

CANADA / JUDGMENT

Xu v. Chu

2018 BCSC 2222

COURT

Supreme Court of British Columbia

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2018 BCSC 2222 Xu v. Chu

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Xu v. Chu,

2018 BCSC 2222

Date: 20181214

Docket: E152859

Registry: Vancouver

Between:

Wan Cheng Xu also known as Wancheng Xu

Claimant

And

Cai Ming Chu also known as Caiming Chu

Respondent

And

Yan Hang Hu also known as Yanhang Hu

and Future Furniture Ltd.

Respondents by Counterclaim

Before: The Honourable Mr. Justice Milman

Reasons for Judgment

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Place and Dates of Trial:

Vancouver, B.C.

November 5-9, 2018

Place and Date of Judgment:

Vancouver, B.C.

December 14, 2018

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I. Introduction

[1] This is a family claim arising from the breakdown of a 16-year marriage between the claimant, Mr. Xu, and the respondent, Ms. Chu, in early October 2015.

[2] Mr. Xu seeks to increase his parenting time with their ten-year-old son, Hao Nian Xu ("Howie") and an equal division of family assets and debts.

[3] Those assets are worth approximately \$3 million, over \$2 million of which consists of the equity in the family home, which is legally owned by Ms. Chu. If an equal division is ordered, Ms. Chu would owe Mr. Xu \$736,215.60 by his calculation, after accounting for the family debts.

[4] Ms. Chu opposes any increase in Mr. Xu's parenting time and indeed, seeks to remove Mr. Xu's parenting responsibilities entirely so that she will be left as Howie's sole guardian. She also seeks an unequal division of family assets in her favour, based primarily on her allegation that Mr. Xu surreptitiously retained valuable assets from the family business that the couple had operated together during the marriage. In addition, Ms. Chu alleges that Mr. Xu has under-reported his earnings. She seeks child and spousal support based on an imputed income of \$180,000.

[5] Ms. Chu also seeks, by way of counterclaim, additional relief against Mr. Xu's new partner, Ms. Hu, and her company, Future Furniture Ltd. ("FFL"), who, it is alleged, hold, or should be declared to hold, family property in trust for her.

[6] Ms. Hu and FFL seek to have the counterclaim dismissed as against them for want of any evidence supporting the trust allegation.

[7] Mr. Xu has been paying child support since April 2016 of \$269 per month based on a reported income of \$30,000. He acknowledges liability for retroactive child support in the amount of \$1,834 (i.e., six months - from October 2015, the date of separation, to March 2016 - at \$269 per month and 12 months at \$10 per month, to reflect a \$10 increase in the Table

amount as of November 22, 2017 through to November 2018). He is willing to continue paying the Table amount of \$279 going forward, based on a \$30,000 income, even though he reports earning only \$24,000 per year currently. He is also willing to pay spousal support of \$100 per year on that same basis, assuming Ms. Chu's Guidelines income to be \$10,660, as she claims. Finally, he seeks an order limiting the special expenses to which Ms. Chu may compel him to contribute, given the modest incomes reported by both parents.

II. The Background Facts

A. Marriage and Immigration

- [8] Mr. Xu and Ms. Chu were married in Shanghai, China in March 1999 after having lived in a marriage-like relationship since October 1998. She was 25 and he 22 years old at the time. They are now 45 and 42, respectively.
- [9] They moved to British Columbia one year later, in 2000. Initially they lived in the Champlain Heights area of Vancouver.
- [10] They were both able to find work soon after their arrival in Canada. Mr. Xu worked for a Chinese software company. Although he was laid off from that position in 2001, he was able to find another job in the electronics field a few months later. After that, he became involved with a Chinese investment company with an interest in the furniture business.
- [11] Ms. Chu worked initially at an internet café. She says that she was the one who first found the furniture opportunity that the couple later pursued.
- [12] Howie was born in December 2008.

B. Acquisition of Family Property

- [13] On September 13, 2006, the couple purchased their first home at 6150 Selma Avenue in Burnaby. They paid \$910,000 for the property and financed most of the purchase price with a mortgage. Title was registered in Mr. Xu's name alone.
- [14] As their financial position improved, they decided to invest in real estate. To that end, Ms. Chu formed a company called Canada Best Investments Inc. as a vehicle for their investments.
- [15] In 2009, they formed Soulmate Trading Inc. ("STI") for the purpose of carrying on the business of importing and selling furniture. That business eventually became the couple's main source of income. They rented business premises for STI on Bridgeport Road, near No. 6 Road, in Richmond, which they used as a warehouse and showroom.
- [16] On October 28, 2011, they entered into a contract to purchase a new home at 4353 West 14th Avenue in Vancouver. This time, title was registered in Ms. Chu's name alone. The couple lived together at that address until their separation in early October 2015. Since then, Ms. Chu and Howie have continued to reside there, in part because the home is conveniently

located a few blocks from Howie's school. The current market value of the property is \$2.4 million. Their equity interest is worth \$2,021,852.38, making it their single most valuable asset subject to division in this proceeding.

- [17] After they moved into the West 14th Avenue home, the couple rented out the Selma Avenue property. It was eventually sold on April 7, 2015, yielding net proceeds of \$972,783.
- [18] On June 24, 2015, the couple entered into a contract, in both their names, to purchase another property on West 8th Avenue in Vancouver for \$2.35 million. They paid a deposit of \$150,000. The purchase was supposed to complete in February 2016, but the transaction did not proceed due to the parties' separation in early October 2015. Instead, they assigned the contract to a third party on February 15, 2016, netting them \$447,500 (comprised of a credit of \$150,000 for the deposit plus the \$350,000 consideration paid by the assignee, less transaction fees).

