Family Law in British Columbia:
The Year in Review January 2025 – March 2026

These materials were prepared, and rights retained, by Todd Bell of Farris LLP (Vancouver) for the 2026 CBABC (Okanagan), Section Meeting April 22, 2026, broadcast for all Sections. The paper would not have been written without the exceptional assistance of summer student Patrick Armstrong and paralegal Nicole Aren.

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[1] Text is included in spousal support sections below.

1. Introduction

Thank you for taking the time to read this paper. If you get to the end of it email me and I'll buy you lunch but will need some form of proof because it gets pretty dry, pretty fast and I won't believe your bare assertions.

This is the 10th year for this annual paper. Since 2017, back when the CBABC annual Okanagan Section meeting was held in a small conference room downstairs from the pub at Sparkling Hills, it has been my privilege to share this paper with you.

Each year I cover the same general ground: all statutory and procedural changes, every case from the BCCA, and a smattering of trial court decisions that are either important or delicious, and when you get lucky, both. After that, however, each year takes on its own personality. Patterns and trends reveal themselves. Sometimes they are thematically connected to a single event (SCC cases or the 2023 amendments to the *Family Law Act* as two examples); other times they just seem to coincidentally arise.

2025/2026 stands as a precipice year. There are dramatic changes coming on at least three separate fronts and all of which will coalesce at roughly the same time.

Ahluwalia remains, as at the date of this paper, on reserve with the SCC. Whether or not the new tort of family violence becomes law or not, the case will reverberate through the jurisprudence for years to come on the family violence analysis which is coming irrespective of the way the court rules.

The Modernization Project is in the final stages of determining changes to the Family Law Act in respect of parenting issues. What is presently proposed are, in my view, positive changes that have been thoughtfully considered and which will resolve well-known shortcomings as the statute and jurisprudence now stand.

Finally, Bill C-223 heads off to committee. The bill as written is a highly problematic piece of legislation and one that needs significant re-wording. It cannot be overstated how problematic the draft currently is. While founded upon good intentions, it is hoped that it receives aggressive treatment in committee. It is not hyperbole to state that the CBABC (and for whom I do not speak) should take a position if this proposed legislation is not significantly amended.

Every year has its trends. Last year was all about retirement and bringing parenting time appeals that were doomed to fail. This year, appeals built on the effectiveness of counsel argument and the suitability for summary trial made repeat appearances, and few if any successfully.

The certainty we were promised continues to be eroded through section 95 decisions, albeit not to the extent as last year. While the 2023 amendments to the FLA was a welcome belt-tightening, *Mills* and *Healey* followed shortly after. This year, cases like *S.O.S.* (irony noted) were tempered with the sobriety of *Sidhu*, *Lamoureux*, and *Paletar*.

The correct application of *Colucci* received dual treatment this year at the BCCA.

In other observations, a pair of cases have shed some light on the thorny area of jurisdiction to make interim property orders beyond s. 90 and s. 91 orders. Thank heavens for pet cases, which are always a good read no matter what the outcome. This year, a dog made it all the way to the BCCA. Last years' wave of DOA appeals of discretionary parenting time appeals was not repeated.

Yes, I covered a lot of nerdy procedural decisions. That's never changing. Nerds own the world, get on board.

See you next year. It is not clear whether 2026/2027 will ultimately be good or bad for family law, but the turbulence will be terribly fun to watch.

April 21, 2026

2. Supreme Court of Canada

Nothing. Stay tuned for *Ahluwalia*.

3. New Legislation

The following are key changes to the major legislation in family law:

Legislation/Rules	Changes
DA	None, but see the section in this paper relating to bill C-223.
FLA	None, but watch for significant future amendments coming under the Modernization plan (below)
FLA REGS	None.
Pension REGS	None.
SCFR	Rules 22-7 (TMC's), 15-4.1 (Imprisonment under s. 231 of the FLA); 18-3 (Appeals); 19 to Appendix B (Costs – Offers to Settle)

The Modernization Project (Ongoing)

The Modernization project continues (the May 2023 amendments to property were part of this project and which deals with the act in sections). Currently being debated are the following changes[2]:

- Proposed Change: allow guardians to appoint a non-parent as guardian by written agreement and without needing the court's consent.
- Proposed Change: Add "substantial compliance" and "vast majority" to the presumption in favour of relocation; remove "good faith" requirement.
- Proposed Change: Expand s. 211 to enumerate views of the child reports, focused evaluative reports, and full evaluative reports, and set a standard of mandatory qualifications for report writers.
- Proposed Change: Expand s. 211 to allow the views of an indigenous child to be received from an appropriate person who has knowledge and experience of the child's community, culture and customs.
- Proposed Change: Add cultural/linguistic factors as well as disabilities to best interests test.
- Proposed Change: remove restrictions on having children get representation from counsel.
- Proposed Change: Update the definition of family violence to directly reference coercive and controlling behaviour, technology-facilitated violence, financial abuse and litigation abuse.

[2] From the Policy Intentions Paper, FLMP, August 2025

- Proposed Change: Extend FLA protection orders to relationships that have been excluded from eligibility (romantic partners, common residence persons (who are neither blood nor romantically linked, aunts and uncles).
- Proposed Change: Add additional risk factors that the court must consider when determining whether a protection order is needed (victim has specific vulnerability; is rural/remote; aggressor has history of non-compliance).
- Proposed Change: Extend default on protection orders from 1 to 2 years, add a presumption on renewal.

4. Bill C-223

The Bill:

Below is the full text of the Bill, including the Summary from the HOC website, which is not mine. Note that the underlined portions of the text are the proposed additions.

> SUMMARY
>
> This enactment amends the *Divorce Act* to, among other things,
>
> (a) require legal advisers who undertake to act on a spouse's behalf in a divorce proceeding to assess the risk of family violence and, if there is a risk, to take steps to implement an appropriate plan;
>
> (b) provide the means by which a court may more accurately assess the impact of coercive control on a parent-child relationship so as to ensure that children are protected from domestic violence after a separation or divorce;
>
> (c) allow a court, if certain conditions are met, to obtain information or evidence directly from a child in writing or by means of an interview with the child for the purpose of determining the child's views and preferences; and
>
> (d) address certain myths or stereotypes regarding family violence by providing that courts, in determining its impact, are not to make certain inferences, including that violence no longer occurs once spouses have separated or a divorce proceeding has commenced.
>
> Available on the House of Commons website at the following address:
>
> www.ourcommons.ca
>
> 1st Session, 45th Parliament,
>
> 3-4 Charles III, 2025
>
> HOUSE OF COMMONS OF CANADA
>
> BILL C-223
>
> An Act to amend the Divorce Act
>
> Preamble
>
> Whereas the primary focus of family law must be to promote the safety, dignity and well-being of all family members, particularly children and survivors of family violence;

Whereas courts and decision-makers must be guided by the best interests of the child and evidence-based understandings of trauma, coercive control and the dynamics of abuse rather than gendered myths and stereotypes;

Whereas claims that one parent has engaged in conduct to undermine the relationship of their child with the other parent are being used in family court to justify changes in parenting time, sometimes leading to the removal of children from the care of their preferred parent;

Whereas there is increasing concern that such claims may be used in cases of domestic abuse or child sexual assault to support the accused parent and provide the accused parent with continued access to their children, thereby putting the children's safety at risk;

Whereas victims of spousal violence sometimes choose to remain in an abusive relationship rather than lose access to their children;

And whereas Parliament is committed to upholding its obligations under the Convention on the Elimination of All Forms of Discrimination Against Women, which calls for the protection of survivors of gender-based violence, and the Convention on the Rights of the Child, specifically Article 12, which prioritizes the best interests of a child, affirming that a child who is capable of forming their own views has the right to express their views freely in all matters that affect them and to have those views given due weight in accordance with their age and maturity;

Now, therefore, His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

Short Title

Short title

1 This Act may be cited as the *Keeping Children Safe Act*.

R.S., c. 3 (2nd Supp.)

Divorce Act

2 (1) The portion of subsection 7.7(1) of the *Divorce Act* before paragraph (a) is replaced by the following:

Reconciliation

7.7 (1) Unless the circumstances of the case are of such a nature that it would clearly not be appropriate to do so <u>which circumstances include evidence of a risk of family violence</u>, it is the duty of every legal adviser who undertakes to act on a spouse's behalf in a divorce proceeding

(2) Paragraph 7.7(2)(a) of the Act is replaced by the following:

- (a) to encourage the person to attempt to resolve the matters that may be the subject of an order under this Act through a family dispute resolution process, unless the circumstances of the case are of such a nature that it would clearly not be appropriate to do so, which circumstances include evidence of a risk of family violence;

(3) Section 7.7 of the Act is amended by adding the following after subsection (2):

Duty to assess risk of violence

(2.1) It is the duty of every legal adviser who undertakes to act on a spouse's behalf in a divorce proceeding to consider whether there are reasonable grounds to believe that there is a risk of family violence towards the spouse or another family member that could adversely affect

(a) the safety of the spouse on whose behalf they act or the safety of a family member of the spouse; or

(b) the ability of the spouse to negotiate a fair agreement.

Duty to implement a plan

(2.2) If there are reasonable grounds to believe that there is such a risk of family violence, it is the duty of the legal adviser to take steps to implement an appropriate plan, ensure that the family has a safety plan and inform the spouse of the support services known to the legal adviser.

3 (1) Subsection 10(1) of the Act is repealed. [Author's note: this is the duty of the court to determine whether there is any possibility of reconciliation.]

(2) The portion of subsection 10(2) of the Act before paragraph (a) is replaced by the following:

Adjournment

(2) On request by both spouses at any stage in a divorce proceeding, the court may

(3) Paragraph 10(2)(b) of the Act is replaced by the following:

(b) with the consent of the spouses and to assist them to achieve a reconciliation, nominate

(i) a person with experience or training in marriage counselling or guidance, or

(ii) in special circumstances, some other suitable person.

4 (1) Paragraph 16(3)(c) of the Act is repealed. [Author's note: this section read each spouse's willingness to support the development and maintenance of the child's relationship with the other spouse.]

(2) Paragraph 16(3)(i) of the Act is replaced by the following:

(i) the ability and willingness of each person in respect of whom the order would apply to communicate and cooperate, in particular with one another, on matters affecting the child, taking into consideration any evidence of family violence;

(3) Subparagraph 16(3)(j)(i) of the Act is replaced by the following:

(i) the ability of any person who engaged in the family violence to care for and meet the needs of the child, and [Author's note: removes "willingness" from "ability and willingness".]

(4) Section 16 of the Act is amended by adding the following after subsection (3):

Factor not to be considered

(3.1) In determining what is in the best interests of the child, the court shall not take into consideration any allegation that a spouse has, or is likely to, through deliberate manipulation, persuade or encourage a child to become estranged from or resist contact with the other spouse.

Exception

(3.2) Despite subsection (3.1), the court may consider evidence of deliberate and repeated attempts by a spouse to interfere with a child's relationship with the other spouse if

(a) the spouse who is alleged to have engaged in the attempts to interfere has engaged in family violence;

(b) the evidence is relevant to a determination of the best interests of the child; and

(c) the evidence is not presented to support an allegation of conduct described in subsection (3.1).

