

CANADA / JUDGMENT

Xu v. Yao

2025 BCSC 2634

COURT

Supreme Court of British Columbia

DECIDED

8 October 2025

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2025 BCSC 2634 Xu v. Yao

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Xu v. Yao,

2025 BCSC 2634

Date: 20251008

Docket: E230954

Registry: Vancouver

Between:

Xu Xu also known as Lynn Xu

Claimant

And

Yan Ling Yao also known as Yanling Yao also known as Nick Yao

and Yan Zhang

Respondents

Before: The Honourable Madam Justice Sharma

Oral Reasons for Judgment

In Chambers

Counsel for the Claimant:

H.B. Chiu

Counsel for the Respondent Yan Ling Yao:

J. Sheppard

M. Henricksen

For Yan Zhang:

No appearance

Place and Date of Trial/Hearing:

Vancouver, B.C.

October 3, 2025

Place and Date of Judgment:

Vancouver, B.C.

October 8, 2025

- [1] THE COURT: This is an application brought by the claimant, seeking to impute income to the respondent pursuant to s. 19 of the Federal Child Support Guidelines [CSG]. Her position is that an annual income of at least \$180,000 and as much as \$450,000, should be imputed to the respondent. She also seeks an interim order for child support, spousal support, and specified s. 7 expenses retroactive to December 1, 2023.
- [2] The respondent's position is that the claimant's application to impute income lacks an evidentiary foundation. He submits any order for child support should be based on his most recent income as reported on his tax return.
- [3] With regard to s. 7 expenses, he agrees that medical and dental insurance premiums and any health-related expenses exceeding insurance reimbursement by at least \$100 annually qualifies as special expenses, but submits they are not being incurred, so no order should be made. With regard to fees for private school, he submits his parents provided ample funds to pay for that and the claimant has failed to account where that money went. He also submits the parties cannot afford to continue that expense. He does not agree that fees for math and Spanish classes should qualify because he was not consulted before those were incurred.
- [4] With regard to the claim for spousal support, he does not dispute that the claimant is entitled, but his position is that income should be imputed to her and, once that is done, the parties' respective incomes will result in an insufficient disparity that would justify paying support under the Spousal Support Guidelines.
- [5] The respondent Yan Zhang is the mother of the respondent. Although she filed a response to the application and evidence by way of two affidavits, she takes no position on the orders sought and did not appear at the hearing.

- [6] The parties have had to wait many months to have this matter heard. The claimant filed the application on March 10, 2025, and it was originally set in general chambers on March 31, 2025, but the parties adjourned because there was insufficient time for the application to be heard. They agreed to set it down for a day on July 18, but unfortunately no judge was available. It was reset to September 9, but unfortunately the respondent's counsel was ill, and the matter then came before me.

I. FACTS

- [7] While the general chronology of the parties' background is not disputed, there are some disputes about the date of particular events. Many of those disputes need not be resolved for this application. For example, the parties disagree about the date of separation, and the difference is about a year. However, by both accounts, their marriage was over 10 years in duration which is significant and relevant to the issue of spousal support.
- [8] The parties have three children, currently aged 14, 12, and nine.
- [9] The claimant left the family home in February 2023. The children remained with the respondent in the family home until November 2023 when he went to China for work. At that time, the children moved in with the claimant.

A. Education and Work Experience

- [10] The claimant has a bachelor's degree from the University of Windsor and earned an Master's Degree in Business Administration from the New York Institute of Technology. She worked for a scooter company in Taiwan between 2008 and 2010. However, she has not worked outside the home since that time. She deposed that she has been the children's primary caregiver, although she acknowledged that the respondent had an active role in parenting when he lived in Vancouver, and that they lived with the respondent's parents for many months each year, who assisted with the care of the children. In addition, the parties had a part-time nanny for about four years, and the claimant's parents would occasionally visit and help out.
- [11] The respondent was born in China, graduating from high school there in 1999. He studied English and accounting in China until 2001 when he moved to Canada. He graduated from Thompson Rivers University in 2008 with a Bachelor's Degree in Business Administration.
- [12] In 2007, he started working at Future Shop as a part-time salesman in the computer department. He deposed after graduation he was working full time there, earning between \$3,000 and \$5,000 a month before taxes.

- [13] The respondent's father is an owner of a car dealership company in China. The claimant's position is that there are three car dealerships in China owned and operated by the respondent's family, primarily his father and uncle, and in which the respondent has an interest. The respondent and Ms. Zhang deny the respondent has any ownership in those businesses.
- [14] Given his background, the respondent's father encouraged the respondent to get into the car business. The respondent worked at a dealership in Vancouver from 2010 to 2011. He also had another job at a duty-free shop, and from 2011 to 2014, he worked at a Mercedes Benz dealership.
- [15] In 2015, he was hired at JL Auto in China to be the vice president of sales. He worked at that job until 2020. He deposed that he would travel back to Vancouver four or five times a year and during the holidays to see his family.
- [16] He deposed that he was laid off in 2020 because of the impact of the COVID-19 pandemic. He returned to Vancouver and looked for work in the car business, but was unsuccessful. From December 2022 to November 2023, he worked part time as a salesperson at Golf Town.
- [17] In November 2023, the respondent returned to China to assist in the care of his grandmother. In around the same time, he began to work at JL Auto. He describes in detail what that job entails at paras. 28-32 of his affidavit.
- [18] His position is that it has been reasonable for him to remain working at JL Auto in China, and his evidence explaining that is summarized at para. 55 of the respondent's written submissions. However, he acknowledges that JL Auto's fortunes have suffered since he rejoined the business, in part, because of the Chinese government's production of low-cost EV cars hurting sales, and I am referring to para. 57 of his submissions and his affidavit at paras. 33-34.
- [19] The respondent remains of the view that he has a better chance at earning a higher income if he stays working in China, believing that recent changes in the company will turn its fortunes around, but also because he is pessimistic about whether he can find a high-paying job in Vancouver given his experience after COVID. However, he also deposed that, "If time goes by, and it doesn't look like the company is going to survive, I will return to Vancouver."