C. The Separation

- [19] A number of factors led to the couple's separation.
- [20] Ms. Chu recounted a history of Mr. Xu's infidelities, culminating with his current relationship with Ms. Hu. That relationship began while Ms. Chu was away in China during the summer of 2015 to see her ailing father.
- [21] Mr. Xu had first met Ms. Hu in Shanghai in 2014. Ms. Hu ran a clothing store there. In July 2015, she visited Vancouver as a tourist and met Mr. Xu again. She spent some of her time in Vancouver at the STI business premises, where she assisted at the store and worked on improving her English. In order to deceive Ms. Chu as to why she was there, she and Mr. Xu prepared a false resume and employment application. On July 17, 2015, Ms. Hu emailed those documents to Ms. Chu, intending to convey to her the false impression that Ms. Hu was looking for employment at STI.
- [22] Ms. Hu eventually decided to settle in Vancouver permanently. On September 12, 2015, she entered into an agreement with a developer to purchase a two-bedroom condominium in a new building that was then under construction on Tomicki Avenue, in Richmond, for a price of \$514,900. The agreement called for a 20% deposit of \$102,980 to be paid in installments (\$5,000 on signing, \$46,490 by September 19, 2015 and \$51,490 by January 10, 2016).
- [23] After the foreign buyer's tax came into effect, Ms. Hu assigned the agreement to Mr. Xu, who eventually completed the purchase in his own name. He reimbursed Ms. Hu for the money she had already spent on it. Title to the property is now held in Mr. Xu's name and both he and Ms. Hu reside there together.
- [24] Ms. Chu learned of Mr. Xu's relationship with Ms. Hu when Ms. Hu turned up at the STI business premises in the late summer of 2015 to return Mr. Xu's car, after having borrowed it for a few days. This aroused Ms. Chu's suspicions. Unsatisfied with the responses she received to her questions, she inferred, correctly, that Mr. Xu was again being unfaithful to

her. Mr. Xu and Ms. Hu recounted in their testimony that Ms. Chu assaulted Mr. Xu violently in the ensuing argument, although Ms. Chu denied doing so. The couple had apparently had violent arguments before. Ms. Chu recounted previous incidents earlier in the marriage in which Mr. Xu had assaulted her.

- [25] In any event, the relationship between Ms. Chu and Mr. Xu deteriorated quickly after that. Mr. Xu became alarmed after he discovered that Ms. Chu had been transferring funds from their jointly held accounts into an account in her own name at RBC. On September 25, 2015, Ms. Chu withdrew \$595,490 from the couple's joint HSBC bank account holding the proceeds from the sale of the Selma Avenue property. Then, on September 29, 2015, she withdrew \$52,000 from STI's account at Coast Capital, putting that account into an overdraft.
- [26] Upon learning of those withdrawals, Mr. Xu demanded that Ms. Chu return the funds and gave her three days to do so. She refused. According to her, the funds had been transferred to her personal account at RBC in order to allow for the completion of the then pending purchase of the West 8th Avenue property, which was scheduled to close in February 2016. She asserted that RBC needed to have sufficient funds on deposit for the couple to qualify for additional mortgage financing. Another rationale that Ms. Chu offered in her testimony to explain the transfers was that RBC was offering a higher rate of interest than the other institutions.
- [27] Mr. Xu's suspicions were not assuaged. On September 29, 2015, he transferred the remaining \$500,000 in the joint HSBC account into a new personal account that he opened at BMO in his own name for the purpose. On September 30, 2015, he transferred \$25,000 from their joint account at RBC into another new BMO account in his own name. He later used these funds to complete the purchase of the Tomicki Avenue property, among other things.
- [28] The parties disagree on the exact date of their separation. Mr. Xu claims that it occurred on October 1, 2015, while Ms. Chu claims that he physically moved out on October 10, 2015. In any event, by the end of the second week of October, Mr. Xu had permanently left the family home on West 14th to reside with Ms. Hu.

D. The Legal Proceedings and Preservation Orders

- [29] On October 9, 2015, Mr. Xu commenced this proceeding. On October 16, 2015, he obtained an order of this Court freezing the parties' bank accounts and restraining Ms. Chu from dealing with or disposing of the family assets. On November 2, 2015, Ms. Chu obtained a similar order against Mr. Xu. That order halted his dealings with STI and required that he return its records to Ms. Chu, including all passwords for the alarm system and email and other media accounts.
- [30] Since then, the parties have applied to court successfully on a number of occasions for permission to withdraw funds from the frozen accounts for various purposes.

- [31] Ms. Chu obtained orders permitting her to withdraw a total of \$985,000 from her frozen accounts at RBC, of which \$800,000 was applied to reduce the mortgage on the West 14th Avenue property. The other \$185,000 was applied to pay off two lines of credit at RBC that had been drawn down by Mr. Xu (in the amounts of \$27,363.63 and \$15,550.32 respectively) and the overdraft remaining in STI's line of credit at Coast Capital (in the amount of \$8,096.95), leaving Ms. Chu with \$133,989.10, which she spent on other post-separation expenses.
- [32] Mr. Xu obtained orders permitting him to withdraw \$525,000, which he used primarily to complete the purchase of the Tomicki Avenue property, to pay legal fees and to give a \$50,000 gift to his parents.

E. The Demise of STI

- [33] With its bank account frozen and limited ability to purchase new inventory, STI's financial situation worsened. Its problems were compounded when the city contacted Mr. Xu in February or March, 2016 to advise that the location from which it had been operating the business was not zoned as retail space and could no longer continue to be used as such. Mr. Xu told the city to contact Ms. Chu directly about this problem. Ms. Chu was never able to resolve it and after trying with only limited success to sublet the space, was ultimately forced to surrender the lease.
- [34] In December 2015, Ms. Chu voluntarily dissolved STI. Six months later, on June 10, 2016, she had it restored. The restoration officially expired in June 2018, but the company had ceased doing business by the end of 2016.
- [35] When asked in cross-examination about why she took those steps, Ms. Chu provided a number of explanations. First, she said she was concerned about Mr. Xu's ongoing access to the corporate records. She also said she had to dissolve STI because of the problem with the zoning. In addition, she said the dissolution was made necessary because of the new competition it faced from FFL.

F. The Inventory Disputes

- [36] There was considerable controversy at trial over what became of the inventory at STI's premises following the parties' separation. Both parties were suspicious about the other's activities in relation to STI and took active steps to secure its assets for themselves. Both parties accuse the other of selling off or otherwise disposing of inventory and other assets for cash and not accounting properly to the other in that regard.
- [37] It appears to be common ground that there was approximately \$220,000 worth of inventory left on site at STI when the parties separated.