(5) Paragraph 16(4)(g) of the Act is replaced by the following:

- (g) evidence that any steps taken by the person engaging in the family violence to change their behaviour will improve their ability to care for and meet the needs of the child and will prevent further family violence from occurring; and

(6) Subsection 16(5) of the Act [author's note: past conduct] is replaced by the following:

Myths and stereotypes

(5) In considering the impact of any family violence under paragraph (3)(j), the court shall not infer that it no longer occurs or has ceased to have an impact, or that any reports

or complaints of family violence were unreliable, inaccurate or exaggerated, solely on the basis of any of the following grounds:

(a) the spouses have separated or a divorce proceeding has commenced;

(b) there were no reports or complaints of family violence prior to separation, including to a police authority or child welfare agency, or there have not been any such reports or complaints since separation;

(c) no criminal charges were laid in respect of family violence, or allegations were withdrawn, there was no intervention on the part of a child welfare agency or, in the case of a trial for an offence involving family violence, a finding of not guilty is entered;

(d) allegations of family violence are made late in the proceedings or were not made in prior proceedings;

(e) in a proceeding under this Act or in a criminal proceeding, there are inconsistent statements or conflicting evidence in relation to incidents of family violence;

(f) a spouse continues to live with or maintain a financial, sexual or business relationship with their spouse, or previously left them but has resumed cohabitation; or

(g) there are no visible physical injuries or outward signs of fear.

Decision to leave household

(5.1) A decision by a spouse to leave a household in which family violence occurs to reside in a shelter or other temporary housing or to leave the province with any or all children of the marriage, with or without giving notice, is not, in and of itself, contrary to the best interests of the child.

(7) Subsection 16(6) of the Act is replaced by the following:

Parenting time — no presumption

(6) In allocating parenting time, the court shall not presume that

(a) the parenting arrangement that is most consistent with the best interests of the child is one that allocates parenting time and decision-making responsibility to both spouses or equally between the spouses; or

(b) it is in the best interests of the child that they maintain ongoing contact with each spouse.

5 (1) Section 16.1 of the Act is amended by adding the following after subsection (1):

Evidence from child

(1.1) Before making an order under subsection (1), in order to determine a child's views and preferences, the court may obtain information or evidence from the child directly in writing or by means of an interview with the child *in camera* in the presence of an *amicus curiae* if

(a) it is in the best interests of the child to provide the information or evidence;

(b) both spouses agree; and

(c) the court is of the opinion that the safety and privacy of the child would not be compromised and there is no other appropriate way to obtain the information.

Disclosure

(1.2) Any information or evidence obtained under subsection (1.1) may be disclosed to the spouses only if the court is of the opinion that disclosure is in the best interests of the child.

(2) Section 16.1 of the Act is amended by adding the following after subsection (4):

Not permitted in parenting order

(4.1) The court shall not, in the order,

(a) restrict the parenting time of a spouse with whom the child has a close connection for the purpose of improving a child's relationship with the other spouse; or

(b) require a child to attend reunification therapy or allow a spouse to consent to the child attending reunification therapy without seeking the consent of the other spouse.

Definition of *reunification therapy*

(4.2) In subsection (4.1), *reunification therapy* includes any intervention, program, treatment, service or practice whose purpose is to create, repair or reestablish a relationship between a child and a parent from whom the child is estranged or whom the child has rejected.

6 (1) Paragraph 16.92(1)(a) of the Act is replaced by the following:

(a) the reasons for the relocation, including whether the reasons relate to family violence;

(2) Subsection 16.92(1) of the Act is amended by adding the following after paragraph (b):

(b.1) the impact on the child of prohibiting the relocation, in particular in respect of the child's relationship with the person who intends to relocate the child;

(3) Paragraph 16.92(1)(g) of the Act is replaced by the following:

- (g) whether each person who has parenting time or decision-making responsibility or a pending application for a parenting order is likely to comply with their obligations under family law legislation, an order, arbitral award, or agreement, taking into account the impact of family violence on their ability to comply with their obligations.

(4) Subsection 16.92(2) of the Act is replaced by the following:

Presumption

(2) In deciding whether to authorize a relocation of the child, the court shall presume that the person who intends to relocate the child will relocate regardless of whether the child's relocation is prohibited.

Factor not to be considered

(3) In making a decision under subsection (1), the court shall not take into consideration any arrangement regarding the exercise of parenting time by the parties in their current places of residence.

7 Subsections 16.93(1) and (2) of the Act are replaced by the following:

Burden of proof — person who objects to relocation

16.93 (1) If, in accordance with an order, arbitral award, or agreement, a child of the marriage spends the majority of their time in the care of the party who intends to relocate the child, the court must authorize the relocation, unless the person opposing the relocation proves that

(a) the relocation is not in the best interests of the child; and

(b) it is in the best interests of the child to reside primarily with the person opposing the relocation.

Burden of proof — person who intends to relocate child

(2) If, in accordance with an order, arbitral award, or agreement, a child of the marriage spends the majority of their time in the care of the party who opposes the relocation of the child, the person intending to relocate the child has the burden of proving that the relocation would be in the best interests of the child.

Transitional Provisions

Proceedings commenced before coming into force

8 A proceeding commenced under the *Divorce Act* before the day on which this Act comes into force and not finally disposed of before that day is to be dealt with and disposed of in accordance with the *Divorce Act* as it reads as of that day.

Variation order — change in circumstances

9 If, before the day on which this Act comes into force, a court, in making a decision, relied on an allegation or a previous decision that a spouse had, through deliberate manipulation, persuaded or encouraged a child to become estranged from or resist contact with the other spouse, then, for the purpose of subsection 17(5) of the *Divorce Act*, the provisions enacted by subsection 4(4) of this Act are deemed to be a change in circumstances.

Commentary:

This bill as drafted is poorly considered and badly written. Without taking anything away from the seriousness with which family violence must be considered, as structured this bill focusses on the family violence relative to the victim rather than focussing on the nexus between the conduct and the child. This is contrary to the onus that the child's best interest is the only consideration. Without question, family violence perpetrated on a family member directly and indirectly harms children (Barendregt). That is beyond debate. This bill does not strike the correct balance.

The broad assault on reunification therapy is a blunt and violent statutory response to a nuanced area of treatment and law.

There is clearly a concern held by the private member that parents who have lived within a shared abusive context alongside their children are unfairly blamed for alienation and/or estrangement. However, how this translates to the language above is frankly not discernable.

Finally, long-standing relocation were only very recently codified. It is not clear why such a radical change is suddenly warranted.

5. Practice Directions/Administrative Notices[3]

Civil Practice Directions

PD:	Effect
BCSC PD – 24	Witness Oaths and Affirmations (Updated June 6, 2025)
BCSC PD – 67	Gowning Policy for Counsel In civil and family proceedings, counsel are to gown for the following appearances unless the presiding judge otherwise directs: • trials, except for summary trials • post-trial appearances, including applications for costs or for directions from a judge to settle the terms of an order • appeals from orders made in the Provincial Court, and applications for habeas corpus. For clarity, counsel are not required to gown for conferences in civil and family proceedings.
BCSC PD – 69	Requirements for Written Submissions in Civil and Family Proceedings A judge, associate judge or registrar may permit or require parties to provide written submissions to the Court before or after a hearing and may permit a party to hand up written submissions during a hearing. The Supreme Court Civil Rules and the Supreme Court Family Rules also authorize the inclusion of written argument in a petition record and in an application record for some applications. The purpose of this Practice Direction is to set requirements in civil and family law proceedings for providing written submissions to the Court. This Practice Direction does not address service of written submissions or filing timelines.
BSCSC PD -71	Manner and Attendance for Case Planning Conferences and Judicial Management Conferences This practice direction provides that the default manner of attendance at a case planning conference (CPC) and a judicial management conference (JMC) in civil and family proceedings is by video.
BCSC PD – 72	Electronic Application Records (Associate Judges Chambers Piolt Project)

[3] Current to March 31, 2026

	Electronic application records may be submitted for applications scheduled for 30 minutes or less before an associate judge in chambers.
BCSC PD – 73	Virtual Chambers (Associate Judges Chamber Pilot Project) The Associate Judges Chambers Pilot Project provides a means for parties to appear in virtual chambers in most registries. In virtual chambers all litigants appear by video by default, pursuant to Supreme Court Civil Rule 23.1-1(1) and (2) and Supreme Court Family Rule 22.1-1(1) and (2). A party may schedule an application before an associate judge with a time estimate of 30 minutes or less in virtual chambers, except in proceedings filed in the Vancouver registry. In proceedings filed in the New Westminster registry, an application can only be heard in virtual chambers as of June 1, 2026. An electronic application record submitted in accordance with PD- 72 is required for an application scheduled in virtual chambers. A person receiving a notice of an application scheduled in virtual chambers may object.
BCSC PD – 74	Remote Attendance at Applications, Trial Management Conference and Hearings and Pre-Hearing Conferences before the Registrar This practice direction sets out factors the court will consider when determining an application for remote attendance at an application, trial management conference (TMC), or a hearing or pre-hearing conference before the registrar, in civil and family proceedings. The overarching considerations are the right to a fair hearing, access to justice and proportionate conduct of the proceedings. When considering an application for remote attendance, the court may consider the following factors, as applicable: • The nature of the underlying hearing, including whether the subject matter is substantive or procedural in nature, time estimates, whether the matter is contested, and whether oral evidence is anticipated; • (b) The nature of the request to attend remotely, including the timeliness of the request, the other parties' position with respect to the request, the other parties' manner of attendance, access to technology, and any potential for prejudice; and • (c) The grounds for the request, including distance and time to travel to the courthouse, the

	proportionality of costs associated with in-person attendance, health issues, accessibility concerns or other personal circumstances which may interfere with in-person attendance, safety concerns, allegations of family violence, protection orders or relevant orders made in criminal and/or child protection proceedings.

Family Practice Directions[4]

PD:	Effect
BCSC FPD – 20	French Language and Bilingual *Divorce Act* Proceedings.

Administrative Notices

PD:	Effect
BCSC AN – 15	Emergency Hours Applications in Vancouver – Civil and Family (Updated)
BCSC AN – 18	General Requirements for Microsoft Teams Video Hearings (Updated)

BCCA Civil and Family Practice Directions

PD:	Effect
Appearing Before the Court	Updated February 6, 2025
Pronouncement of Reserved Judgements	Issued – September 4, 2025 Pursuant to ss. 39(1) and 40(1)(b) of the Court of Appeal Act, this practice directive establishes the Court's practices and procedures respecting the pronouncement of reserved judgments. The Court will pronounce reserved judgments by publishing reasons for judgment on the Court of Appeal's website on the date of release at the time specified on the upcoming judgments list. Pronouncements of reserved judgments by a justice in open court may take place in special circumstances.
Registrar's Filing Directive	Updated September 4, 2025 E-Filing Chambers Materials Under s. 38 of the Court of Appeal Act and Rule 5 of the Court of Appeal Rules, the Registrar may provide directives on filing documents. This directive provides general directions on how to file documents in the Court

[4] Only the civil PD's which also apply to family law (missing items like foreclosure)

	of Appeal. Specific instructions, including formatting requirements for the different types of documents filed in an appeal, are found in the completion instructions and the forms. E-filed documents that must be filed in paper: 1) Appeal records - If e-filed (required for lawyers in civil appeals) you must provide the registry with three (3) stamped paper copies of the e-filed document within two (2) weeks of e-filing. 2) Factums and statements - If e-filed (required for lawyers in civil appeals) you must provide the registry with three (3) stamped paper copies of the e-filed document within two (2) weeks of e-filing.

Rescinded Practice Directions/Administrative Notices[5]

PD:	Effect
BCSC PD – 68	Associate Judges Chambers Pilot Project (Rescinded March 31, 2026, see BCSC PD – 72 above)

[5] The rescinded are only the ones where the date they were rescinded was indicated.