B. Financial Support from the Respondent's Parents

- [20] The respondent's parents immigrated to Canada in 2007, at first settling in Kamloops where the respondent was going to school. They then moved together as a family to Vancouver in 2008.
- [21] In June 2009, the respondent's parents bought a home in Richmond for \$790,000. They lived there for most of the year but spent two or three months in China each year. The respondent lived with his parents, and, after marriage, the claimant also moved into that home.

- [22] In 2013, the respondent's parents purchased a home in Richmond located on Montana Road for \$2 million. This is agreed to be the home in which the parties lived together from that time until February 2023. The respondent did not dispute that this was a family home, although the parties differ on the ownership of the residence. I will refer to the property as the "family home". It is approximately 4,000 square feet with five bedrooms and five bathrooms. The parties lived there together with the children, and at times, except for a few months a year when they were in China, the respondent's parents lived with them.
- [23] As noted, the parties dispute who has legal and/or beneficial interest in the family home.
- [24] The respondent and Ms. Zhang depose that the respondent's parents provided a million dollars for the down payment. That might be a mistake, but I would have to correct that figure. In any event, and the rest was financed through a mortgage at RBC. They attested that the respondent's father was not approved for a mortgage, so the respondent took out the mortgage with his father being the guarantor.
- [25] They also implied that because the respondent was a mortgagor, title to the family home had to be placed in his sole name. However, both claim while title was registered to the respondent, he held it in trust for his parents who contributed all the finances towards its purchase and upkeep.
- [26] It is unclear if the claimant denies the down payment for the family home came from the respondent's parents or if she claims he had some beneficial interest in the former home that flowed through the proceeds of sale. In any event, the claimant submits the money for the home's expenses came from the respondent, not his parents. She denied that it was put in his name because of the father's inability to get a mortgage. Her position is that the respondent's parents have no legal or beneficial interest in the family home. That issue cannot be resolved on this application.
- [27] However, there is no disagreement that from February 2023, when the claimant moved out of the family home, until November 2023, the children lived with the respondent in the family home. The claimant had moved into a one-bedroom apartment. When the respondent returned to China in November, rather than live in the family home, the children moved into the claimant's one-bedroom apartment. In addition, Ms. Zhang paid off the entirety of the mortgage, and the respondent, apparently at her request, transferred title of the family home to Ms. Zhang.
- [28] The parties agree that the children in the months of June and July and part of August 2024 were with the respondent in China. Similarly, he has taken the children to China this past summer.
- [29] However, during the school year, the children live with the claimant who has sole care of them.

- [30] The respondent's parents also gave a large sum of money to the parties to be used as a fund for the children's education. The respondent and Ms. Zhang both depose the parties received \$400,000 for the education fund. Ms. Zhang deposed that she also deposited \$100,000 into the parties' joint account, but the claimant claims to have no record or recollection of that \$100,000 deposit.
- [31] However, in her affidavit filed in July in response to Ms. Zhang's affidavit, the claimant admitted that she received a bank draft for the sum of \$300,000 which was to be used for the children's education. She stated the following in her affidavit:

The funds were deposited into Nick and my joint RBC account. At no time during the marriage did my mother-in-law asked me to provide her with an accounting of the funds or how it should be used except that it be used generally for the Children's education and for there are RESP's. As such, I have set up a RESP/education fund for each child and of use the funds to pay for the children's private school tuition, tutors and extracurricular activities such as ballet, piano, swimming and similar type of activities, which I believe formed part of their education.

- [32] The respondent's position is that all expenses for the matrimonial home were paid for by his parents, either by paying the mortgage directly or transferring funds to accounts the parties held jointly. The claimant appears to accept that the funds were transferred from bank accounts in the name of the respondent's parents' accounts, not the parties' accounts, for paying the mortgage and other expenses, but she maintains her claim that those funds are, in reality, part of the respondent's income.
- [33] The other differences in the parties' evidence about their finances and how they met their expenses is explained later.

II. LEGAL PRINCIPLES

- [34] The main issue in dispute is assessing the parties' Guideline income. Section 2(3) of the CSG provides a payor's most current income should be used for the purpose of setting the amount of child support. Section 16 states that an annual income is determined by using the sources of income set out under the heading "Total Income" in the payor's T1 General tax form, adjusted in accordance with Schedule III.
- [35] In *Fuzi v. Fuzi*, [1999] B.C.J. No 2263 at paras. 12-16, 1999 CanLII 4073 (S.C.), the court confirmed that a determination of annual income is for the year in which the application is heard based on the most current information. However, where a party's income fluctuates or is uncertain, courts can rely on a previous year's income as being the best indicator: *K.A.M.R. v. W.H.G.*, 2014 BCSC 103 at para. 16.