- [38] Ms. Chu alleges that, for a brief period following the separation, Mr. Xu physically occupied the STI business premises. She claims that he changed the security system alarm codes and refused to disclose the new password to her. Mr. Xu acknowledges having installed a new security alarm system at this time and having barred Ms. Chu from entering the premises at night, due to his suspicions about her conduct. He also acknowledges selling furniture from STI during the day during that period, sometimes for cash. I accept that there were some cash sales during the period for which Mr. Xu has not properly accounted to Ms. Chu.
- [39] Ms. Chu alleges that by the time she regained access to the premises in December 2015, Mr. Xu had disposed of all but \$86,000 worth of inventory, or well over half of it. I find that to be unlikely, given the relatively short period of time he was there. Ms. Chu refers to the receipts that Mr. Xu left her during that period, which she says were less than the historical norm for STI. I note, however, that STI reported \$204,738 in sales during the calendar year of 2016, as compared with \$226,846.64 during calendar 2015. STI was evidently able to make something close to the usual amount of sales in 2016. Its actual sales, including those carried out for cash, were probably higher still. I accept that Ms. Chu also conducted cash sales of STI inventory and other assets for which she has not properly accounted to Mr. Xu.
- [40] On one occasion in November 2016, Mr. Xu says he secretly observed activity at the STI business premises and photographed a truck moving inventory from there to a storage facility. Ms. Chu's explanation was that this was a legitimate delivery to a customer. Mr. Xu has also adduced evidence showing Ms. Chu selling STI's stock of equipment (including a forklift and pallet racking) on Craigslist in early 2016.
- [41] Ms. Chu also alleges that Mr. Xu caused a supplier in China to redirect a furniture shipment, ordered and partly paid for by STI, to FFL. In support of that allegation, she adduced three documents.
- [42] The first was a telex message dated October 1, 2015. It records Ms. Chu having placed an order on behalf of STI with Shanghai Chouqin Furniture Co. Ltd. ("SCFCL"), a supplier in China, and paying a deposit of USD \$5,980 on the order. The telex lists, under the heading "remittance information," the following code: "PI L156171-2."
- [43] The second document was an email from a representative of SCFCL to Ms. Chu dated April 6, 2016, in which SCFCL confirmed the value of the order (USD \$26,456), acknowledged receipt of the USD \$5,980 deposit, and asked her to arrange the shipment as soon as possible because the order had been awaiting shipment for too long already. The email is headed "L156171-1-2." It attached two excel spreadsheets, labelled "L156171-1.xls" and "L156171-2.xls." In the body of the email, the SCFCL representative stated as follows, among other things:

Dear Christina,

Nice talking to you just now.

1. For the order PI pls kindly check the attachment. Totally PI amount is USD26456.00.
- [44] The third document appears to be a bill of lading showing that on or around July 12, 2016, FFL received a shipment from SCFCL. The content of that shipment is described as follows: "SOFA/BED/HEADBOARD/SPARE PARTS PI NO.:L156171-1-2."
- [45] Although these documents were not put to Mr. Xu in cross-examination when he first testified, I allowed Mr. Xu to testify in rebuttal to address this and a number of other new issues arising from Ms. Chu's testimony. In his rebuttal testimony, Mr. Xu denied that there was any connection between STI and the July 12, 2016 delivery. He insisted that the order had instead originated with Ms. Hu and him through FFL.
- [46] I am satisfied, despite Mr. Xu's testimony to the contrary, that the three documents pertain to the same transaction and that Ms. Chu's allegation in this regard is well founded.
- [47] Mr. Xu testified that it took approximately two months to place, process and ship such an order. FFL had just been formed barely one month before the delivery date, on June 9, 2016. Its only bank account was first opened on June 16, 2016 and it shows no sign of FFL having paid a deposit in advance for the shipment. Its financial statements for the fiscal year ended June 30, 2017 show no expenditures of any kind having been made on account of inventory in the previous fiscal year, i.e., in the 22 day period from its original incorporation on June 9, 2016 to the end of its first fiscal year on June 30, 2016.
- [48] In any event, it is unlikely that Mr. Xu and Ms. Hu happened to initiate an order from the same supplier, using the same "PI" number for the same kind of furniture that STI had recently ordered and was waiting to receive, at around the same time that Ms. Chu was in contact with the supplier about the status of the shipment but was unable to pay for it. I find it more likely that Mr. Xu took the benefit of the pending shipment, already partly paid for by STI, and redirected it to FFL, as Ms. Chu alleges.

G. FFL

- [49] Following the dissolution of STI, Mr. Xu found employment with a company known as Blue Star Marble Ltd. ("BSML"). He worked there until December 2017, when he was let go.
- [50] On June 9, 2016, Ms. Hu incorporated FFL as its sole shareholder and appointed Mr. Xu as its sole director. Since then, Mr. Xu has been working for FFL in sales, inventory management and shipping. Mr. Xu is no longer a director of FFL, however. He and Ms. Hu testified that he was made a director initially only because Ms. Hu was not permitted to work in Canada at the time.
- [51] In 2016, Mr. Xu reported employment income of \$18,720 at BSML and \$6,000 at FFL. In 2017, he reported employment income of \$14,601.60 at BSML and \$15,000 at FFL. In 2018, he has worked exclusively at FFL. He is paid approximately \$2,000 per month.

[52] FFL opened a retail store at 11600 Bridgeport Road, in Richmond, just a few blocks away from STI's former premises. In his dealings on behalf of FFL, Mr. Xu uses a pseudonym, Sam Wong, admittedly to avoid confusion with STI.

III. The Issues

A. Parenting Issues

1. The Parties' Positions

[53] Mr. Xu seeks the following relief in relation to Howie:

- (a) continued joint guardianship under the Family Law Act, S.B.C. 2011, c. 25 [FLA];
- (b) shared parental responsibilities, with disputes on material matters addressed through a time limited, half-day arbitration, or alternatively, on application by either party to court; and
- (c) Howie's primary residence to be with Ms. Chu, with Mr. Xu having parenting time during school weeks starting on Fridays after school at 3:00 p.m. and continuing overnight to Saturday at 1:00 p.m., and equal sharing of holidays (including one month each for the summer, during which Mr. Xu may bring Howie to China to visit with his paternal grandparents).

[54] Ms. Chu seeks sole custody and guardianship of Howie.

2. The Legal Framework

[55] The starting point in the analysis is s. 37 of the FLA, which states as follows:

37 (1) In making an agreement or order under this Part respecting guardianship, parenting arrangements or contact with a child, the parties and the court must consider the best interests of the child only.

- (2) To determine what is in the best interests of a child, all of the child's needs and circumstances must be considered, including the following:
 - (a) the child's health and emotional well-being;
 - (b) the child's views, unless it would be inappropriate to consider them;
 - (c) the nature and strength of the relationships between the child and significant persons in the child's life;
 - (d) the history of the child's care;
 - (e) the child's need for stability, given the child's age and stage of development;
 - (f) the ability of each person who is a guardian or seeks guardianship of the child, or who has or seeks parental responsibilities, parenting time or contact with the child, to exercise his or her responsibilities;

- (g) the impact of any family violence on the child's safety, security or well-being, whether the family violence is directed toward the child or another family member;
 - (h) whether the actions of a person responsible for family violence indicate that the person may be impaired in his or her ability to care for the child and meet the child's needs;
 - (i) the appropriateness of an arrangement that would require the child's guardians to cooperate on issues affecting the child, including whether requiring cooperation would increase any risks to the safety, security or well-being of the child or other family members;
 - (j) any civil or criminal proceeding relevant to the child's safety, security or well-being.
- (3) An agreement or order is not in the best interests of a child unless it protects, to the greatest extent possible, the child's physical, psychological and emotional safety, security and well-being.
- (4) In making an order under this Part, a court may consider a person's conduct only if it substantially affects a factor set out in subsection (2), and only to the extent that it affects that factor.