6. Decisions of the Court of Appeal

a) Property

Summary Table

Case	Importance/Issue
Zemstova v Shevalev Estate, 2025 BCCA 114	ISSUE: This appeal addresses the common problem of conflating the value of shares and the value of their underlying assets. FRA case. The facts were unusual in that certain SPAs were to be transferred to a spouse from a holding company, a transfer that was delayed and ultimately frustrated. Arbitrator #1 (Khan) declared the frustration, Arbitrator 2 (Nordlinger) concluded the original HoldCo – Zion – was a family asset. OUTCOME: On appeal, it came down to whether Zion was a family asset. Held: Arbitrator Nordlinger's finding upheld. IMPORTANCE: There are a few helpful components: 1. The court again addresses the standard of review from an arbitrator, notes that in the aftermath of *Vavilov* the question of standard of review remains unsettled and then applies "palpable and overriding error" on an error alleged to be one of mixed law and fact. 2. A re-statement of the concept that corporate family assets are the asset to be divided, not the underlying asset. Where frustration arises, the obvious answer is to turn back the clock the last (or as the case here was, last and current) state, and which was an equal interest as tenant-in-common of the Zion shares. 3. There were arguments about compensation and how the SPAs should be held. Arbitrator # 2 followed logic, which led to a place with both parties were unhappy, but which was legally correct. 4. Given the outcome, the case raises the question of whether such an outcome could ever have been foreseen and if so, how one might draft around it. At a minimum, given that the SPA's were subject to possible conditions subsequent, they might have recited that they had turned their mind to it.
Wang v Li, 2025 BCCA 256	ISSUE: property division and jurisdiction were the backdrop to this case, but which was ultimately about challenges to findings about credibility. OUTCOME: Credibility findings are nearly impossible to appeal and that was no different here. On the issue of jurisdiction over certain Chinese properties, the court noted that the Judge did err by not performing a mandatory analysis that was required of him, but that it would not, in this case, have changed the outcome. IMPORTANCE: 1. Don't appeal credibility findings unless you have a home run. There is a helpful recitation of the things a judge must do in a credibility section of reasons which offers a guide to counsel even considering it: para. 41. 2. Sections 106-108 are not for the faint of heart, either counsel or the bench. Approach them carefully.
Sidhu v Sidhu, 2025 BCCA 263	ISSUE: Everybody complaining about everything. Not uncommon situation where spouses and other generational members of family hold properties in various ways with no unifying theme and where evidence points in 79 different directions.

	OUTCOME: Appeal and cross-appeal dismissed. IMPORTANCE: from amongst the wreckage, there are some quite helpful sections for general application: 1. Consideration of Future Wealth in Property Division: a. nothing has changed since *H.S.S.* and *Cook*, and it isn't changing now. Also, this is not *Healey*: an inheritance is about future money, *Healey* was about present excluded money. b. On the "virtual certainty" of receipt argument, the problem still remains that the future inheritance was unconnected to the economic characteristics of the parties' marriage. c. On the "contributions to the inheritance" argument, while perhaps founded in an unjust enrichment claim, it was not borne out on the facts of this case as the increase in the grandparents' property was market driven. 2. Derivative Unjust Enrichment Claim: the court notes that to date, the law has not allowed derivative actions by one spouse on behalf of another even those a chose in action is family property. One reading of *Douglas* and *Russo* suggests it is possible if a joint family venture is first proven. This case died before the court could go there on the finding that there was no unrecognized contribution on which to build an UE claim. 3. Minority Discounts: nothing new here, except a note about the modest evidentiary foundations that are needed to make such findings.
Xu v Li, 2025 BCCA 327	ISSUE: Whether an exclusion was made out, and whether a property was held in trust for a spouse's parents. Two properties, two claims, many – *too many* – ill-timed changes in position. OUTCOME: Appeal dismissed: exclusion had not been made out, and the facts supported the second property being found as family property. IMPORTANCE: There is nothing here. This was a mess before trial, at trial, and during the appeal. If there is anything to be taken from this case it is to underscore the importance of determining early on your theory of the case, getting your pleadings correct, and ensuring you can meet the evidentiary standard.
Castelli v Paton, 2025 BCCA 411	ISSUE: Limitation periods for property. Short CL relationship with stops and starts, final ending in 2018; proceedings started in 2022. OUTCOME: Appeal dismissed, upholding finding below that the claim was statute barred. IMPORTANCE: the case is helpful as it engages in the sometimes difficult area of weighing indicia to find a separation. In doing so, the court asserts the following: 1. A separation can be in place despite some ongoing indicia of marriage-like relationships; 2. The court notes the concept of "drifting" into legal relationship and so to, drifting out of them; 3. The court comments on the problem of looking for marriage-like indicia vs. looking for separation indicia. 4. NOTE: there is heavy focus in this case on "cohabitation", but which should not be read to mean that the cases where the parties are spouses but without a joint residence are invalid.
Papadogeorgos v McMullan, 2025 BCCA 439	ISSUE: The rejection of an exclusion or in the alternative, reapportionment. Wacky facts. OUTCOME: Appeal dismissed. The record was sufficient.

	IMPORTANCE: in this case one spouse was trying to make something that was one thing into one that was entirely another, through legal sleight of hand (I do not mean unethical) and creative framing, and then tried to turn that pretzel into significant unfairness. This case does not stand for any new principle, and the facts will be distinguishable 99% of the time. Its value comes as a water cooler story for law nerds.
Lamoureux v Hedquist, 2025 BCCA 438	ISSUE: Reapportionment for unequal contributions, which was successful at trial 75/25. OUTCOME: Appeal allowed. Equal division ordered. IMPORTANCE: The case is important for a few reasons: 1. Comparative Economic Contribution (CEC): a. The value of the companies jumped from 1.28M to 3.57M over five years. Some increase was before DOS, some after. TJ unwisely used the term "hitched her wagon" to describe her relative to the hardworking other spouse with the company. b. CEC is permissible: *Jaszczewska; Banh; Khan* but always only insofar as the result would be significantly unfair. c. The Judge here focussed almost exclusively on the contributions but which were themselves not objectively unusual or exceptional: "It is commonplace for spouses to establish a relationship at a time when one spouse is beginning to see earlier efforts to build a business bearing fruit and continues to build the business during the relationship, while the other spouse is uninvolved in the business and contributes to it not at all, marginally, or at best indirectly. The legislative intention is that the value the one spouse brings into the relationship is protected as excluded property based upon market value (which typically captures future growth potential), but that any growth in value is family property to be divided equally. It is only in exceptional circumstances that potential growth in value during the relationship as a result of pre- or during-relationship contributions justify a departure from equal division. These are not exceptional circumstances as contemplated by the legislative framework. <u>In my view, it is contrary to the legislative policy to ground unequal division on a conclusion that one spouse "hitched [their] wagon" to an already successful and growing enterprise that the other spouse had spent years developing. This is exactly the kind of analysis the new statutory framework eschews</u>" (para. 27). [underline added] 2. *Venables*: does not stand for the approach (as argued) that the potential from "seeds sown" prior to the marriage was a basis to consider reapportionment. Rather, Venables was about transferring a large portion of excluded property that happened to unexpectedly occur close to separation. 3. Goodwill: there was an attempt to connect personal goodwill as a basis for reapportionment as it cannot be sold itself. Neither I nor the BCCA seem to understand that argument. It went nowhere.
Paletar v Paletar, 2026 BCCA 41	ISSUE: Reapportionment for the cumulative weight of factors (80/20 sought). Was not successful at trial, with equal division ordered. OUTCOME: Appeal dismissed. No error. IMPORTANCE: This was at attempt at stacking, or arguing the cumulative weight of factors. Here the following were argued concurrently: a) Short duration; b) All family property generated from excluded property;

	c) Relative contributions; and d) Latent tax. *Lamoureux* turned out to be terrible timing for the appellant. He relied on the trial decision, and which was overturned on appeal by time he got to the big dance.
Falconer v Cohrs, 2026 BCCA 38	ISSUE: Failing to account for a concession. OUTCOME: Concession taken into account. IMPORTANCE: None. Was a situational defect important to only the parties to the action.
Glioza v Ardalani, 2026 BCCA 97	ISSUE: Well, everything. Appeal covered everything. As to property, the appeal was based upon selling costs, an impugned appraisal, and failing to consider evidence of family expenses being used (collectively, what I will call the "Dribs and Drabs Argument"). OUTCOME: A tiny adjustment for use of property to pay for school fees; otherwise, appeal dismissed. IMPORTANCE: Limited. However, there are a few points to take: 1. Selling costs: The appellant cited *Sea v. He* for the proposition that all costs must be considered when ordering division of property. The respondent says not where a sale is not sought or ordered, but rather a compensation payment. Held: a trial judge does not have to consider costs when no sale is contemplated. In any event, even if the judge had an obligation to consider every possibility on the facts whether argued or not, which they do not, a sale was not a *fait accompli* on the facts. 2. Use of a Non-Joint Appraisal: the appellant argued *J.P.* and the gatekeeper concept but did not object at trial when it was put into evidence. Turns out it was a joint report anyway. D'oh!!! 3. Fresh Evidence: notes the "somewhat relaxed standard" for fresh evidence when it does to integrity of the trial process, rather than the merits.
Janif v Chander, 2026 BCCA 118	ISSUE: Challenge of equal division of real property. OUTCOME: Appeal allowed, sent back down. IMPORTANCE: This case addressed the issue of duration under s. 95(2)(a), how it is measured, and what purpose is serves under reapportionment arguments. 1. The trial judge found that 95(2)(a) allows the court to take the full context of the "relationship" into account. 2. BCCA says this is wrong: 95(2)(a) relates only to the duration from start to separation and does not and cannot encompass post separation events.

Zemstova v Shevalev Estate, 2025 BCCA 114

Issue: Did the arbitrary err in concluding that a holding company which contained several sales purchase agreements was family property? Division of sales purchase agreements following divorce. SPAs owned by holding company. The arbiter concluded the holding company was a family asset and thus the SPAs held through joint beneficial ownerships.

Overview: The parties owned a corporation that held several sales purchase agreements (SPAs). In 2014, to finalize the divorce, it was ordered that the SPAs would be transferred to the appellant, while the respondent would retain the holding company, with the parties sharing the

expenses of maintaining the SPAs prior to transfer. The respondent paid $5.5M in other assets to compensate for the SPA value. The SPAs were placed on the cancellation list by the Dubai Land Department, and thus their status and value became uncertain. The respondent died in 2015. The arbitrator found the Order frustrated as it related to the SPA and that the estate needed to pay $2.75M to the appellant. Following this, the parties could not agree on how to hold the SPAs and engaged a second arbitrator to help determine the question. That arbitration concluded that, as the holding company held the SPAs and both parties were beneficial owners of that company, nothing further was required to achieve joint holding of the SPAs, and both parties would be equally responsible for ongoing management. The appellant appealed, arguing that the arbitrator exceeded her powers and failed to observe the rules of natural justice when determining that the SPAs were a family asset. The trial judge rejected both arguments and found no palpable and overriding error in concluding that the SPAs were a family asset.

Appeal dismissed. The arbitrator was correct to conclude the holding company was a family asset. It served as a vehicle for holding the SPAs, which were purchased as a family investment.

Key Passages

> [34] As Arbitrator Nordlinger correctly pointed out, upon an order for divorce—the 2014 Order—the parties became joint owners of all family assets as tenants in common by virtue of s. 56 of the *FRA*. She then interpreted the 2014 Order by applying the definition of family assets under s. 58 to the evidence before her.
>
> [35] The evidence established Rion was a holding company that served as a vehicle for holding the SPAs. The SPAs themselves were purchased as a family investment. There was no evidence Rion held other assets or served any business ends.
>
> [36] Based on this evidence and her proper understanding of the *FRA*, Arbitrator Nordlinger concluded the Rion shares are a family asset. She did not, as Ms. Zemtsova contends, wrongly imply a new term into the 2014 Order. Rather, when Arbitrator Nordlinger found it was "implicit in the Order that the shares of Rion are the family asset", I take her to have been saying simply that, on the evidence, it was obvious that was so and could not be otherwise.
>
> [37] A plain reading of the 2014 Order demonstrates as much. The heading directly above para. 28 of the order is "Division of Assets". More importantly, para. 28 stated, in part, that Mr. Shevalev was to retain Rion only after the transfer of the SPAs to Ms. Zemtsova. That transfer never occurred, and therefore Mr. Shevalev did not retain Rion. The logical, legal and proper conclusion is that Rion therefore remained a family

Wang v Li, 2025 BCCA 256

Issue: Assets located in China/beneficial interest under FLA. The appellant's family accumulated significant assets in China. The assets were used to acquire real estate and other assets in B.C. Did the respondent have a beneficial interest in the Chinese assets, such that some of the B.C. assets were family property and subject to provisions under the FLA. The appellant argued that the judge made errors of law and of fact in his credibility assessments and in his findings

regarding the parties' ownership interests in various Chinese assets, after declining to exercise jurisdiction over those assets pursuant to s. 106 of the FLA.