- [36] Moreover, with respect to child support, spouses have a joint financial obligation to support the children in the marriage in accordance with their relative abilities to contribute. Thus, the court is not bound to accept what a party declares as income, but must consider what money is fairly available to support the children of the marriage: *Younger v. Younger*, 2017 BCSC 363.

A. Imputing Income

- [37] A party seeking to impute income has the burden to establish an evidentiary basis for the court to make such a finding: *Marquez v. Zapiola*, 2013 BCCA 433 at paras. 36-38. Moreover, the court should not engage in speculation or guesswork, and there must be an evidentiary basis for imputing income: *Yeung v. Silva*, 2016 BCSC 1682 at para. 51; *M.C.V. v. F.V.*, 2018 BCSC 96 at para. 157.
- [38] A person is expected to take reasonable steps to obtain employment appropriate for their age, health, education, skills, and work history and should maximize their earning potential: *Poole v. Poole*, 2011 BCSC 740 at paras. 34-35; *Marzara v. Marzara*, 2011 BCSC 408 at para. 326; and *P.K.C. v. J.R.R.*, 2014 BCSC 932 at para. 99. Where a party has the capacity to work but does not work at all, courts will impute income based on the minimum wage.
- [39] The respondent submits that as a general rule, income should not be imputed on an interim application unless the evidence has been properly developed or there are exceptional circumstances. His position is that the issue is better dealt with at trial when there is better opportunity to canvass the parties' capacities after full document disclosure: *Kouznetsova v. Kouznetsov*, 2014 BCCA 160 at para. 45; and *Elliott v. Pollock*, 2015 BCSC 2121 at para. 20. This is especially true where evidence about income levels and related issues are hotly contested: *Devathanan v. Devathanan*, 2017 BCSC 1010 at paras. 89-90.
- [40] One issue of controversy in this case is the extent to which funds the respondent has claimed to come from his parents should be considered in imputing income to him. The parties agree the leading case on this issue is *Bak v. Dobell*, 2007 ONCA 304, which was accepted and followed in a number of British Columbia cases, including *Andreassen v. Andreassen*, 2016 BCSC 1196; *Y.W. v. X.B.*, 2024 BCSC 1899; *N.K.R. v. T.S.G.*, 2023 BCSC 738; and *S.R. v. B.E.*, 2011 BCSC 1586.
- [41] In *Bak*, the Ontario Court of Appeal stated the following factors should be considered when assessing whether to impute income based on gifts:
- a) the regularity of the gifts;
 - b) the duration of their receipt;
 - c) whether the gifts were part of the family's income during cohabitation that an entrenched a particular lifestyle;
 - d) the circumstances of the gifts that earmark them as exceptional;

- e) whether the gifts do more than provide a basic standard of income;
 - f) whether they are paid to support an adult child through a crisis or period of disability and whether the gifts are likely to continue;
 - g) the true nature and purpose of the gifts.
- [42] Section 7 of the CSG state that a court can order a parent to pay an amount of certain expenses defined in subsections (a) to (f) as special and extraordinary expenses, taking into account the necessity of the expense as it relates to the best interests of the children, and reasonableness as that relates to the parents' means with respect to the family's spending pattern prior to separation.
- [43] The category set out in the CSG for extraordinary expenses for school and post-secondary education and extracurricular activities are specifically mentioned.
- [44] Section 7(1.1) provides a mandatory definition for extraordinary expenses, and I am not going to read that out. Section 7(2) stipulates that special and extraordinary expenses are to be paid in proportion to the parties' income. It is understood there is a two-part test to assess whether an expense qualifies. The first part is whether it is special or extraordinary, and the second is whether it is necessary.
- [45] Section 7(1.1)(b) sets out consideration the courts look to when assessing whether it qualifies as being extraordinary, including looking at the recipient spouse's income, taking into account any amount ordered or to be ordered for support, the nature and number of education programs or extracurricular activities, the special needs or talents of the children, the overall cost of the activity or program, and any other similar factor.
- [46] Other guiding legal principles are not contested, and they include:
- a) The parent claiming the expense has the onus of proving it is extraordinary and that it is reasonable and necessary, and to do so, the parent must provide sufficient details: *W.R.M. v. D.K.M.*, 2020 BCSC 322 at para. 121; *D.L.Y. v. J.A.P.Y.*, 2003 BCSC 1372 at para. 8.
 - b) Common, ordinary, usual, or standard recreational activities typically do not qualify as extraordinary: *Clarke v. Clarke*, 2014 BCSC 824; and *Dorey v. Havens*, 2019 BCCA 47.
 - c) The court should consider these factors in light of the family's spending prior to separation: *L.A.M. v. S.C.M.*, 2020 BCSC 67.
 - d) Parents being asked to pay are entitled to be consulted in advance and to be informed of the nature and extent of the expense and why it is being incurred; It is unreasonable for a parent to incur significant expenses without the agreement of the other parent, seeking to recover them after the fact: *Petersen v. Petersen*, 2007 BCSC 497; *Younger*.
 - e) With regard to private school fees, the court has stated that this is a contextual and fact-specific inquiry which must be made to consider the schooling history of the child and the parents. The courts will look to whether the parties prioritized schooling and limited