[56] Given that I heard extensive testimony about a number of incidents of alleged family violence committed by both parents, I must also have regard to s. 38 of the FLA, which states as follows:

38. For the purposes of section 37 (2) (g) and (h), a court must consider all of the following:

- (a) the nature and seriousness of the family violence;
- (b) how recently the family violence occurred;
- (c) the frequency of the family violence;
- (d) whether any psychological or emotional abuse constitutes, or is evidence of, a pattern of coercive and controlling behaviour directed at a family member;
- (e) whether the family violence was directed toward the child;
- (f) whether the child was exposed to family violence that was not directed toward the child;
- (g) the harm to the child's physical, psychological and emotional safety, security and well-being as a result of the family violence;
- (h) any steps the person responsible for the family violence has taken to prevent further family violence from occurring;
- (i) any other relevant matter.

[57] With respect to Ms. Chu's claim for sole custody of Howie, s. 16 of the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp) states in relevant part as follows:

Factors

- (8) In making an order under this section, the court shall take into consideration only the best interests of the child of the marriage as determined by reference to the condition, means, needs and other circumstances of the child.

Past conduct

- (9) In making an order under this section, the court shall not take into consideration the past conduct of any person unless the conduct is relevant to the ability of that person to act as a parent of a child.

Maximum contact

- (10) In making an order under this section, the court shall give effect to the principle that a child of the marriage should have as much contact with each spouse as is consistent with the best interests of the child and, for that purpose, shall take into consideration the willingness of the person for whom custody is sought to facilitate such contact.

[58] With respect to Ms. Chu's claim for sole guardianship, s. 39 of the FLA presumes that each parent will be a guardian of the child. The only way that Ms. Chu can become Howie's sole guardian is by way of an application under s. 51(1)(b): S.H. v. R.G., 2013 BCPC 114. In that case, Hamilton P.C.J. stated as follows in dealing with a similar application, at paras. 148-150:

[148] Given the statutory presumption of guardianship over T. that R.G. enjoys, along with the order of guardianship that she has with A., I am not satisfied that S.H. has established that this is one of the rare cases where guardianship should be terminated. I say one of the rare cases, because I am of the view that in enacting the F.L.A. the Legislature decided to put birth parents who have raised children together before separation on a more equal footing than they have been in the past under the F.R.A.

[149] I am further of the view that in enacting the F.L.A., the Legislature:

- a) Established a presumption of guardianship; and
- b) Did not include an operative section allowing a presumptive guardian to apply for sole guardianship.

[150] Accordingly, to obtain sole guardianship in those circumstances the presumptive guardian must apply to cancel the other presumptive guardian's guardianship status. I am of the view that the Legislature intended that such applications to cancel a presumptive guardian's guardianship status would occur only in very rare and the clearest of cases where cancelling guardianship was clearly in the child's best interests. I do not consider this case to be one of those rare and clearest of cases such that it is in T.'s and A.'s best interests to cancel R.G.'s guardianship over them.

[59] That decision was cited with approval by Fleming J. in *M.A.G. v. P.L.M.*, 2014 BCSC 126, at paras. 44-46. In *C.A.J. v. N.J.*, 2014 BCSC 279, Bernard J. dealt with a similar application as follows, at paras. 134-135:

[134] In the case at bar, each party seeks an order removing the other as guardian. A parent who is not a guardian cannot have any "parenting responsibilities" or "parenting time" as these terms are defined in ss. 41 and 42 of the FLA. The role of such a parent in relation to the child is limited to mere "contact"; thus, the removal of a parent as guardian is a draconian step that ought to be taken only when any sort of division of parenting responsibilities and parenting time between the parents would not be in the best interests of the child.

[135] In this regard, s. 40 of the FLA permits the court to allocate parenting responsibilities and parenting time between, or among, guardians, and provides that there is neither a presumption of equal allocation nor one that the decisions of guardians must be exercised together; thus, even where, as here, there are compelling concerns about a child's best interests vis-à-vis one parent and of parental animosity which would realistically preclude joint decision-making, these may be addressed through allocation and designation of parenting responsibilities.

3. Discussion of the Parenting Issues

[60] I begin with the history of the parenting arrangements that have been in place since the parties' separation.

[61] At the judicial case conference held on April 4, 2016, the parties agreed on a parenting schedule that allowed for Mr. Xu to have parenting time with Howie on Sundays from 5:30 to 8:00 p.m. and on Thursdays from 6:00 to 8:00 p.m. On December 14, 2016, Leask J. ordered the parenting schedule changed so that Mr. Xu would have parenting time on Fridays from 3:00 to 6:00 p.m. and on Saturdays from 9:00 to 11:00 a.m. Later, the parties found the Saturday time slot to be inconvenient and Mr. Xu stopped exercising his parenting time on Saturdays altogether.

[62] Since then, Mr. Xu has occasionally failed to turn up for his Friday parenting time as well. He acknowledged in cross-examination that this has occurred from time to time, and he did not deny that it may have occurred as many as eight or nine times in the last year alone, sometimes without adequate notice to either Howie or Ms. Chu. Mr. Xu's explanation for these incidents was not particularly compelling - he attributed them to work commitments.

[63] It is a serious matter for a parent to fail to turn up repeatedly for his or her scheduled parenting time. The potential adverse psychological toll on a ten-year-old child of being repeatedly stood up in this way is obvious. A child who is left waiting in vain for a delinquent parent to turn up is likely to wonder, justifiably, about the level of that parent's commitment to the relationship. Such behaviour displays selfishness and a lack of consideration for both the child and the other parent. It can justify relief under s. 63 of the FLA, such as a forfeiture of parenting time. This is a factor weighing against any increase in Mr. Xu's parenting time.