Overview: Appeal dismissed. While the judge did err in principle in declining to exercise jurisdiction under s. 106 of the FLA, the error had no material impact on the outcome of the case. When deciding whether to decline jurisdiction under s. 106, the first question is whether an order respecting property division between the same spouses may be made in more than one jurisdiction. This requirement is consistent with the common law requirement that where a party raises an issue of forum non conveniens, that party must establish, among other things, that there is another forum "with an appropriate connection under the conflicts rules…that should be allowed to dispose of the action" and that the alternative forum is more appropriate.

Key Passages:

> [s. 106 of the Family Law Act]
>
> [20] At trial, the Li Parents submitted that the court should exercise its discretion not to make any orders related to the Jin An Garden properties, pursuant to s. 106(4) of the FLA. Where an order respecting property division may be made in more than one jurisdiction, s. 106(4) permits the court to decline to make an order in respect of family property where, "having regard to the interests of the spouses and the ends of justice, [the court] considers that it is more appropriate for jurisdiction to be exercised outside British Columbia". Section 106(5) provides a list of factors that the court "must consider" in determining whether to exercise jurisdiction under s. 106(4).
>
> [21] Having considered the factors set out at s. 106(5) of the FLA, the judge held that it would "be more appropriate for the parties' dispute in respect of their legal interests in the Jin An Garden units to be decided by a court in China with the requisite jurisdiction": at para. 60. He gave several reasons for this conclusion. The first had to do with the "unusual nature of the family claim made in respect of the [Jin An Garden units]", in particular, the fact that the claim involved the Li Parents' financial and proprietary interests: at para. 61. In addition, the judge was of the view that "the Li Parents' assertion of a beneficial ownership interest in the Chinese real estate appears to have merit": at para. 62. While the judge purported not to decide the issue, he noted that the "testimonial evidence before the Court strongly suggests that the Li Family always considered Ms. Li's registered title to the Jin An Garden units as simply a notional one" and that this position was supported by an agreement signed by the members of the Li Family stating that the properties, despite being "registered under individual names…are jointly owned by the Li Family": at para. 62
>
> [22] The trial judge declined jurisdiction to determine this matter under s. 106(4) of the FLA. He found that it would be more appropriate for a court in China to determine the issue because of the limited evidentiary record; the fact that the issue involved the Li Parents, who claimed to beneficially own the properties; and the fact that prior litigation proceedings related to the Chinese Properties had already been adjudicated by Chinese courts.

[23] It should be noted that the judge did, however, assume jurisdiction over another asset located in China, treating it as family property which should be apportioned equally. This was an account with Guo Yuan Securities, valued at $682,820 as of September 2022: at para. 95. The Li Family submitted that the judge ought to decline to exercise jurisdiction over the account under s. 106, but, in the alternative, accepted that the account was family property: at para. 97. The judge saw "no valid reason to refuse to exercise…jurisdiction in respect of this asset" as, unlike the Jin An Garden units, the Li Parents did not assert any claim to ownership of the account: at para. 99. Accordingly, and in light of Ms. Li's alternative concession that the account was family property, he made an order for equal division of the account: at para. 99.

….

[60] This Court addressed the proper approach to s. 106 in *Jiang v. Shi*, 2017 BCCA 276, which the judge did not refer to in his reasons. In *Jiang*, Hunter J.A. held that the first question to be asked when deciding whether to decline jurisdiction under s. 106 is whether an order respecting property division, respecting the same spouses, may be made in more than one jurisdiction: at para. 24. As noted in Jiang, this requirement is consistent with the common law requirement that where a party raises an issue of forum non conveniens, that party must establish, among other things, that there is another forum "with an appropriate connection under the conflicts rules…that should be allowed to dispose of the action" and that the alternative forum is more appropriate: see *Club Resorts Ltd. v. Van Breda*, 2012 SCC 17 at para. 103.

[61] The judge did not address this legal requirement. In the absence of a finding that an order respecting the family property division could be made in China, it was not open to him to decline to exercise jurisdiction under s. 106. While he did refer to some litigation involving the properties that had already taken place in China, these proceedings did not concern the family property division between Ms. Li and Mr. Wang (neither of whom were parties) and did not address the Li Family's respective ownership interests in the disputed properties.

[62] Parenthetically, I would add that in Jiang, Hunter J.A. also emphasized the "mandatory nature" of the factors identified in s. 106(5), drawing particular attention to the court's obligation to consider whether and how the choice of law rules set out in s. 108 of the FLA apply: at para. 30. The provisions of the FLA, and this Court's decision in Jiang, required a clear engagement with s. 108 and the considerations enumerated in s. 106(5) which the judge did not perform.

[63] While I am of the view that the judge did err in principle in his approach to s. 106 of the FLA, these errors were not material to the outcome, given his other findings and analysis. Accordingly, I would not find any reviewable error in the judge's ultimate conclusions and orders.

[64] This is because even if the judge ought not to have declined to exercise jurisdiction in respect of the Jin An Garden properties, and should have considered the

question of ownership in accordance with British Columbia law, there was a reasonable evidentiary basis for him to conclude that Ms. Li held the property in trust for her parents.

….

[Respondents Guidelines Income]

[71] Mr. Wang also challenges the judge's determination of Ms. Li's income for the purposes of determining her child support obligations under the Child Support Advisory Guidelines. He says that the judge's decision not to impute income to Ms. Li in addition to that recorded on her T1 tax return was grounded in his decision not to make a determination with respect to the ownership of the Chinese properties but then to proceed upon the assumption that the Li Parents owned all of the properties.

[72] I see no reviewable error in the judge's analysis. Support orders attract a special degree of deference on appeal: Hinz v. Davey, 2022 BCCA 232 at para. 33, citing Hickey v. Hickey, 1999 CanLII 691 (SCC), [1999] 2 S.C.R. 518 at para. 12. As I have explained, there was evidence upon which the judge could have determined that the Li Parents beneficially owned all the Chinese properties, including those nominally registered in Ms. Li's name. Whether to impute additional income to Ms. Li was a matter within the judge's discretion such that appellate deference is owed absent an error in principle or misapprehension of the evidence: Barendregt v. Grebliunas, 2022 SCC 22 at paras. 100–104. Mr. Wang has established neither; accordingly, I would not accede to this ground of appeal.

Sidhu v Sidhu, 2025 BCCA 263

Issue: This appeal involves property claims arising from the breakdown of a marriage during which the former spouses lived and worked together with the husband's parents. The appellant challenged the trial judge's dismissal of her claims for unequal division of family property and constructive trust based on unjust enrichment. The husband and his parents cross-appealed the judge's valuation of corporate shares, the dismissal of a claim for occupational rent, the determination that shareholder loans were family property, and findings on the beneficial ownership of two properties.

Overview: Appeal and cross appeals dismissed. The trial judge did not err by declining to consider a prospective inheritance or the value of the husband's potential unjust enrichment claim against his parents in valuing family property. While a chose in action may constitute family property, the judge concluded a viable claim in unjust enrichment against the parents was not made out. The trial judge did not err in dismissing the appellant's own claim in unjust enrichment. His juristic reason analysis properly considered the parties' legitimate expectations and a limited weighing of the mutual benefits that accrued to the parties. The factual finding that the enrichment of the parents during the marriage was primarily due to market forces was not affected by palpable and overriding error.

On the cross-appeal, the judge did not err in refusing to apply a minority discount when valuing corporate shares or in finding that half the value of the shareholder loans was family property. Although it was open for the parents to seek occupational rent at trial, the evidence did not support such an award. The judge did not err in his conclusions on beneficial ownership. For the property legally owned by all four parties, the evidence supported the judge's finding that the pledging of credit constituted consideration such that the presumption of resulting trust did not arise. In the case of the property owned by the wife and her parents, the judge did not err in finding the wife held her interest in trust for her parents, as that was her uncontroverted testimony.

The Court held that the certainty that a spouse will inherit their parents' estate and the expectation of the other spouse that they will benefit from this inheritance is not sufficient to render the potential future inheritance family property. Also, a prospective inheritance, even when "virtually certain", should not be considered when determining whether equal division of family property would be significantly unfair

Key Passages

> [Prospective inheritance]
>
> [62] It is settled law that a prospective inheritance, one that may come to a spouse from a person still living, should not be considered when determining whether the equal division of family property would be significantly unfair. In my opinion, the trial judge correctly considered *Graham v. Graham* (1984), 1984 CanLII 363 (BC CA), 59 B.C.L.R. 27 (C.A.) and *H.S.S. v. S.H.D.,* 2018 BCCA 199 to stand for the proposition that a potential inheritance should not be factored into the consideration of an application for an unequal division of family property.
>
> ….
>
> [65] On the other hand, as the Court noted in *H.S.S* at para. 91, *vested* inheritances not dependent on the exercise of discretion by others may appropriately be taken into consideration in determining whether equal division would be significantly unfair: see *Hefti v. Hefti* (1998), 1998 CanLII 6173 (BC CA), 57 B.C.L.R. (3d) 171 (C.A.); and *Beese v. Beese*, 2008 BCCA 396 (considering inheritances under s. 65 of the *Family Relations Act*) and *Healey v. Healey*, 2024 BCCA 68 (under s. 95 of the *Family Law Act*).
>
> [66] In such cases, a spouse who seeks to establish that equal division of family property would be substantially unfair, as this Court noted in *Jaszczewska* at para. 41 and repeated in *Cook* at para. 41, must establish unfairness that is compelling or meaningful having regard to the factors set out in s. 95(2): factors connected to the economic characteristics of the marriage. It is not open to the trial judge to consider unfairness at large, or subjective unfairness.
>
> ….

[74] The question for this Court is whether it was open to the trial judge on the evidence to conclude the significant inheritance that is virtually certain to come into Sid's hands is not an economic circumstance connected to his marriage. In my view, it was.

[75] In my opinion, there is no reversible error in the judge's conclusion that Sid's potential inheritances should not be considered in support of the appellant's claim to unequal division of family property. The test for significant unfairness under s. 95 requires something objectively unjust, unreasonable or unfair in some important or substantial sense and only a limited class of factors may be considered in order to identify significant unfairness: those related to the economic characteristics of a spousal relationship. I cannot say the judge's finding that the appellant had not established compelling or meaningful unfairness having regard to the factors set out in s. 95(2) is affected by palpable and overriding error or a misapprehension of the evidence.

….

[Derivative unjust enrichment]

[85] What may constitute "property" subject to division pursuant to the Family Law Act is broadly defined: *V.F.J. v. S.K.W.,* 2016 BCCA 186. In my view, property must be taken to include all personal rights of property, even those which can only be claimed or enforced by action rather than taking physical possession (choses in action). Having said that, the inclusion of choses in action in family cases is problematic and for good reason the examples of the inclusion of such property are rare. Such claims are most likely to be included and valued where, as in McGrail, Mitchell and Hannigan the chose in action is a legal, rather than an equitable claim and its value is easily ascertainable (or already ascertained).