other expenses during the marriage in asking whether it was reasonable in light of their means. Thus, even where a family may not be able to reasonably afford it, the court might still order it when looking at the history of the parents making it a priority and their willingness to make economic sacrifices: *L.C.T. v. R.K.*, 2015 BCSC 2378, affirmed 2017 BCCA 64; *McDonald v. McDonald*, 2001 BCCA 702; *Cochrane v. Zarins*, 36 R.F.L. (4th) 434 at para. 3., 1998 CanLII 4270 (B.C.C.A.).

- f) Children being exceptionally bright or having certain problems does not inexorably lead to the conclusion that they must attend private schools: *J.L.T. v. J.D.N.T.*, 2009 BCSC 780.
- g) Courts have refused to order grandparents to contribute to private school expenses or have refused to qualify them as s. 7 expenses because of the lack of the affordability: *Saby v. Macintosh*, 2002 BCSC 1144; *J.L.T.; M.L.D. v. L.T.P.W.*, 2010 BCSC 1262; *K.A.B. v. P.D.M.*, 2023 BCSC 1156.
- h) More generally, courts have no power to require grandparents to contribute to s. 7 expenses: *N.R.G. v. G.R.G.*, 2015 BCSC 1062 at para. 354.

B. Interim Spousal Support

- [47] As noted, the respondent accepts that the claimant has a valid claim of entitlement to spousal support on both compensatory and non-compensatory grounds. However, his position is that once income is imputed to her and compared to his income reported on taxes, there is an insufficient disparity to justify making an interim order.
- [48] With regard to interim spousal support, the leading case is *Robles v. Kuhn*, 2009 BCSC 1163, and the principles are accurately set out at para. 3 on page 15 of the claimant's written submissions.

III. DISCUSSION OF EVIDENCE ABOUT FINANCES

- [49] I have numerous concerns with the state of the evidence in the record.
- [50] The claimant filed affidavits on March 8, July 11, and September 30, 2025. The respondent filed two affidavits dated April 11 and 21, 2025. His second affidavit clarifies or corrects information in the first one. He also relies on affidavits filed by Ms. Zhang dated April 17 and July 15, 2025. She, too, provides in her second affidavit corrections and further clarity for information sworn to in her first affidavit. He also relies on his father's affidavit which was filed late, only days before the hearing (September 26, 2025).
- [51] There are four affidavits prepared by an administrative assistant at the respondent's lawyer's law firm. The administrative assistant provides her own translation of some key documents. She is neither a certified nor an independent translator. I did not rely on her translations for that reason, and, in any event, I do not find the translated documents to be pertinent on this application.

- [52] There are two affidavits from a legal assistant at the firm, the second of which was filed on the date of the hearing. In that affidavit made October 1, 2025, she states that the respondent "recently reviewed" the administrative assistant's affidavit, even though that was filed in April. She stated the respondent "noticed that some of the deposits set out in the table are either duplicates or do not exist for the period February 2024 to May 2024". The legal assistant then purports to have reviewed the table to strikes out the duplicates and deposits not found in the bank statements.
- [53] The respondent's own evidence has deficiencies. In his affidavit filed April 25, 2025, he clarifies information about when he started working at JL Auto. He had first said it was in April, but then corrects that to say the date was actually January 2024, and that he received "salary advances" for the first four months.
- [54] There are also some obvious errors. The respondent says at one point his mother paid off the mortgage on the family home in March 2024, but later states it was March 2023. He states the parties did not begin their marriage-like relationship until 2020.
- [55] It is highly likely the different dates on these two matters were typographical errors, but there are other problems with his evidence that cause me to conclude the reliability of his evidence and the evidence he relies on is diminished.
- [56] Most concerning is the absence of a current F8 financial statement from the respondent.
- [57] The claimant filed an F8 on April 30, 2024, but also a current one in March 2025 to support her application. The respondent's F8 financial statement was filed over a year ago in May 2024. The claimant points to this lack of current information as one reason the court should draw an adverse inference and impute income to him.
- [58] The respondent's position is that "not much" would be gained by his providing an updated F8, given the financial information he has provided in his, his mother's, and paralegal's affidavits. Among other things, he points out that he attached to his affidavit filed income tax returns that shows income ranging from over \$100,000 in 2015 to a low of \$6,000 in 2023.
- [59] I do not agree. The F8 is an essential document in family litigation, and it is intended to be a comprehensive and exhaustive snapshot of the parties' financial status. There is no good reason for the respondent's failure to file an updated one in response to the claimant's. Notably, he is relieved of the obligation to detail his expenses. Given the lifestyle he admits to enjoying before separation, his failure to give evidence under oath as to how much money he is currently spending and what his lifestyle is like, with respect, is suspicious.
- [60] The claimant also emphasized the lack of a current F8, as well as the respondent's failure to respond to her description of "income splitting" in her July 2025 affidavit. In light of both, she invites the court to draw adverse inferences.