- [64] On the other hand, Mr. Xu has demonstrated a commitment to his relationship with Howie in other ways. Although Ms. Chu alleges that Mr. Xu has failed to keep promises he made to Howie, I am not persuaded that that particular allegation was supported by the evidence. Mr. Xu appears to have a good relationship with Howie.
- [65] Unfortunately, I was given little if any direct or even indirect evidence of Howie's own views. Howie was described as being generally happy, well-adjusted and "friendly with everyone." The limited evidence I have leads me to infer that Howie would welcome the chance to spend more than three hours per week with his father.
- [66] Mr. Xu has generally sought to protect his parenting time with Howie on those occasions when Ms. Chu unjustifiably impeded it, such as when she texted Mr. Xu that Howie would not be available for Mr. Xu's parenting time because Howie was "hungry." In June 2016, Ms. Chu placed Howie in a summer camp without consulting Mr. Xu, thereby depriving Mr. Xu of his parenting time during that period. In July 2016, Ms. Chu appears to have arbitrarily decided that because her father was having surgery in China, Mr. Xu was precluded from having any parenting time during that time. When she did travel to China with Howie to attend to her father, however, Ms. Chu left Howie with Mr. Xu's parents for the duration of the trip - a fact that tends to support Mr. Xu's claim that the opportunity to spend at least some time with his paternal grandparents in China during the summers would indeed be in Howie's best interest.
- [67] I heard a great deal of evidence during the trial about a number of incidents involving violence by both parents against one another or, in the case of Ms. Chu, an alleged assault by her on Ms. Hu using a motor vehicle. I do not believe it is necessary for me to resolve the many conflicts in the evidence that I heard on that subject because I am not satisfied that the events in question, to the extent they actually occurred as described to me, reflect on the capacity and inclination of both parents to conduct themselves responsibly in caring for Howie.
- [68] I have concluded that the appropriate order is to increase Mr. Xu's parenting time on the terms he seeks, subject to two conditions.
- [69] First, Mr. Xu's parenting time is intended for Howie to spend time with his father, not necessarily his grandparents or others. My order will therefore be that Mr. Xu may bring Howie with him to China once each summer to visit with his paternal grandparents, but Mr. Xu must himself be present in any home when Howie is staying overnight. Second, my order in this regard will be subject to revision if Mr. Xu fails, without reasonable excuse, to abide by that condition or fails to show up for his parenting time on any occasion without providing at least 48 hours' advance notice to Ms. Chu of his inability to make the appointment.

[70] In the circumstances, I am not persuaded that it would be in Howie's best interest to remove Mr. Xu as Howie's guardian and I will order that both parents continue to be joint guardians on the terms suggested by Mr. Xu.

B. Property Division

1. The Legal Framework

[71] Pursuant to s. 81 of the FLA, the parties are presumptively entitled on separation to an undivided one-half interest in the family assets as tenants-in-common, unless Ms. Chu can establish under s. 95 that it would be "significantly unfair" to divide those assets equally.

[72] That provision states in relevant part as follows:

95. (1) The Supreme Court may order an unequal division of family property or family debt, or both, if it would be significantly unfair to
- (a) equally divide family property or family debt, or both,
 - (2) For the purposes of subsection (1), the Supreme Court may consider one or more of the following:
 - (a) the duration of the relationship between the spouses;
 - (c) a spouse's contribution to the career or career potential of the other spouse;
 - (d) whether family debt was incurred in the normal course of the relationship between the spouses;
 - (f) whether a spouse, after the date of separation, caused a significant decrease or increase in the value of family property or family debt beyond market trends;
 - (g) the fact that a spouse, other than a spouse acting in good faith,
 - (i) substantially reduced the value of family property, or
 - (ii) disposed of, transferred or converted property that is or would have been family property, or exchanged property that is or would have been family property into another form, causing the other spouse's interest in the property or family property to be defeated or adversely affected;
 - (h) a tax liability that may be incurred by a spouse as a result of a transfer or sale of property or as a result of an order;
 - (i) any other factor, other than the consideration referred to in subsection (3), that may lead to significant unfairness.

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

[73] 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.

2. The Family Assets and Debts Subject to Division

[74] Before determining how to divide the family assets and debts, I must first determine what those assets and debts are: *Remmem v. Remmem*, 2014 BCSC 1552 at para. 47. I will therefore turn to the question of the appropriate division after setting out my conclusions on the respective values of the assets and debts in issue.

[75] Mr. Xu has calculated the family assets and debts available for division as follows:

Description

Mr. Xu

Ms. Chu

Net equity in West 14th Avenue

\$2,021,852.38

Funds withdrawn by Mr. Xu

\$525,000

West 8th Avenue proceeds

\$223,750

\$223,750

Funds withdrawn by Ms. Chu pursuant to the October 11, 2016 order

\$25,000

Funds withdrawn by Ms. Chu pursuant to the December 14, 2016 order

\$50,000

Funds withdrawn by Ms. Chu pursuant to the December 14, 2016 order

\$65,000

Funds withdrawn by Ms. Chu pursuant to the August 10, 2017 order

\$45,000

RBC line of credit payout

(\$27,363.63)

RBC line of credit payout

(\$15,550.32)

Payout of STI overdraft at Coast Capital

(\$8,096.95)

Home preservation costs

(\$115,496.33)

Subtotal

\$748,750

\$2,264,095.15

[76] Assuming an equal division is appropriate, Mr. Xu claims to be entitled to payment from Ms. Chu of \$757,672.58 (i.e., \$1,515,345.15 /2). In addition, Mr. Xu acknowledges responsibility for his half share of the RBC line of credit payouts, in the amounts of \$27,383.63 and \$15,550.32, yielding a net amount owing by Ms. Chu to him of \$736,205.60.

[77] Ms. Chu accepts most of those figures, although she says that she incurred additional family debts. She testified that the home preservation costs she incurred totalled \$173,000, rather than \$115,496.33.

[78] The written evidence shows that Ms. Chu paid the mortgage on the West 14th Avenue property from October 2015 through to and including October 15, 2017 (a period of 24 months) at \$4,733.62 per month, for a total of \$113,606.88. After that, she continued to pay the mortgage at a reduced rate of \$2,073.79 per month from November 15, 2017 through to the present (a period of 13 months), for a total of \$26,959.27. She also paid property tax on the property for the years 2015, 2016 and 2017, in the amounts of \$7,649.58, \$8,226.95 and \$9,040.06 respectively. Finally, she paid homeowners insurance premiums for the same years in the amounts of \$1,326, \$1,324 and \$1,381. These amounts total \$169,513.74, and I accept that sum as the correct total of the home preservation expenses incurred by Ms. Chu. This means that Mr. Xu has understated the home preservation costs incurred by Ms. Chu by \$54,017.41.