[86] *Carruthers v. Carruthers,* 2021 SKCA 52 at paras. 73 and 88 is authority for the proposition that a claim in unjust enrichment can be a chose in action within the meaning of family property, under the applicable Saskatchewan legislation.

[87] Section 84(2)(b) of the *Family Law Act* includes in the definition of family property, "an interest in a partnership, an association, an organization, a business or a venture". It was open to Min to seek to establish that Sid had a beneficial interest in one or more ventures of the Sidhu family. To do that, she would have had to point to evidence establishing Sid had an unjust enrichment claim against his parents. In the face of the judge's unchallenged findings that Sid had not invested capital in a Sidhu venture and that he was not paid below market rates for his work, Min has not demonstrated Sid has an unjust enrichment claim that could be family property within the meaning of s. 84(2)(b).

[Juristic reasons – weighing of mutual benefits; intentions and expectations]

[96] Min says the trial judge erred in focusing upon whether there was an expectation that Min would obtain an interest in the Sidhu Assets. The reasoning in Kerr calls upon

judges to consider whether, in light of both parties' legitimate expectations, the retention of benefits conferred upon the defendant by the plaintiff was just. Plaintiffs need not establish that they expected to acquire an interest in property in order to obtain a proprietary remedy. In *BCI Bulkhaul Carriers Inc. v. Wallace*, 2017 BCCA 180, this Court cited *Haigh v. Kent*, 2013 BCCA 380 as authority for the proposition that the proprietary remedy of a constructive trust may be available where unjust enrichment has been established, even where a proprietary interest was not in either party's reasonable expectations. The Court adopted the view expressed by Harris J.A. at para. 32 of Haigh, that "the critical question is the nature of the contribution made to the property" and "[i]f the contribution is sufficiently direct and substantial, then awarding a proprietary remedy may be appropriate, even if the contribution was made without an expectation that it would earn an interest in land": Kerr at para. 66; *Pettkus v. Becker*, 1980 CanLII 22 (SCC), [1980] 2 S.C.R. 834.

[97] Having said that, it must be recognized that there is inevitable overlap between factors that can be considered in determining whether there is a juristic reason for a party's enrichment and whether the unjust enrichment warrants a proprietary remedy—that is, the question whether the remedy should be a measure of value received or value surviving (as in *Kerr* at para. 96). In my view, consideration of whether the parties intended to share the wealth generated by their efforts may be relevant to both questions.

[98] In the case at bar, the judge considered the intention to share wealth as part of the analysis of the potential juristic reasons for Ajit and Banso's enrichment, but he did so in context. He accepted the evidence of Ajit and Banso that the parties expected Min to live in the Sidhu household without paying rent or expenses, to perform domestic chores, to work in the orchards, and to assist the family business with bookkeeping and as otherwise required. Min's limited work on the farm was considered to be typical of that expected of family members on Canadian farms. In my view, the judge did consider whether, in light of both parties' legitimate expectations, the retention of benefits conferred upon Ajit and Banso by Min was just. The analysis included consideration of whether Min expected to acquire an interest in property from her labours but did not hinge upon that factor. In my view, the appellant Min has not made out the alleged errors in the trial judge's analysis of the unjust enrichment claim.

….

[Joint family venture]

[100] As I have noted, the judge's consideration of whether there was a joint family venture was obiter, inessential to his judgment. Having found unjust enrichment was not made out by Min, the question whether she had a proprietary interest in the family venture was moot. For that reason, I am of the opinion that it is not necessary to address Min's submission that the trial judge imposed too heavy a burden upon her when he held that she "must show that she made something in the nature of an investment in the value of the Parents' property in order to succeed in her claim that the Sidhu Family Enterprise

was a joint family venture": at para. 223. The imposition of the burden was inconsequential in this case because the judge found as a fact that there was no unjust enrichment and I can see no reversible error in that conclusion.

….

[The Properties]

[126] It is unclear from the reasons for judgment whether Min's pledging of credit was required as a term of the mortgage loan. There is no explicit consideration by the trial judge whether the pledging of that credit amounted to consideration. I agree with Sid's submission that if Min's signature on the mortgage documents assisted her parents' purchase that ought to have been regarded as consideration. A consistent approach to consideration ought to have led the judge to start from the presumption that Min, holding a registered interest in the title to the Celano Crescent property is the legal and equitable owner of that interest.

[127] However, that is not, as Sid submits, the end of the analysis. It was still open to the judge to consider evidence of the parties' intentions and to determine that the presumption had been rebutted. As noted in *Fuller*, the effect of the presumption only becomes evident after all the evidence, both direct and circumstantial, on the surrounding circumstances in which the transfer was made, has been weighed. As Fleming J. (as she was) noted in *J.D.G. v. J.J.V.*, 2016 BCSC 2389, addressing the strength of the presumption arising, in that case, from a lack of consideration:

> [145] … [T]rust principles are central to determining the nature of the respondent's interest ... The presumption of resulting trust is a general rule that applies to gratuitous transfers of property, including those between a parent and an adult child (Pecore v. Pecore, 2007 SCC 17). Because equity presumes bargains and not gifts, it is presumed that the transferor intended to convey only legal title to a transferee who pays no consideration. The transferee then holds the beneficial interest in the property on a "resulting trust" in favour of the transferor. When a resulting trust arises, the transferee is under an obligation to return the property to the transferor upon request. To rebut the presumption of resulting trust the party asserting a gift, typically the transferee, must prove on a balance of probabilities the transferor intended to provide a gift at the time of the transfer. Because the court examines all of the evidence to determine the transferor's actual intention, the presumption actually operates only in doubtful cases. (Mawdsley v. Meshen, 2010 BCSC 1099at paras. 283–90, aff'd 2012 BCCA 91, leave to appeal ref'd [2012] S.C.C.A. No. 182).
>
> [Emphasis added.]

[128] The judge found there was no evidence to contradict Min's that she was on title as a matter of convenience. Serving as a guarantor and appearing on title were indicia of an interest but are not determinative. Whereas in the case of the 4871 Bella Vista Road

property, both Min and Sid testified to their interest in the property and no one testified to a different intention, in the case of the Celano Road property no one testified that Min was intended to have a beneficial interest and Min testified that she had no such interest.

[129] In my view, neither conclusion was founded upon legal error or misapprehension of the evidence. I would dismiss Sid's appeal on this ground.

….

[The shareholder loan allocation]

[140] The trial judge's reasons center on the appropriate "allocation" of the Loan Amount between the parties rather than explicitly making a finding relating to family property. However, in my view, the judge's finding of family property is implicit in the reasons and was supported by the evidence. The parties effectively took positions on the issue of family property at the supplemental hearing, with Min arguing that the entirety of the Loan Amount constituted family property and the parents arguing that none of it was family property.

[141] The trial judge clearly rejected both positions, finding that the truth lay somewhere in the middle. The Supplemental Reasons make clear that he was satisfied part of the Loan Amount constituted family property and part of it did not and was debt owing to Ajit and Banso. What could not be determined with precision was the proper allocation of those portions. Faced with unsatisfactory financial documentation and the entirety of the trial evidence regarding the nature of the Sidhu family's property holdings, the judge found that the most equitable outcome was to find that half of the Loan Amount was family property. He did not err in law in doing so.

Xu v Li, 2025 BCCA 327

Issue: The appellant argued that the trial judge erred in failing to consider whether funds from his mother used to purchase a matrimonial home were an excluded asset.

Overview: The appellant bought two properties while married to the respondent. In their divorce proceedings, he claimed that the funds used to purchase the first property were excluded property because his mother gifted them to him. He claimed that the second property was not a family asset because he held it in trust for his parents. The judge concluded that the second property was a family asset and neither property was excluded property and divided the family property equally. After the trial, the appellant unsuccessfully attempted to reopen the trial and argue that the second property was excluded property because he purchased it with money his parents had gifted him. The appellant argues the trial judge erred in dividing the second property equally.

Appeal dismissed. The appellant did not adduce evidence at trial to show that his parents gifted him money to purchase the second property, as his argument was that it was not family property at all. The judge did not make a finding that the appellant could not advance an alternative argument that the funds used to purchase the second property were a gift and therefore did not err

in doing so. The judge did not err in failing to consider whether the allegedly gifted contributions to the second property were excluded property; the appellant deliberately chose not to pursue that argument at trial and has not applied to raise new issues on appeal. It was within the exercise of the judge's discretion to find that it would not be significantly unfair to divide the family property equally.

Key Passages

> [19] Excluded property, defined in s. 85(1), includes "gifts to a spouse from a third party": s. 85(1)(b.1). This Court recently summarized the law relating to the establishment of an exclusion under s. 85(1)(b.1) in *Zhao v. Fang*, 2022 BCCA 227:
>
> > [25] […] Under s. 85(2) the spouse making this claim has the burden of demonstrating that property is excluded property. The standard of proof is on a balance of probabilities (as in any civil case), but the evidence must be clear and cogent. If documentary evidence is not available, a party's testimony on this issue is to be scrutinized for credibility. However, the judge is permitted to draw reasonable inferences from evidence that is less certain or precise in order to do justice between the parties: *Shih v. Shih*, 2017 BCCA 37 at paras. 43–44; see also *Pisarski v. Piesik*, 2019 BCCA 129 at para. 24.
> >
> > [26] A gift is "a gratuitous transfer made without consideration". For a gift to be legally binding, the donor must have intended to make a gift and must have made the transfer to the done: see *McKendry v. McKendry*, 2017 BCCA 48 at para. 31.
>
> ….
>
> [22] Mr. Xu's strategy at trial was not to seek an exclusion in relation to the funds used for the Peterson Drive Residence, but to argue it was not family property at all because he held the property in trust for his parents. Had he been successful with this argument, Ms. Li would not have been entitled to any part of the value of the property. He does not challenge on appeal the trial judge's findings rejecting the argument that the property was held in trust.
>
> [23] On appeal, Mr. Xu seeks a finding that part of the funds used to purchase the Peterson Drive Residence were gifted to him by his mother and are therefore excluded property. Such a characterization would presumptively entitle Ms. Li to an equal share in the equity after deducting the excluded property….
>
> ….
>
> [Exclusion based on Gift]
>
> [31] In any event, I do not accept that the trial judge determined the issue of excluded property or foreclosed Mr. Xu from advancing the issue if he wished to do so. In my view, when the trial judge suggested exclusion based on a gift was not an alternative legal theory but would require "alternative facts", he was presumably referring to the fact that

the evidence from Mr. Xu and his mother explicitly denied that the funds were a gift. Although the trial judge expressed scepticism that the evidence would support such a theory, he clearly indicated to counsel for Mr. Xu that he could argue the point if he wished to do so. It was also evident from his subsequent exchange with counsel for Ms. Li that the question of exclusion by way of gift might still be argued by Mr. Xu.

[32] As I am not persuaded that the trial judge made a determination on this issue at all, it follows that he did not err in doing so. I would not accede to this ground of appeal.

….

[Failure to Consider Exclusion]

[34] As noted above, Mr. Xu's main focus was not on framing the contributions to the Peterson Drive Residence as excluded property, but on framing the entire property as belonging to his parents. It is possible trial counsel felt that seeking to lead evidence to support an exclusion and then arguing it in the alternative would have diluted the strength of his main argument. Whether the decision not to pursue an argument in the alternative was a considered strategy is a question for Mr. Xu's trial counsel. What is clear from the record as a whole is that exclusion appears to have been deliberately not pursued as an argument at trial.

[35] As noted by counsel for Ms. Li, leave is required for a new issue to be raised on appeal, which is a practice generally to be discouraged: *Zeligs v. Janes*, 2016 BCCA 280 at para. 66. I am not inclined to grant leave in the circumstances and in any event, there was no unfairness to Mr. Xu in the trial judge not addressing an argument he explicitly declined to make. To the contrary, given the manner in which the hearing unfolded, there would have been significant unfairness to Ms. Li had the trial judge decided the case based on such an exclusion after explicitly declining to hear submissions from her on the issue.