[61] In response, the respondent points out what he says are serious concerns with the credibility and reliability of the claimant's evidence. To explain that, I need to review portions of her evidence. Her March 10, 2025, affidavit includes the following claims:

- a) The respondent has an interest in car dealerships in China owned and operated by his parents.
- b) During the marriage, the respondent transferred \$60,000 on more than one occasion (although the regularity and timing of the transfers is not mentioned) from China, from which he paid the children's and household expenses. Even when he worked and lived in Canada, the respondent would arrange for his funds to be transferred to the parties from China.
- c) The respondent paid for the children's private school tuition fees and approximately \$1,800 a month for extra classes which the claimant specifies.
- d) In addition to household and children's expenses, she deposed the parties had monthly expenses of \$10,000. She attached what she says is a printout of the parties' joint account at RBC ending in the numbers 928 for January 2016 to February 2023, which she claims supports her claim about the sources of the funds.
- e) She deposed that money was not a concern during the marriage. The family went out for meals every weekend and for some holidays, usually with the respondent's parents but sometimes other guests, spending between \$300 and \$1,000 per outing. She also describes semi-annual family trips costing between \$5,000 and \$15,000.
- f) In particular, she says that while the respondent worked in Vancouver, funds were still wired from China that came from her husband. She also deposed that she paid for the children's school fees from those funds.

[62] The respondent's April 25 affidavit filed in response to the claimant's includes the following:

- a) Statements from his Chinese bank account which he claimed showed the deposits of his salary and some reimbursements for business expenses. He claims that document confirms his Canadian income in 2024 was \$58,667, although I note that an attached income tax return in his later affidavit has a different amount.
- b) He agreed that he used that account to transfer money to Canada to the joint account he had with the claimant or with his mother, but he denied that he made \$60,000 transfers as described by the claimant or that it came from his income.
- c) He included a table in his affidavit prepared by his lawyer's legal assistant, who is unnamed, that purports to summarize deposits into the same joint RBC account ending in 928, statements of which are attached to the claimant's affidavit. That table identifies deposits over \$500. It also has more information than appears on the claimant's exhibit, including a description of deposits. That table indicating the following total deposits into that account as follows: in 2016, just over \$284,600; in 2017, just under \$277,000; in 2018, just over \$335,000;

in 2019, just over \$16,000; in 2020, nothing; in 2021, just over \$64,600; in 2022, just over \$26,000; in 2023, just over \$13,000; and in 2024, just over \$32,000.

- d) The respondent identified only two deposits over the years that he claimed came from him, saying both were related to his job (2016 for \$63,200 and \$8,000 in January 2018).
 - e) He said his parents made deposits into the account but only specifically identifies three that he attributed to them in the years 2016 to 2018, each of which is over \$60,000. There are numerous deposits from "Nu-Skin Canada" that he says he knows nothing about.
 - f) He also identified GIC redemptions made between August 2016 and January 31, 2018, totalling over \$300,000. He stated those redemptions were reinvested, although he says he knows nothing about them except that they were his mother's investments.
 - g) He lists what he says are all his Canadian bank accounts. There are five, but he says only two are actively used. One is a joint account with his mother, and he deposed that money deposited into that account comes from his parents, which they use for living expenses in Canada, but also to maintain the family home. The second one is used primarily to make mortgage payments on the family home. He noted that there were only three deposits into that account between 2022 and March 2023, all of which came from his parents, totalling about \$100,000.
- [63] Ms. Zhang's affidavit is consistent with the respondent with respect to her and her husband's financial contributions and support of the parties. Both the respondent and Ms. Zhang depose that the family home always belonged to the parents, that neither he nor the claimant made any financial contribution to the down payment or mortgage or other expenses, and that all were made by his parents.
- [64] In response to the respondent's mother's affidavit, the claimant then augmented her evidence in a second affidavit filed in July:
- a) She, for the first time, revealed that "wages" were deposited from the auto company between 2018 and 2024, into an account in her sole name at CIBC.
 - b) She then claimed that the respondent engaged in "income splitting" with his aunt prior to marriage, and then with her, whereby half of his salary would be deposited into a different account. She claims that the wages paid to her in the CIBC account represents that income splitting.
 - c) For the first time, she also stated that she made investments that flowed through their account (presumably, this must be a reference to the GIC's), and that she was not told at any time that money was coming from the respondent's parents.
 - d) She disagreed with his description that they were "basically supported" by his parents, although that is just a bald denial.

- e) She denied that the mortgage was paid by the parents, and in support of that, she merely attaches the same bank printout that she had in her first affidavit.
- [65] In response to Ms. Zhang's affidavit, the claimant acknowledged that she was handed a \$300,000 bank draft directly from Ms. Zhang, but the claimant said she put it into an RESP and an "education" fund to pay for tuition as well as extraordinary expenses for the children.