[79] After making that adjustment, I find that the assets and debts subject to division net out as follows: \$748,750 (net amount retained by Mr. Xu) plus \$2,210,077.74 (net amount retained by Ms. Chu), or \$2,958,827.74 in total.

3. Should an unequal division be ordered?

- [80] Ms. Chu advances several grounds in support of her submission that an equal division would be significantly unfair to her.
- [81] First, she submits that Mr. Xu caused a reduction in what would otherwise have been the value of the family assets through his unjustified refusal to proceed with the purchase of the West 8th Avenue property. She refers in that regard to the amount by which that particular property has since appreciated in value (although the actual amount of that appreciation was not properly proven). She argues that Mr. Xu should have to account to her for the loss of that foregone profit, whatever it was. Mr. Xu says he would have agreed to purchase the property jointly but Ms. Chu was insisting on taking title in her own name.
- [82] I am not persuaded that Mr. Xu's unwillingness to proceed with the purchase of the West 8th Avenue Property, whatever his reason, justifies an unequal division of family property. Mr. Xu was entitled to elect not to participate in another investment project with Ms. Chu, regardless of how profitable it may have turned out to be. In any event, the couple was able to withdraw from the transaction at a profit.
- [83] Second, Ms. Chu alleges that an unequal division should be ordered because of the higher rate of interest she has had to pay on the West 14th Avenue property mortgage after it came up for renewal in September 2017. Ms. Chu complains that she was only able to renew at that higher rate because of Mr. Xu's delay in signing the mortgage forms. As it happened, Ms. Chu had demanded his signature within 24 hours of presenting him with the new terms, following which the bank's offer expired. I am not prepared to order an unequal division on this basis either.
- [84] Third, Ms. Chu alleges that Mr. Xu did not account to her fully for the profits flowing from his sale of the STI inventory left on the STI business premises in the weeks following their separation. I have accepted that Mr. Xu did engage in some cash sales for which he has not properly accounted to Ms. Chu. On the other hand, I have also found that Ms. Chu herself engaged in cash sales of STI inventory and other assets for which she has not properly accounted to Mr. Xu. I find the evidence as to which of them owes what to the other for those cash sales to be inconclusive, given the cryptic and chaotic state of STI's financial records in that regard. I am therefore unable to conclude that an unequal division of family assets is justified on this ground either.
- [85] Finally, Ms. Chu alleges that Mr. Xu has improperly retained and used STI assets in setting up FFL with Ms. Hu as a competing venture. Ms. Chu points in this regard to Mr. Xu's retention after separation of his iPhone, iPad and computer, which contained customer and supplier contacts and other information associated with STI's business. Mr. Xu admitted that he has had to operate FFL using a pseudonym to avoid confusion between FFL and STI.

- [86] I agree that the evidence supports Ms. Chu's contention that Mr. Xu improperly converted STI assets, including its goodwill and customer and supplier data, for the benefit of FFL, and therefore, that part of FFL's current value as a going concern is attributable to that conversion of family assets. I find it likely that Mr. Xu's diversion to FFL of STI's October 2015 furniture order from SCFCL was merely one example of the kind of conversion that Mr. Xu carried out when he and Ms. Hu set up FFL.
- [87] I therefore agree with Ms. Chu that Ms. Hu and FFL should be declared to hold some family assets in trust for Mr. Xu, who is, I am also prepared to find, a de facto partner in FFL. Rather than formally declare a trust or award damages on that basis, however, I will instead compensate Ms. Chu for Mr. Xu's conversion of that property by awarding her an unequal division of the remaining family assets, pursuant to s.95(2)(g)(ii) and 95(2)(i) of the FLA.
- [88] I have also concluded that an unequal division in favour of Ms. Chu is also justified pursuant to s. 95(3), given the value of the family assets relative to the parties' reported incomes, the compensatory and non-compensatory factors supporting an award of spousal support and the difficulty in arriving at an appropriate figure for periodic spousal support payments, as more fully described below.
- [89] On that basis, I am ordering an unequal division of the net family assets and debts, in the proportion of 60/40% in favour of Ms. Chu.

C. Child Support

1. The Legal Framework

- [90] In *M.A.G. v. P.L.M.*, 2014 BCSC 126, Fleming J. described the legal principles governing awards of child support, as follows, at para. 52:
- [52] Three fundamental principles apply to all child support applications:
1. parents have a joint and ongoing legal obligation to support their children;
 2. the children, not the parent with custody, have the right to support; and
 3. support payments are based on earning capacity and not only on what a parent actually earns. As a result a parent has a legal obligation to earn as much as he or she is reasonably capable of earning: *Earle v. Earle*, [1999] B.C.J. No. 383 (S.C.).
- [91] The quantum of child support is set according to the Federal Child Support Guidelines, SOR/97-175; FLA s. 150.
- [92] Section 19 of the Guidelines states as follows: "The court may impute such amount of income to a spouse as it considers appropriate in the circumstances, "
- [93] In *M.A.M. v. D.L.L.*, 2018 BCSC 2114, Ker J. set out the following summary of the law applicable in determining Guidelines income, at paras. 73-78:

- [73] The legislative scheme for determining guideline income requires a consideration of ss. 16 to 20 of the Guidelines. This was succinctly described by Mr. Justice Groberman in *Brown v. Brown*, 2014 BCCA 152 at para. 16:
- [16] The legislative scheme for determining Guideline income is fairly straightforward. A court begins, under s. 16 of the Guidelines, with the "total income" from the payor parent's tax return and then makes specified adjustments. Next, the court is entitled to take further specific considerations into account under ss. 17-20 of the Guidelines to determine Guideline income. This Court outlined the steps in *Vincent v. Vincent*, 2012 BCCA 186:
- [35] All determinations of child support begin with finding the spouse's Line 150 income, a relatively straight-forward step one. The second step is to make whatever adjustments to that amount are required by Schedule III. Once these two steps are completed, the court must look to sections 17 to 20, to determine whether any of the exceptions set down in those provisions applies, and, if so, what effect they should be given on the facts of the case.
- []
- [77] Vincent discusses the application of the exceptions listed in ss. 17-19 of the Guidelines and how they may further apply to determine a parent's Guidelines income:
- [36] Section 17 gives the court discretion to deal with the problem of an income which fluctuates from year to year and with non-recurring income or losses such that the determination of a spouse's income under s. 16 is not the fairest determination of that income. As it relates to this case, this provision permits the inclusion of non-recurring capital gains and the exclusion of non-recurring dividends.
- [37] Section 18 provides discretion to deal with the situation where a spouse is in a position to manipulate income in his or her capacity as shareholder, director or officer of a corporation, such that a person's income under s. 16 does not fairly reflect all the money available to that spouse for the payment of child support. It permits the inclusion of pre-tax corporate income and benefits paid to non-arm's length persons.
- [38] Section 19 addresses situations where the spouse's disclosed income does not fairly reflect what should be paid in child support by permitting imputation of income. It permits the imputation of income in a variety of situations, including income which is tax exempt, under-utilized capital investments, and when there is a failure to provide income information.
- [78] These comments illustrate the need to focus on the substance of any transaction or mode of receiving income rather than the form of any payments to a corporation. The objective of this approach is to ensure that a payor's Guidelines income reflects the money reasonably available for child support purposes: *Richardson v. Richardson*, 2013 BCCA 378 at paras. 54-55; *Andreassen v. Andreassen*, 2016 BCSC 1196 at para. 62.