….

[Unequal Division of Property]

[42] In submissions before this Court, Mr. Xu has not articulated his argument for unequal division in terms of any of the factors set out in s. 95(2). The crux of his argument appears to be that because his mother was the source of the funds to purchase the Peterson Drive Residence unequal division was warranted even if an exclusion had not been established.

[43] The fundamental problem for Mr. Xu on appeal is that he is unable to point to a material error, a serious misapprehension of the evidence, or an error of law in the approach taken by the trial judge. The issue raised in this Court is whether the trial judge erred in the exercise of his discretion not to divide the family property equally.

Castelli v Paton, 2025 BCCA 411

Issue: Was the claim for family property statute barred? / Scheme of s 198(2)(b)

Overview: The parties were in a marriage-like relationship and living together. Following a separation, they disagreed on the nature of their relationship from October 2016 onwards, with one characterizing it as an "open marriage" and the other as "friends with benefits", not a marriage-like relationship. In April 2022, the appellant filed an NOFC claiming a 50% right in the property acquired by the respondent during their relationship. The issue before the trial judge was whether the claim was barred under s.198(2)(b). The judge held that the claim was statute-barred because it had not been

Appeal dismissed. While it appears that the judge erred in focusing on the question of when the marriage-like relationship ended rather than on the date of separation, her findings of fact were sufficient to establish that the claim was not brought within the time limit set out in the *Family Law Act*.

Key Passages

> [7] The parties appear not to have recognized that s. 198(2)(b) speaks specifically of the date of separation and not of the date that the marriage-like relationship ended. Probably due to the manner in which the case was argued, the judge also conflated the issue of the existence of a marriage-like relationship with the concept of separation, and her judgment considered, in detail, when the marriage-like relationship ended.
>
> ….
>
> [9] As I will explain, when unmarried persons who are spouses under the *Family Law Act* commence living apart due to a breakdown in their relationship, they are "separated" for the purposes of the *Family Law Act*, and, subject to the specific provisions of the *Act* dealing with separation, the two-year limitation period in s. 198(2)(b) begins to run. This is so even if some of the *indicia* of a marriage-like relationship subsist. It appears that the statute is designed to promote certainty, and to provide a bright-line date on which the limitation period for bringing a property division proceeding may be commenced.
>
> ….
>
> [s. 198(2)]
>
> [38] The case before us, then, is not about the existence of a marriage-like relationship, but rather about when Mr. Castelli's right to apply for division of property terminated. That depended on "separation" not on the complete termination of the relationship.
>
> [39] Typically, the concept of separation is straightforward. Where common law spouses who live together cease doing so by reason of a deterioration in their relationship, they are "separated". It is unnecessary, in determining whether parties are

separated, to undertake a detailed analysis of all aspects of the "marriage-like relationship", nor is it useful to consider whether some elements of such a relationship continue to exist. Section 198(2) is a "bright line test" setting out when the right to commence an action for property division expires.

….

[41] The case before us also presents some challenges, because the parties had different primary residences before their relationship deteriorated and they separated. Nonetheless there were clear events that occurred that marked the beginning of the separation.

….

[Should the Judgement be overturned?]

[42] As I have indicated, the parties did not focus on the language of s. 198 in their arguments, instead focussing on the "marriage-like relationship". Unfortunately, the judge erred by also focussing on the question of whether the relationship remained in various ways "marriage like" rather than whether there had been a separation.

[43] It is clear that the parties separated in October 2016, when their relationship deteriorated and they ceased all cohabitation for a period of time. While it is true that they later resurrected aspects of their relationship, that, in itself, did not serve to restore all spousal rights. Rather, the court ought to have considered whether the separation was nullified by s. 83(1) of the statute:

> 83 (1) For the purposes of this Part, spouses are not considered to have separated if, within one year after separation,
>
> (a) they begin to live together again and the primary purpose for doing so is to reconcile, and
>
> (b) they continue to live together for one or more periods, totalling at least 90 days.

[44] If common law spouses separate, and do not engage in conduct that invokes s. 83, the right to bring an action will expire two years after the separation.

[45] Section 83 was the yardstick by which the couple's reconciliation efforts in 2017 should have been measured. Because the trial judge was not referred to s. 83, it is difficult to know how she would have evaluated the evidence in respect of the 2016 separation.

[46] The same cannot, however, be said of the period following October 2018. The judge's evaluation of the evidence makes it clear that while the couple saw each other occasionally, and were, from time to time, sexually intimate there was no effort to resume cohabitation, let alone cohabitation for the purpose of reconciliation.

> [47] While I am of the view that the judge erred by focussing on the existence of a "marriage-like relationship" rather than on "separation" in deciding the case, the conclusion that she ultimately reached is unassailable. The appellant's family proceeding was brought well-beyond the limitation period set out in s. 198 of the statute.
>
> ….
>
> [53] The appellant also suggests that in order for a "marriage-like relationship" to be terminated, one spouse must explicitly communicate the termination to the other, or there must be a specific action that serves to communicate the spouse's permanent intentions. He bases his argument on s. 3(4) of the *Family Law Act*, which allows a judge to accept evidence of specific communications or specific acts evidencing intentions in determining whether a separation has occurred.
>
> [54] Section 3(4) does nothing more than provide that evidence of intention to separate may be considered by the court. Such evidence may be critical in cases where the parties continue to live in the same residence, where it can be difficult to determine whether or not they have separated.
>
> [55] In most cases, however, specific evidence of an intention to separate is not necessary. Clear evidence that the parties have ceased cohabitation due to a breakdown in their relationship will suffice to establish separation. Such evidence was present in this case.

Papadogeorgos v McMullan, 2025 BCCA 439

Issue: Did the trial judge err in dismissing the appellant's argument that a portion of the value of the family residence consisted of excluded property? In the alternative that an order for unequal division should be made to avoid significant unfairness.

Overview: The appellant and his parents purchased a family residence, with the parents providing a down payment, and the remainder financed through a mortgage. All were listed as registered owners. The appellant did not contribute any of his own money to the purchase, but it was a term of the agreement with his parents that he would assume responsibility for the entire mortgage and an LOC used to finance renovations, which was secured against the property. When the respondent moved in, she made monthly mortgage payments, and a bank account was opened into which both their salaries were deposited, from which the mortgage payments were drawn. The appellant's relationship with his parents deteriorated, and they severed the joint tenancy, changing the registered title to a tenancy in common, with the appellant owning 1/3rd. Approximately a year later, the appellant's parents filed a petition to sell the property. A settlement was negotiated, and the residence was transferred to the appellant and the respondent as joint tenants for $250,000. The parties separated shortly afterwards. The Respondent argued he acquired an interest in the residence before the relationship and thus it was excluded property under s. 85, and that the settlement with his parents reflected their agreement to gift him their interest in the property that exceeded the $250,000. The trial judge dismissed both claims, finding that the appellant did not own any equity prior to the start of the relationship and that it

was not a gift. Further, the respondent made contributions to the property; thus, equal division was fair.

Appeal dismissed, the rejection of the claim for excluded property was based on factual findings which show no palpable and overriding error. No error was shown that the trial judge erred in declining to exercise discretion to order unequal division.

Key Passages

> [Excluded Property]
>
> [30] In relation to the transfer of the Family Residence to the parties in September 2020, the appellant takes the position that his parents intended to gift him their interest in the property to the extent that it exceeded $250,000. However, the trial judge found that the evidence did not establish a gift. As she noted, the only evidence that the parents intended a gift came from the appellant in his affidavit. Notably, in his examination for discovery evidence, the appellant testified that he was not sure if the actual term "gift" was used in discussions with his parents, and he could not recall what was said. As such, even within the appellant's evidence, there was internal inconsistency. There was no direct evidence from the appellant's parents as to their reasons for settling the petition proceeding on the basis of what appears to have been a compromise of their entitlement. Although the $250,000 payment was made, and the Family Residence was transferred, in the context of a contested petition proceeding, there was no documentation prepared to reflect that the parents intended to make a gift to the appellant alone.
>
> [31] The trial judge's finding that the appellant had not established a gift was open to her on the record. The appellant has not identified any palpable error in her factual finding, let alone an error that is overriding.
>
> ….
>
> [Unequal Division]
>
> [34] As I understand the appellant's arguments on appeal as set out in his factum, he says the trial judge made two errors in principle in declining to order unequal division: (1) she failed to account for the origin of the Family Residence as excluded property as permitted by *Venables v. Venables*, 2019 BCCA 281; and (2) she failed to properly account for the "relative contribution of spouses to the acquisition, preservation, maintenance, or improvement of family property during the relationship": Appellant's Factum at para. 92, citing *Singh v. Singh*, 2020 BCCA 21 at para. 139.
>
> [35] On the first argument, as I have explained, the trial judge concluded that the appellant had not acquired excluded property in the Family Residence by the time the spousal relationship commenced, because he had no equity. As such, it cannot be said that the trial judge erred in failing to account for the origin of the Family Residence as excluded property

> [36] The appellant's second argument is based on the proposition that the trial judge "heavily relied on the contributions that [the respondent] made to the mortgage and property taxes" during the marriage, yet failed to recognize that it was the appellant's parents who paid the property taxes between 2010 and 2020.
>
> [37] However, the trial judge did not find that the respondent had contributed to property taxes during the marriage, let alone place heavy reliance on this finding. In addressing the parties' contributions during the relationship, the trial judge found that there were periods of time that the respondent was making greater contributions to the mortgage than the appellant. She also referenced the fact that the appellant required the respondent's assistance to payout his parents and refinance the Family Residence. The appellant has not identified any factual error in this analysis.

Lamoureux v Hedquist, 2025 BCCA 438

Issue: Did the judge err in (1) reapportioning the increase in the value of certain family property during a marriage-like relationship basis that the presumptive equal division of the increase in value between the parties would be significantly unfair; (2) making a final order that required the repayment of support that had been ordered to be paid on an interim basis pending trial.

Overview: The parties were in a 5-year marriage- like relationship. The Respondent owned two companies, one before the relationship started and a second which he started during the relationship. The respondent financed the growth of both companies. The trial judge found that the appellant had made only minor contributions to the company, as her focus was on running the family's domestic affairs. The trial judge concluded that the growth in the companies would have happened because of the respondent's business acumen, reputation and lack of competition, regardless of the relationship. The trial judge ordered that the increase in the value of the respondent's shares in companies be divided unequally because the respondent's efforts in growing the business rendered it significantly unfair to divide the property equally.

"As the trial judge saw it, the appellant, "hitched her wagon" to already growing and successful enterprise the respondent had spent years developing".

The trial judge also made an order regarding child and spousal support, requiring the appellant to repay approximately $90,000 in support she had received under an interim court order.

The appeal was allowed in part. The trial judge erred in grounding his analysis of significant unfairness in comparative economic contribution to the relationship. The order for unequal division of the increase in value of the respondent's companies is set aside, and an order for equal division substituted. The trial judge did not err in making the support orders retroactive or in imputing income to the appellant, and the appeal is dismissed on those issues.

Key Passages

> [15] The purpose of the legislative framework is to provide certainty and predictability to the division of property in accordance with widely accepted principles of fairness. The

scheme reflects the Legislature's intention to constrain the discretion of courts to depart from equal division, except where equal division would be significantly unfair. In finding significant unfairness, courts may rely only on the factors laid out in *FLA* s. 95(2). Those sections do not refer expressly to the relative contribution of either spouse to the acquisition of family property, but the courts have recognized that the discretion to rely on that consideration has not been entirely eliminated. Rather a test has developed which involves a high threshold before a court can conclude that equal division is unfair.