IV. ANALYSIS

- [66] The parties rely on many of the same documents, especially bank statements, for completely different positions. Critically, they both rely on statements from a joint account in their names from 2016 to 2022. At best, the statement may show amounts of funds received, but it does nothing to eliminate the critical dispute: whose money was it before it arrived into their joint account?
- [67] The claimant's attachment of those bank statements has no RBC logo and no description of the deposits. The respondent purports to rely on that document and had a legal assistant prepare a table summarizing some of that information, yet that table has a description of each deposit. There is no explanation for where that information came from and why it is not appearing on the exhibit attached to the claimant's affidavit.
- [68] The parties and Ms. Zhang's affidavits contain argumentative and conclusory statements about legal issues that will have to be resolved at trial, such as whether the respondent's parents had a beneficial or legal interest in the family home when it was registered in the respondent's name.
- [69] The respondent emphasized that in her initial affidavit, the claimant deposed that he paid for everything. The only mention of his parents' financial support was that at times the parents might have paid for a family trip. There is absolutely no mention in her first affidavit of the \$300,000 "education fund". I agree that is a glaring omission that causes me to question both the credibility and reliability of her evidence.
- [70] The respondent also points out that in her affidavit, the claimant stated that the "majority" of those funds were for the children and their expenses. Highlighting the use of the term "majority" means that she admitted some of that money was not used for the children. I do not find that point compelling, noting that the respondent used similarly vague words in saying that the family was "basically supported" by his parents and the expenses were paid "mainly" by them. He also claimed to have made a "good" income and able to cover "most of the family's meals and other expenses", though "some" were covered by his parents. At the same time, he lived in the family home for which he says he made no financial contribution. Not having to pay for housing when you live in the Lower Mainland is hardly covering "most" of the family's expenses.

[71] The claimant asserts that the respondent has not filed an affidavit denying her claim about income splitting. Instead, he relied on an affidavit filed by his father which was filed only four days before the hearing. In it, his father stated that he and his wife used \$100,000 from the proceeds of sale of their first house as a down payment for the family home and "to meet remaining mortgage payments and other expenses", he and his wife would transfer funds to the respondent and the claimant, who would pay those expenses. He acknowledged they sometimes sent funds through third parties, including JL Auto, to circumvent limits on moving funds out of China. He also explained:

I would send money directly from JL Auto to the Claimant, who would then use the funds to pay expenses for the [family home]. None of the funds I sent to the Claimant were part of my son's salary, bonus, or any other pay. I would send funds to the Claimant this way even when my son was not working for JL Auto.

[72] That does not explain why the funds were being described on that account as wages, which is at least consistent with the claimant's position that it was the respondent engaging in income splitting. It is also unclear why the respondent did not include that information in his own affidavit.

[73] However, the respondent correctly points out that the claimant did not even refer to what she says is the income splitting in her first affidavit. Despite able submissions by her counsel, the claimant's omission from her first affidavit of that assertion about income splitting and her personally receiving a bank draft in the amount of \$300,000 is frankly remarkable.

[74] The respondent's evidence is equally astonishing in some respects, including his purported ignorance of many details of his parents' financial support of his own family, such as the GICs and the wages paid to the claimant, and the fact that he did not review the administrative assistant's summary of the joint bank account until some three months later after that affidavit was filed, and that might be seen as a careless attitude towards ensuring precision in the evidence that he gives to this Court that he wants the court to rely on, especially given the other errors that I have also mentioned.

[75] The following paragraphs are critical to his position that the children's private school tuition and other expenses are not affordable to the parties:

86. The lifestyle she describes was never affordable for us. It was paid for mainly by my parents.
87. Prior to 2019, I had a good income so most of our meals and other expenses could be paid by me. But other expenses were covered by my parents. We lived with my parents and they paid for all the housing costs. They did not charge us rent or make us contribute to any house expenses. My mother cooked for us and so most of our food costs were covered by my parents.

88. After 2019, the Claimant and I were basically supported by my parents. Most of the trips mentioned by the Claimant were paid for by my parents. The cost of expensive meals was covered by my parents. My parents paid for our groceries and anything needed for the children.
- [76] He also stated that the Tesla car the claimant drove was bought by the parents, and alleges that the claimant spent extravagantly during the marriage on things like clothes, restaurants, shopping, entertainment, alcohol, hotel rooms, as well as skincare. He deposed that the claimant knew his parents were paying for it and that she managed the family finances and bank accounts.
- [77] While he complained that the claimant apparently ignored his pleas starting in 2020 to change lifestyle because they could not afford it, he made no concrete steps during the relationship to make any of those changes. Also, he does not suggest that he ever disagreed with enrolling the children in very expensive private schools or was reluctant to acquiesce to his parents apparently covering all of his family's housing costs. The tone of his affidavit suggests that he is attempting to place blame on the claimant for their extravagance but, with respect, it occurred during the marriage and he is equally responsible.
- [78] Given all the foregoing, I conclude the evidence from both parties suffers from impaired credibility and reliability.

A. Imputing Income to the Respondent

- [79] The burden is on the claimant to persuade me that income should be imputed to the respondent. Her position is that the respondent is effectively hiding his income by funnelling it through his parents, such that his reported salary grossly understates his true income. Alternatively, she submits if the court does not make that evidentiary finding, it should conclude that the respondent is intentionally underemployed, pointing out the evidence that he was making about the same salary working as a salesman at Future Shop almost 20 years ago. She also contends that in that scenario, the evidence supports a conclusion that the respondent's parents' financial support ought to be included in his Guideline income.
- [80] Keeping foremost in mind that an interim application amounts to a form of rough justice, and that any conclusions drawn at this stage ought not to prejudice the future trial judge's ability to conclude differently based on different or more evidence, the following represents my findings based on the evidence and the record for the purpose of resolving this application.