2. Discussion

[94] The amount of child support payable by Mr. Xu depends on his Guidelines income, as so determined.

[95] Mr. Xu testified that he is currently earning approximately \$24,000 per year, although he is willing to have his Guidelines income fixed at \$30,000 for this purpose. Since the judicial case conference in this matter in April 2016, Mr. Xu has been paying child support, based on an assumed income of \$30,000, at \$269 per month. He is willing to pay child support as of November 2017 and going forward based on that same income, which yields a Table amount of \$279 per month. On the other hand, Ms. Chu urges me to impute an income of \$180,000 to Mr. Xu.

[96] Despite Ms. Chu's testimony on the point, Mr. Xu himself was not challenged in cross-examination about his true level of income. This raises an issue as to the applicability of the rule in *Brown v. Dunne*. The application of the rule was recently discussed by MacKenzie, J.A., writing for the Court, in *North American Construction (1993) Ltd. v. Yukon Energy Corporation*, 2018 YKCA 6, as follows, at paras. 19-21:

19 The jurisprudence reflects that where trial fairness is unaffected by lack of cross-examination, a cross-examiner's failure to confront a witness will not violate the rule in *Browne v. Dunn*.

20 This may be the case where it is clear or apparent, on considering all the circumstances, which may include the pleadings and questions put to the witness in examination for discovery, that the witness or opposite party had clear, ample and effective notice of the cross-examiner's position or theory of the case. Therefore, where the other party, the witness, and the court are not caught by surprise because they are aware of the central issues of the litigation, the rule in *Browne v. Dunn* is not engaged: see *Liedtke-Thompson v. Gignac*, 2014 YKCA 2 at paras. 42-43; *R. v. Drydgen*, 2013 BCCA 253 at para. 18; *Trillium Motor World Ltd. v. Cassels Brock & Blackwell LLP*, 2017 ONCA 544 at para. 317; *R. v. Paris* (2000), 150 C.C.C. (3d) 162 (Ont. C.A.) at para. 23; *R. v. Poole*, 2015 BCCA 464 at para. 39.

21 Where the rule is engaged, a trial judge enjoys broad discretion in determining the appropriate remedy, and "there is no fixed consequence" for an infringement of the rule": *Poole* at paras. 43-44.

[97] In her pleadings, Ms. Chu seeks to impute to Mr. Xu an income of \$180,000, so her position in argument that his income has been drastically under-reported should have come as no surprise to him. In any event, Mr. Xu's obligation to pay child support is an obligation he owes to Howie, not Ms. Chu, and so any failure by Ms. Chu to cross-examine Mr. Xu as to his true income should not inure to the prejudice of Howie. On those grounds, insofar as an issue under the rule in *Brown v. Dunne* arises by virtue of that failure to cross-examine, I find that it ought not to preclude me from fixing Mr. Xu's Guidelines income at the level justified by the evidence.

[98] That being said, there is some evidence confirming the level of Mr. Xu's income, as he has reported it.

- [99] For example, while he was working for BSML, apparently an arms-length employer, his level of income was similar to that which he has reported at FFL. I note that in 2014 and 2015, the only years prior to the parties' separation for which I was given records, Mr. Xu also reported an income from STI of between \$25,000 and \$30,000 per year. Mr. Xu pleaded in his response to the counterclaim filed December 2, 2015 that he estimated his "net income" in 2014 to have been "around \$50,000." His tax return for that year declared only \$27,000 in income, however, all of it derived from rent from the Selma Avenue and West 14th Avenue properties. In the following year (2015), he reported \$25,000 in employment income and no rental income.
- [100] I am not persuaded that Mr. Xu really earns, or is capable of earning, only \$30,000 per year, let alone only \$24,000. I find it unlikely that someone who was truly earning, or capable of earning, only that amount annually could have accumulated the assets that Mr. Xu and Ms. Chu acquired during the marriage, or that such a person would have been prepared to give his parents a gift of \$50,000 (i.e., the equivalent of two years of income at that level), as Mr. Xu did.
- [101] Although Ms. Chu says that Mr. Xu's income should be fixed much higher, at \$180,000 per year, there is no evidence to support that figure either. It appears to derive from a conversation that the couple had during the marriage in which Mr. Xu told Ms. Chu that STI was then bringing in approximately \$18,000 per month. That number, assuming it came from Mr. Xu as alleged, may have had something to do with the business' gross sales at the time, but that is not the same as Mr. Xu's personal income. On the other hand, the two figures are not necessarily entirely unrelated either.
- [102] Unlike the situation at BSML, Mr. Xu is, I have already found, a de facto partner in FFL, capable, as such, of controlling the income he and Ms. Hu receive from the business, subject only to the constraints imposed by its overall financial performance. I find that the salary that Mr. Xu has formally been drawing from FFL since its inception has been kept artificially low in a concerted effort by him and Ms. Hu to defeat Ms. Chu's claims in this action, among other things.
- [103] I also find that the actual gross sales of both STI and FFL have been understated in their respective financial statements because a substantial portion of those sales are conducted in cash, with the cash proceeds used to acquire inventory or to pay expenses such as rent, without being properly recorded. Ms. Chu testified that the percentage of cash sales was between 40% and 50%. Although Mr. Xu was not prepared to agree they were as high as that, both he and Ms. Hu acknowledged that cash sales formed at least some part of their revenue stream. Mr. Xu's and Ms. Hu's attempts to minimise the extent of the cash sales in the business were not persuasive.

[104] Both STI and FFL have reported net losses each year, which leaves one wondering why the parties continued operating them year in year out. It appears that the businesses would be profitable on paper in each year if their actual gross revenues were 30% higher, with no additional expenses. Assuming FFL's cash sales are under-reported in its financial statements by that amount, its operating deficits would vanish and there would be additional funds available to the owners.