[16] Given the issues on appeal, it is helpful to say a little more about this discretion. A court may depart from equal division where an equal division would be significantly unfair, but the discretion to do so is significantly constrained. As noted, the factors justifying unequal division must be rooted in the factors set out in *FLA* s. 95.

….

[Division of Family Property]

[22] It follows that the judge's reliance on the relative contributions of the parties, standing alone, is not a legal error. Whether the judge erred in principle turns on how the judge applied that consideration, which is only relevant in exceptional circumstances, in this particular case.

[23] The judge analyzed those circumstances under the factors identified in s. 95(2). In brief, the judge gave some limited weight to the duration of the relationship because their actions and conduct suggested that the parties considered their relationship to be unstable and temporary with a lack of commitment towards one another. He concluded that there was no agreement affecting the fairness of an equal division of property. He concluded that the appellant had not contributed to the respondent's career in a way that affected the fair division of the increase in value.

….

[26] There are, in my opinion, several difficulties with the judge's analysis, leading to the conclusion that he placed undue emphasis on the importance of the relative contributions of the parties to the increase in wealth. In substance, the result is driven almost entirely by a focus on unequal contribution to an increase in value in a way that defeats the purpose of the legislative scheme, which is to provide for equal division of family property regardless of relative contribution, except in exceptional circumstances. On the facts found by the judge, there is nothing objectively unusual or exceptional to justify departing from the outcome contemplated by the legislature.

[27] If the result is upheld on appeal, the door is opened to litigation routinely focused on relative contribution to family property. These facts do not describe an unusual situation. It is commonplace for spouses to establish a relationship at a time when one spouse is beginning to see earlier efforts to build a business bearing fruit and continues to build the business during the relationship, while the other spouse is uninvolved in the business and contributes to it not at all, marginally, or at best indirectly. The legislative

intention is that the value the one spouse brings into the relationship is protected as excluded property based upon market value (which typically captures future growth potential), but that any growth in value is family property to be divided equally. It is only in exceptional circumstances that potential growth in value during the relationship as a result of pre- or during-relationship contributions justify a departure from equal division. These are not exceptional circumstances as contemplated by the legislative framework. In my view, it is contrary to the legislative policy to ground unequal division on a conclusion that one spouse "hitched [their] wagon" to an already successful and growing enterprise that the other spouse had spent years developing. This is exactly the kind of analysis the new statutory framework eschews.

[28] Accordingly, I find that the judge placed undue emphasis on the pre-relationship contributions of the respondent to the increase in the value of the companies during the relationship. This is not to say that pre-relationship contributions could never be a relevant consideration, perhaps where it is evident that those contributions have clearly not been captured in a fair market valuation of excluded property. But those circumstances will surely be rare, and it would not be useful to speculate on them.

[29] The judge relied on *Venables v. Venables*, 2019 BCCA 281, for the proposition that he could consider the pre-relationship contribution the respondent made to the Companies' increase in value during the relationship. The judge found that the increase in value was partially the result of the momentum generated by the respondent through his efforts in building the Companies before the relationship began. In short, the seeds of financial success were sown before the relationship began and the fruit reaped during the relationship.

[30] *Venables* is not authority for that approach….

[31] I do not think *Venables* supports the judge's approach in this case. As noted, in that case, equal division would have deprived one spouse of substantial value which had previously been his excluded property. In this case, equal division would not have effectively transferred value of excluded property from the respondent to the appellant. What was at issue was sharing in an increase in value. The respondent retained and was not deprived of the fair market value of his companies at the date the relationship began.

[32] As well, the parties agreed on the value of the excluded property at the date the relationship began. That valuation was, as the legislation contemplates, a fair market valuation which reflected the future earning prospects of the Companies and must be taken to capture, at least in principle, the financial momentum generated by the contributions to their growth made by the energy, drive, and reputation of the respondent. In substance, attributing growth in value during the relationship to pre-relationship contribution is an indirect attack on the agreed upon valuation.

[33] The respondent says that this is wrong because in a business of this kind a fair market valuation of the Companies does not capture the value personal goodwill adds to the in-relationship growth in value because personal goodwill cannot be sold to an arms

length third party buyer. Accordingly, his counsel submits, there is no error in taking the contribution to the in-relationship growth in value made by pre-relationship contributions into account in the substantial unfairness argument.

[34] I would not accede to this argument. As I have said, I view it as an indirect attack on the agreed-on value of excluded property and inconsistent with the legislative scheme that values excluded property at fair market value. Moreover, in circumstances where a party comes into a relationship with a business that has some "personal goodwill" and then retains that business at the termination of the family law proceedings, that party will have retained any continuing value in the "personal goodwill" after the property division is complete.

….

[36] On the facts of this case and in light of the parties' agreement on value, in my view, the judge erred in principle by relying on an irrelevant consideration, namely pre-relationship momentum of the business, in his analysis of the respondent's unequal division claim

…..

[Post- separation contribution to value]

[39] He went on to conclude that the unequal contribution to value justified unequal division, even allowing for the increase in value attributable to market trends.

[40] One key problem with this analysis is that the judge relied on financial information about increased revenues that post dated the financial information on which the agreed-on valuation was premised. For example, he referred to the revenues of Superior Septic in 2022 as being over $1 million higher than in 2020. However, the May 2022 fair market valuation only used financial information up to the end of 2021. The judge was assessing post-separation contribution to the increase in value as reflected in the agreed fair market valuation, but the 2022 revenues were not part of that analysis. To the extent the 2022 revenues contributed to Superior Septic's increasing values, the respondent took that value as excluded property after May 2022. In the result, the judge overvalued the contribution made post-separation by relying on 2022 revenues which were not part of the valuation of the Companies at the valuation date.

[41] Moreover, it is far from clear that either company enjoyed materially higher revenues after separation than during the relationship. For example, Trademark's revenue in 2018 was as high as $2.46 million — only $56,717 less than in 2021 (and higher than in 2022). And, as noted, Superior Septic's $1 million increase in revenue did not occur until 2022. The revenue in 2022 was irrelevant to the Companies' value for the purposes of division. In any event, revenue and value are different things, and it is value not revenue that is relevant to s. 95(2)(f).

[42] Accordingly, the judge's reliance on s. 95(2)(f) rested on a misapprehension of relevant evidence and does not lend support to his overall conclusion that equal division would be significantly unfair.

….

[44] This is the exercise of weighing relative contributions that the legislative scheme discourages. Accepting the judge's findings of fact about relative contribution to the increase in value during the relationship, there is nothing exceptional or unusual about the facts of this case. I have already expressed the view that relationships in which the relative contributions to increased value are markedly uneven are not unusual and part of the objective of the legislative changes was to ensure that departures from equal division would be rare, even where one spouse had made no contribution to the increase in value. Approaching contribution as the judge did here frustrates the intention of the Legislature.

….

[The Support Issue]

[61] In the first place, I see no error in the judge's imputation of an income of $92,000 to the appellant. The judge made several pertinent findings of fact. He said, for example, that:

> [275] In the end, I am satisfied that the claimant is and remains multi-talented including most notably her self-professed talent for interior design that was a major part of her evidence respecting her contributions during the Relationship. She is skilled in interior design and professed her talents during the trial. Despite having marketable skills, the claimant has not sought to use them or work since Separation. I find that she functions at a high level and could easily work either for herself or others if she chose to do so. I conclude that the claimant is intentionally unemployed, her anxiety issues notwithstanding.

[62] In addition to the above findings about the appellant's ability to host paid-admission events, marketable skills, high-level functioning, and ability to work for herself or others, the judge referred to other potential sources of income that the appellant had not pursued. These included rental income she could generate from the vacant rental suite and carriage house at one of the properties. The trial judge also criticized the appellant's financial disclosure. He concluded that her March 28, 2023 F8 Financial Statement suggested "artificially low income" and expressed that he had "no faith that her claimed income and expenses are reliable". In my view, all of these findings were open to the judge on the evidence. No palpable or overriding error has been demonstrated. There is no basis for appellate intervention.

[63] Nor do I think it was an error for the judge not to engage explicitly in a discussion of "retroactivity". At issue here is whether the set-off order should be set aside. In light of the reasonable expectations of the parties arising from the interim orders

and the financial resources available as a result of the division of property, I see no basis to interfere with the support orders and would not accede to these grounds of appeal.

Paletar v Paletar, 2026 BCCA 41

Issue: Appellant argues that the judge erred in not dividing the family property unequally. He argued the judge failed to (1) consider or give adequate weight to the nature of the family property, substantially all of which consisted of the amount by which the value of his excluded property increased during the relationship; and (2) consider the cumulative effect of the s. 95(2) factors, including the relatively short relationship, the magnitude of the excluded property claim, the exponential increase in the value of the excluded property during the relationship, and the parties' unequal contribution to the family property, and instead, assessing whether each of the factors on its own would render an equal division substantially unfair.

Overview: The parties were in a 5-year marriage-like relationship, had two children. At separation, the significant assets were a home, a commercial strata unit and a motorcycle shop. The parties agreed that the value of the appellants' pre-relationship interest in these assets was excluded property. The appellant sought an unequal division based on the combined effect of the relatively short duration of the relationship, that substantially all the family property was generated by his excluded property, the parties' relative contributions to the acquisition and maintenance of the family property, and what he asserted were latent tax liabilities associated with the motorcycle shop. The trial judge dismissed all the claims and divided the property equally.

Appeal dismissed. The appellant did not identify any error that would permit appellate intervention. The trial judge correctly stated the legal principles and properly considered the relevant factors.

Key Passages

> [28] This Court recently reiterated the principles applicable to the exercise of discretion to depart from equal division where an equal division would be significantly unfair in *Lamoureux BCCA* at paras. 15–19, drawing from *Jaszczewska v. Kostanski*, 2016 BCCA 286, *Banh*, and *Khan*. The following are of particular relevance in this appeal:
>
> - The general rule of equal division is to prevail unless persuasive reasons can be shown for a different result.
> - The discretion to depart from equal division is "significantly constrained" and must be rooted in the factors set out in s. 95.
> - The term "significant unfairness" creates a "high threshold" that is more stringent than the mere "unfairness" test in the *Family Relations Act*, R.S.B.C. 1996, c. 128 (the predecessor to the *FLA*), and requires something objectively unjust, unreasonable, or unfair in some important or substantial sense.

- The Legislature intended to limit the circumstances in which a departure from equal division of family property could be justified because of unequal contributions to its acquisition, preservation, maintenance, or improvement.
- While unequal contribution has not been abolished as a factor that may be relevant to reapportionment, the circumstances in which it may be considered and relied on are much constrained, and allowing unequal contribution to become a regular consideration would undermine the legislative objectives of certainty and predictability.
- The "significant unfairness" contemplated by s. 95 requires much more than differing financial contributions; and cases in which unequal contribution has resulted in a finding that equal division would be significantly unfair have involved marked, prolonged, and intentional or unexplained disparities in contribution to family burdens.

[Failure to consider the cumulative effect under s. 95(2)]

[30] The second alleged error can be dealt with summarily as it is plainly unfounded. Contrary to Mr. Paletar's assertion, it is apparent from the reasons for judgment that the judge did consider the cumulative effect of the factors he relied on in support of his claim for reapportionment. She identified those specific factors: RFJ at para. 149. She addressed each of them and found that none of them weighed in favour of an unequal division: RFJ at paras. 148–156. She then found that an equal division would not be significantly unfair considering the factors "[he] ha[d] relied on together and the circumstances as a whole": RFJ at para. 157 (emphasis added).

….

[Failure to consider/give adequate weight to the nature of family property]

[35] As explained in *Lamoureux BCCA* at para. 30, "this Court's discussion [in *Venables*] of the relevance of the 'origin' of property related it to the fact that it had previously been excluded property, but its legal status had been transformed". In *Venables*, equal division would have deprived one spouse of substantial value which had previously been his excluded property whereas here, and in *Lamoureux BCCA*, equal division would not have had that effect because the excluded property retained its legal status and the spouse seeking reapportionment retained the value of the excluded property as his separate property.