- [81] The key issue is whether the respondent's parents' gifts of money ought to be included in the respondent's Guideline income and, if so, to what extent. Both parties referred to a number of cases which apply the principles from *Bak*, including *Johnson v. Johnson*, 2011 BCCA 190; *Flader v. Gutkin*, 2013 BCSC 414; *Todd v. Todd*, 2016 BCSC 243; *N.K.R. v. T.S.G.*, 2023 BCSC 738; *De Cotiis v. De Cotiis*, 2023 BCSC 1436; *J.L.M. v. G.G.M.*, 2024 BCSC 999; *Ussher v. Ropchan*, 2024 BCSC 1976; and *Y.W.*
- [82] It is clear that the framework is not in dispute. Each of the cases cited by the parties is only somewhat helpful with regard to some of the factors, but ultimately, I have to apply the guiding principle to the facts before me. I do not find that a lengthy review of any of those cases will provide much assistance to me for that task.
- [83] There is little doubt that the lifestyle admitted to by both parties could not be sustained on the respondent's income as reported on his tax returns. I specifically reject the respondent's position that it was only after he was laid off in 2020 that he thought or stated to the claimant that they could not afford the lifestyle they had. Even if, as he stated, his income before 2019 was good enough to pay for many things, the parties accepted his parents' support to pay for all housing expenses and children's expensive private school.
- [84] Relying on the factors identified in *Bak* and given the state of the evidence, I find, on a balance of probabilities, the respondent's description of the nature and degree of financial support received from his parents supports imputing significant income to him.
- [85] Apart from the direct transfers of money, the provision of a 4,000-square-foot home, rent-free, represents a significant financial benefit conferred on the parties by his parents, and that should be attributed to him.
- [86] Turning to the specific factors from *Bak*, I find:
- a) The respondent's, his mother's and father's evidence confirm there was a significant regularity to the parents' gifts of money. I specifically find the parents paying all expenses for the home, including the mortgage, without seeking any contribution from the parties is akin to a gift of money and relevant to this analysis.
 - b) The duration of financial support was from at least 2013 to the date of separation and likely longer.
 - c) There is little doubt that the parents' gifts were critical in entrenching in the parties their lifestyle. On this point, I am not persuaded by those aspects of the respondent's evidence that he attempted to dissuade the claimant from providing the schooling and extracurricular to the children based on the parties' inability to afford those things. He makes no mention that he, in any way at any time, expressed opposition or doubt about enrolling the children in expensive private schools. Nothing about how the respondent's nor his parents' evidence is consistent with the notion that the gifts were earmarked as exceptional.
 - d) The gifts clearly provided for more than the basic standard of income.

- [87] The final relevant factor is the true nature and purpose of the gifts. Consideration of this factor is more complicated, and the evidence from the parties is starkly different, especially with regard to the parents' providing to the family a rent-free home.
- [88] However, I note the respondent's evidence is that as an only child, his parents moved to Canada and bought a house to be near him. Although there are disputes about whose idea it was to enrol the children in private school, both the claimant and Ms. Zhang agreed at the time they thought it was a good idea and that the parents provided at least \$300,000 for that purpose.
- [89] In addition, in her affidavit, Ms. Zhang explicitly stated that she and her husband looked for a new home "to accommodate Nick, Xu and their growing family".
- [90] In my respectful view, in relation to the evidence in this application, there can be little doubt that the gifts were for the purpose to benefit the children directly, but indirectly supported an elite lifestyle for the parties. While Ms. Zhang claims that she and her husband have had to resort to their own savings to continue, and I note that I think that was made in submissions rather than evidence, although I could be wrong about that, it might be in her evidence, I place little weight on that claim. She has not had to explain her financial circumstances in detail, so the extent of her wealth is unknown. However, what is known is that she was in a position to gift at least \$300,000 for the children's education when the first home was sold. More significantly, at separation, she was able to completely pay off the mortgage on the family home.
- [91] Given that the separation was presumably not an event she would have known about in advance or planned, this is an indication that she has quick and easy access to significant sums of money. Accordingly, I do find the nature and purpose of the gifts to the parties was to sustain their lifestyle.
- [92] In addition, I find the respondent's claim that he is living in China in the hopes of improved economic prospects to be highly suspect. He claims to be making less than \$70,000, yet in 2007, after graduating from university, he claimed he was making between \$36,000 and \$60,000. Based on that evidence alone, I conclude, for the purpose of this interim application, based on the evidence on the record, he is intentionally underemployed and that there exists a reasonable basis to conclude he is not revealing his true income. Either way, I am satisfied the evidence supports imputing income to him.
- [93] I add one last factor that I find to be similar and thus relevant, as identified in Bak. The claimant and the children lived in a spacious family home where the oldest daughter had her own bedroom and the other two children shared a bedroom. They are now living in a one-bedroom suite where the 14-year-old girl shares a bed with her mother and the other two are sharing a bed, not in a room but apparently in the living space, and they are all sharing one bathroom. The respondent's silence on his own living circumstances is concerning.