[105] FFL reported revenues of \$205,563 in 2017 and \$232,247 in 2018. If those figures were actually 30% higher than reported due to hidden cash sales, there would have been an additional \$61,668 earned in 2017 and \$69,674.10 in 2018. Assuming Mr. Xu shared half of those extra earnings with Ms. Hu, his income would be \$30,000 - \$35,000 greater than reported in each of those years.

[106] On the basis of the foregoing, I am imputing a Guidelines income of \$60,000 to Mr. Xu.

[107] The Table amount on that level of income is currently \$567.00. Prior to November 2017 it was \$556.00.

[108] On that basis, I am awarding Ms. Chu retroactive child support calculated as follows:

October 2015 to March 2016: six months at \$556.00 = \$3,336

Plus:

April 2016 to November 2017: eight months at (\$556.00 - \$269.00) = \$2,296

Plus:

December 2017 to December 2018: twelve months at (\$567.00 - \$269.00) = \$3,576

Total: \$9,208

[109] Prospectively, I am ordering that Mr. Xu pay Ms. Chu child support in the amount of \$567.00 per month on the first day of each month, starting January 1, 2019.

[110] I am ordering that Howie's special and extraordinary expenses are to be shared in proportion to their respective incomes. Ms. Chu adduced no evidence at trial of any such expenses, so I make no order as to the need for the parents to contribute to any specific expense. If one parent seeks to be reimbursed for a non-medical expense incurred for Howie, that parent will need the consent of the other parent or a court order.

D. Spousal Support

1. The Legal Framework

[111] The objectives of an award of spousal support are set out in s. 161 of the FLA, which states as follows:

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

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

[112] The factors that must be considered in determining the amount and duration of spousal support are set out in s. 162 of the FLA, which states as follows:

162 The amount and duration of spousal support, if any, must be determined on consideration of the conditions, means, needs and other circumstances of each spouse, including the following:

- (a) the length of time the spouses lived together;
- (b) the functions performed by each spouse during the period they lived together;
- (c) an agreement between the spouses, or an order, relating to the support of either spouse.

2. Discussion

[113] I accept that there are both compensatory and non-compensatory factors weighing in favour of a substantial award of spousal support in this case. This was a 16-year marriage. Although Ms. Chu was working alongside Mr. Xu outside the home during the marriage, she has been encumbered both before and since the parties' separation by her having taken on the role as the primary caregiver for Howie. I have also found that the circumstances of the separation led to a conversion of family property by Mr. Xu in favour of himself and Ms. Hu. It was Ms. Chu who was left to cope with the demise of STI, which I find to have been brought about partly by the parties' joint mistake about the zoning and partly by Mr. Xu's conversion of assets to FFL and FFL's resulting unfair competition with STI.

[114] I am also mindful of the need under s. 161(d) of the FLA to encourage Ms. Chu's economic self-sufficiency within a reasonable period of time. Mr. Xu did not challenge Ms. Chu's currently reported income of \$9,130, notwithstanding that it emerged in her cross-examination that she had failed to include child benefits received on her Form F8 Financial Statement and the fact that she is clearly capable of earning a higher income than that, particularly given that Howie has been placed in after school care until 6:00 p.m. each day. I note that Ms. Chu has pleaded in s. 3 of Schedule 3 of her amended counterclaim filed January 17, 2018 that her gross annual income was "approximately \$28,000" at that time. For those reasons, I am imputing an income of \$28,000 to Ms. Chu in calculating the amount of

spousal support that should be paid.

- [115] Based on the parties' incomes as I have found them to be, the DivorceMate software yields a monthly range of \$0 (low), \$37 (medium), and \$272 (high), or alternatively, a lump sum of \$0 (low), \$3,976 (medium), or \$29,746 (high). Ms. Chu has already received some compensation through the unequal division of family property that I have ordered.
- [116] Given that the parties appear to have underreported their incomes relative to the assets they have acquired during the marriage, any spousal support award based on these incomes would likely not compensate Ms. Chu adequately and would, for that reason, fail to achieve the objectives under s. 161. In light of the uncertainty surrounding the parties' actual incomes and the level of those incomes relative to the value of the family property subject to division, I am ordering that Mr. Xu pay a further lump sum of \$25,000 out of the family property subject to division which, together with the unequal division of the family property that I am also ordering, will suffice to compensate Ms. Chu, both retroactively and prospectively.

IV. Summary and Conclusion

[117] My orders are as follows:

- (a) the parties shall remain joint guardians of Howie. Parenting responsibilities are to be shared, with disputes on material matters being addressed through a time-limited, half-day arbitration, or alternatively, on application by either party to this Court;
- (b) Howie will continue to reside primarily with Ms. Chu, but Mr. Xu will have parenting time on Fridays from 3:00 p.m. through to Saturdays at 1:00 p.m. Holidays are to be shared equally, with Mr. Xu being entitled to bring Howie with him to China for one month during the summer to see the paternal grandparents, on the conditions set out above;
- (c) Ms. Chu is to pay Mr. Xu \$374,824.73, reflecting his net share in the family assets and debts subject to division, less retroactive child support and lump sum spousal support payable, calculated as follows:
 - (i) Net family assets and debts subject to division:
\$2,958,827.74 (\$748,750 retained by Mr. Xu and \$2,210,077.74 retained by Ms. Chu);
 - (ii) Mr. Xu's 40% share of that amount: \$1,183,531.10;
 - (iii) Ms. Chu's 60% share of that amount: \$1,775,296.64;
 - (iv) Gross adjustment owing to Mr. Xu from Ms. Chu: \$434,781.10;
 - (v) Less compensation owing by Mr. Xu to Ms. Chu for her 60% share of the RBC line of credit payout of \$27,363.63: (\$16,418.18);

- (vi) Less compensation owing by Mr. Xu to Ms. Chu for her 60% share of the RBC line of credit payout of \$15,550.32: (\$9,330.19);
- (vii) Less retroactive child support owing to Ms. Chu: (\$9,208); and
- (viii) Less lump sum spousal support owing to Ms. Chu: (\$25,000);
- (d) prospectively, Mr. Xu is to pay Ms. Chu child support of \$567 monthly on the first day of each month starting January 1, 2019; and
- (e) Howie's special and extraordinary expenses are to be shared in proportion to their respective incomes, as I have found them to be.

[118] The parties have liberty to speak to costs if they are unable to agree on the appropriate order in light of these reasons for judgment.

"Milman J."

The Honourable Mr. Justice Milman

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