c .C-8, shall be equalized, with the commencement date of the marriage-like relationship between July 1, 2018 and August 19, 2018, to be agreed upon between the parties or further court order, and a termination date of March 23, 2023.
- [133] The claimant has been substantially successful. The respondent shall pay the assessable ordinary costs of this application to the claimant.
- [134] The parties shall set off the net amount payable by the claimant to the respondent (\$2,337 after property division and spousal support) against the assessable costs owing by the respondent to the claimant for this application and the previous divorce application. As the costs owing will be greater than \$2,337, the claimant's liability for the \$2,337 is satisfied forthwith and is not further payable.
- [135] All other claims in the notice of family claim and amended counterclaim are dismissed.

"Norell J."

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