- [94] It is possible that after a trial, that the respondent's and Ms. Zhang's position that neither the respondent nor the claimant ever had a beneficial interest in the family home is accepted. However, in the meantime, the refusal of the respondent to insist or persuade his parents to allow his own children to live in the home they grew up in with their mother, while he works in China, borders on being shocking to this Court. There was no evidence as to why that is the case, and counsel were left to speculate.
- [95] When combined with the timing of Ms. Zhang's entirely paying off the mortgage and insisting that the house be put in her name, the lack of that evidence is telling. Given how apparently easily she paid off the mortgage, it is difficult to accept that it was only in the respondent's name purely for financing reasons. The temptation to find the transfer done after separation was done purely to shield the asset from the claimant verges on being irresistible. Nevertheless, I decline at this time to draw that inference as that is an issue for trial.
- [96] The more difficult question is the amount of income to impute to the respondent. The claimant pointed out that the family's yearly expenses appear to be \$180,000 during the marriage. The claimant relies, in part, on an AI-generated answer as to what the average income for a salary in China for a deputy general manager of an auto dealership is in support of her claim for the amount of income to impute to the respondent. I find that evidence inadmissible because it is inherently unreliable. My understanding is that AI-generated answers are drawn from gleaning the entire internet database. As such, there is no identified source of the information that be investigated or corroborated: see *ITV Technologies, Inc. v. WIC Television Ltd.*, 139 FTR 233, 1997 CanLII 5775 (F.C.); *Thorpe v. Honda Canada, Inc.*, 2010 SKQB 39. The situation is considerably worse than hearsay since one cannot possibly know from whom the AI technology gathered the source information. I would urge counsel not to seek to have the court rely on such information.
- [97] Given the claimant's estimate of family expenses, the considerations I have indicated above about the respondent's underemployment, the extent of the significant financial contributions from the respondent's family, as well as my concerns about both parties' reliability and credibility, I conclude that it is appropriate to impute an annual income to the respondent of \$200,000.

B. Imputing Income to Claimant

- [98] The respondent submits income should be imputed to the claimant. I decline to do so. There is no dispute that during the marriage, the claimant stayed at home to look after the house and the children, even if she had help doing so. Indeed, the fact that she had assistance does not diminish that the parties agreed to her having that role in the marriage. On that point, the respondent's affidavit saying he urged her to work is unhelpful. The fact remains she did not work, and neither suggested that that is what led to the breakdown of their relationship.

- [99] Because she is young and educated, there will be perhaps at some point an obligation on her to contribute towards becoming self-sufficient, but this was a marriage of at least 10 years, and there is no basis at the present time to impute income to her.

C. Section 7 Expenses

- [100] With regard to the s. 7 expenses, given my conclusion as to the Guideline income for the respondent based on imputing income, I find it is appropriate in this case that the private school tuition for all three children is a s. 7 expense and should be shared proportionately by the parties. In my view, the schooling history of the children and both parties' evidence was similar on that point. The description of their lifestyle indicates that they prioritize schooling, in terms of the money that they agreed to accept from his parents. Both strongly support a finding that it is a s. 7 expense. The respondent's objection is twofold: first, he says they do not have the means because it depends upon the generosity of his parents. As noted, once I found the facts support the conclusion that the parents' gifts is income imputed to him, that argument disappears.
- [101] I add that, in my view, he is also intentionally underemployed and/or not disclosing his true income. In any event, given the history of this family's lifestyle and the state of the evidence, I find, even if paying those fees was likely to be difficult in the parties' circumstances, a finding I do not make, I am satisfied in this case, given the caselaw guiding this decision, the history shows that the family would have made sacrifices to support that schooling.
- [102] However, I do not agree that the evidence supports at this time that the cost of any tutoring or extra classes should be a s. 7 expense. The claimant's evidence makes it clear these are not necessities in the best interests of the children, but rather something she believes they ought to do. Among other things, they are paying for very expensive private schools, and it is not clear to me that there is any necessity for extra schooling on top of that. I also agree with the respondent that the failure to consult and seek approval for Spanish and math classes disentitles those from being recoverable as s. 7 expenses.

D. Spousal Support

- [103] With regard to spousal support, the respondent agreed the claimant is entitled on a compensatory and non-compensatory basis. I agree. He opposed making the order only because he said there would be little disparity between their incomes once income was imputed to her to support an interim application. Since I have declined to impute income to her, his argument is defeated.

- [104] Applying the factors from Robles, it supports making an order for interim spousal support at this stage. The critical factor for this analysis is the dramatic change in the claimant and children's standard of living compared to during the marriage, and that is based almost entirely on their housing situation. Had the claimant been able to stay in the family home with the three children where they grew up, her claim for interim spousal support would have been considerably less strong.
- [105] However, I am mindful of the concerns that I have already identified by her evidence, in particular my concerns about the credibility and reliability that apply to her estimation of her current expenses and access to funds from her parents.
- [106] Taking everything into account, I order interim spousal support on a without prejudice basis should be based on the DivorceMate calculation that would be at the low end based on the parties' income, particularly my imputing \$200,000 to the respondent. I trust that counsel will implement that.

V. COSTS

- [107] In all the circumstances, I find in this case that there will be no order as to costs.

"Sharma J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/25/26/2025BCSC2634.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/xu-v-yao-2025>

Prepared on 29 October 2026 · Esheria