[36] In oral submissions, Mr. Paletar argued that the judge glossed over the origin of the family property and contrasted her approach to that in *Lamoureux v. Hedquist*, 2023 BCSC 1539 [*Lamoureux BCSC*] and *Chapman v. Cuthbert,* 2021 BCSC 1, where this factor was given more weight.

[37] At the time the appeal was heard, the appeal in *Lamoureux BCSC* had not been decided. Mr. Paletar relied on the trial decision….

> [38] In any event, *Lamoureux BCSC* was overturned on appeal. This Court found that the trial judge erred by placing undue emphasis on the importance of the relative contributions of the parties to the increase in wealth: *Lamoureux BCCA* at para. 26. Justice Harris, writing for the Court, reaffirmed the principles articulated in *Jaszczewska* and *Khan*: a consideration of unequal contributions requires exceptional circumstances and should not be a routine basis to ground a finding of significant unfairness. He emphasized that while pre-relationship contributions by one spouse might be a relevant consideration in determining whether an equal division of family property would be significantly unfair, such as where those contributions are not captured by the retention by the spouse in question of excluded property, those circumstances will be rare: *Lamoureux BCCA* at para. 28.
>
> ….
>
> [40] As noted, the judge cited the relevant provisions of the *FLA* and correctly summarized the applicable principles with reference to *Bahn* and *Khan*. She considered each of the factors Mr. Paletar relied on in support of an unequal division of the family property in issue and she considered those factors together in concluding that he had not met his burden of establishing the high threshold of significant unfairness. She found that the disparities in the parties' financial contributions were explained by Ms. Paletar's circumstances as a young immigrant without an established career, who had two children during the parties' relationship. She found that Ms. Paletar contributed to the family's burdens through her homemaking and childcare roles.

Falconer v Cohrs, 2026 BCCA 38

Issue: Did the judge err by misapprehending evidence and concluding that the parties were jointly responsible for the payment of the mortgage? Did the judge err concerning an excluded property claim by incorporating a requirement that both parties agreed to for the exclusion [not dealt with as the judge erred on the first point]

Overview: Prior to the relationship, the appellant owned two properties. The parties subsequently purchased a property as tenants in common, with each holding a half-interest. The monies for the home were paid from an LOC registered in the names of the appellant and her father. The parties obtained a mortgage against the property to pay down the LOC. The appellant sold both of her properties using a portion of the proceeds to pay off the LOC. The parties completed major renovations on their home using the funds from the LOC. They obtained a second mortgage and used it to pay off the first mortgage. The respondent received approximately $20,000 in excess funds and continued to make payments against the mortgage. There was no written agreement respecting the property the parties purchased. The appellant argued that there was a verbal agreement among her, the respondent, and her father. The respondent did not recall the meeting where the agreement was formed but did not deny that it happened. The trial judge found that in regard to the property purchased during the relationship the parties agreed that the appellant would finance the purchase, the respondent was responsible to service the mortgage, they would

both share the labour of renovating the home, the appeal ant would receive rental income from the home to finance the LOC payments and would finance the renovation costs, but those were to be shared equally between the parties. Of relevance, the judge did not find that the parties agreed that the respondent would be solely responsible for the mortgage against the property.

Appeal Allowed: the judge erred in failing to consider the respondent's trial admission that he was solely responsible for the mortgage.

Key Passages

> [19] In my view, the question of whether or not the parties agreed Mr. Cohrs would be solely responsible to pay the mortgage debt is dispositive of this appeal. For the reasons set out below, I conclude the judge erred in finding the parties were jointly responsible for this debt.
>
> [Mortgage Agreement]
>
> [24] Apart from the comment about Ms. Falconer's failure to call her father as a witness, the trial judge did not make any finding, express or implied, about the credibility of her evidence concerning the meeting at which she says the parties discussed and agreed upon their respective contributions to the Adderly purchase. Ms. Falconer's specific and detailed account of the meeting, which was not denied by Mr. Cohrs, points strongly toward the conclusion that Mr. Cohrs was responsible for the RBC mortgage because it represented part of his contribution toward the Adderly purchase.
>
> [25] More directly to the point, it is impossible to reconcile the judge's finding that the parties did not agree Mr. Cohrs would be responsible for the $500,000 mortgage with the admissions made by Mr. Cohrs during his examination for discovery and at trial.
>
> [26] During his examination for discovery Mr. Cohrs was asked and answered the following question regarding responsibility for the $500,000 mortgage:
>
> > Question 487:
> >
> > Q So you were to pay $2,000 a month towards this line of credit? Is that what I understand you to say?
> >
> > A I would be responsible for the line of credit and it was set up in an amount that was equivalent to a payment of about $2,000 a month.
> >
> > Question 488:
> >
> > Q So you were to be responsible for this line of credit?
> >
> > A That's correct.

[27] During his testimony at trial Mr. Cohrs accepted that he was responsible for the mortgage. During his examination in chief, when asked questions about the 2022 draft cohabitation agreement, he testified:

> Q But was there any sort of agreement in place about sweat equity or responsibility for the line of credit at this time?
>
> A The –
>
> Q Sorry, the RBC line of credit -- or the RBC mortgage against the Adderley property at this point?
>
> A In 2021 you're referring to?
>
> Q This was in 2022 that you received this.
>
> A Pardon me. Correct. Sorry, in 2022, right, the RBC mortgage. I mean, I was making payments on the mortgage. I assume that that's my mortgage even though it's in both of our names. So yes.
>
> [Emphasis added.]

[28] Counsel for Mr. Cohrs submits the phrase "at this time" was ambiguous. I do not agree with this submission. The question put to Mr. Cohrs was, in summary, whether there was an agreement in place in 2022 concerning who would be responsible for the mortgage. Mr. Cohrs' answer indicates he was not only responsible for making monthly mortgage payments but was also responsible for the mortgage debt.

[29] Mr. Cohrs did not retract this evidence. To the contrary, during his cross-examination, Mr. Cohrs once again accepted responsibility for the mortgage.

> Q. Okay. So, before we went for the afternoon break your counsel asked you if you would be responsible for the RBC mortgage that started with $500,000 that has since been paid down. Do you accept responsibility for that mortgage portion?
>
> A. Yes.
>
> [Emphasis added.]

[30] Mr. Cohrs submits it is unclear whether the above question refers to the outstanding portion or the paid-off portion of the mortgage. That argument is illogical. A mortgagee does not take "responsibility" for the paid-off portion of a mortgage. The only reasonable interpretation of the exchange is that Mr. Cohrs agreed he was responsible for the outstanding portion of the RBC mortgage, a mortgage that he had previously made a point of clarifying was his, despite it being in both parties' names. Consistent with this interpretation, is evidence that Mr. Cohrs retained the $20,000 surplus when the proceeds from the RBC mortgage was used to pay off the balance on the original TD mortgage.

….

[32] With respect, in my view, the judge erred by failing to consider the admission made by Mr. Cohrs at trial that he was solely responsible for the RBC mortgage. Had he done so, in conjunction with the uncontradicted evidence of Ms. Falconer concerning the parties' verbal agreement (summarized at para. 22 of these reasons) he would have come to a different conclusion.

….

Riley J. Concurring Reasons

[45] I agree with Ms. Falconer that the trial judge erred in law by rejecting her excluded property claim based on the failure to prove an agreement between the parties. In assessing whether a transfer of previously excluded property from one spouse to another maintains its excluded character, the focus is on the subjective intention of the transferring spouse at the time of the transfer: *Venables* at para. 95; *Namdarpour v. Vahman*, 2019 BCCA 153 at para. 40; *Cohoon v. Stobo*, 2023 BCCA 479 at para. 18. The correct approach, as stated by Justice Griffin in *Venables* at para. 95, is that "the intention of the spouse transferring ownership is key in determining whether the property transferred from one spouse to the other remains excluded property or becomes family property".

….

[49] I also agree with Ms. Falconer that the trial judge's error had a direct impact on the outcome. In rejecting the contention that the parties had reached an agreement for Mr. Cohrs to assume sole responsibility for the entirety of the $500,000 mortgage, the trial judge accepted that "[t]his may have been [Ms. Falconer's] understanding", but the evidence fell "short of that required to establish an oral contract" (at para. 81). This passage, in the context of the reasons as a whole, indicates the trial judge's acceptance of Ms. Falconer's testimony with respect to her own state of mind at the time the Adderley property was acquired. She intended to preserve the excluded property status of $500,000 of the funds used to acquire the Adderley property, subjectively expecting that Mr. Cohrs would contribute that much by securing a mortgage for which he would be solely responsible. The judge's reasons also catalogue the efforts that Ms. Falconer subsequently made to maintain the excluded character of that portion of the property's value, notwithstanding Mr. Cohrs' unwillingness to agree.

[50] On a proper application of the law to the facts as found by the trial judge, one is driven to the conclusion that Ms. Falconer proved her excluded property claim. The value of the claim is $500,000, which is equal to the amount of Mr. Cohrs' contribution to the purchase of the Adderley property in the form of $500,000 in mortgage financing. In other words, Ms. Falconer's intent at the time of the purchase was to preserve as excluded property $500,000 of the property's value.

Glioza v Ardalani, 2026 BCCA 97

Issue: Following a four-day trial in this family law case, the trial judge granted an order that (i) the appellant, Ms. Glioza, and the respondent, Mr. Ardalani, be divorced, (ii) to achieve an equal division of family property, Ms. Glioza must make an equalization payment of $478,642, after which she would retain the former family home (worth $815,000), (iii) Mr. Ardalani must pay monthly child support of $1,000, and (iv) Ms. Glioza was not entitled to spousal support. On appeal, Ms. Glioza challenges every aspect of the order except the divorce.

Overview: Appeal allowed, in part. The trial judge misapprehended the evidence regarding Ms. Glioza's payment of private school fees for the parties' child. The balance of Ms. Glioza's arguments reflect her dissatisfaction with the outcome at trial but are not grounded in any reviewable errors.

Key Passages

> [Property division- failure to consider selling costs]
>
> [43] Against this backdrop, I do not agree that the judge erred in failing to make an adjustment for selling costs of Westview. The requirement to account for distributive taxes or costs does not arise in every property division case: *Maguire v. Maguire*, 2016 BCCA 431 at para. 38; *Sanai v. Mahmoud*, 2017 BCCA 155 at para. 32. A judge need not account for "hypothetical and speculative disposition costs": *Ouellette v. Ouellette*, 2012 BCCA 145 at para. 32. Further, a judge can only fairly take such costs into account where "there is evidence on which to do so": *Sea* at para. 67; see also *Maguire* at para. 38; *Sanai* at para. 32. In this case, the trial judge cannot be faulted for failing to make an adjustment for distributive costs in the absence of some evidence that such costs would have a concrete bearing on the full realization of the substance and effect of the property division order.
>
> ….
>
> [School Fees]
>
> [60] The fact that the parties agreed to set aside a total of $130,000 for private school tuition and that Mr. Ardalani did not know what became of the balance of those funds does not negate the fact that Ms. Glioza paid the $43,149 borne out by the receipt. Although Ms. Glioza may not have been able to account for the balance of the $130,000 that was supposed to have been "set aside", she was, in my view, still entitled to credit for the amount she did spend. I conclude that the judge misapprehended the evidence on this point, as a result of which he erred in failing to reduce the unaccounted-for proceeds by $43,149, thereby overstating the credit due to Mr. Ardalani by half of that amount, namely $21,574.50.
>
> ….
>
> [Determination of Income for Support Purposes]

[64] Ms. Glioza argues that the judge erred in his treatment of: (i) business expense add-backs, (ii) apportionment of business income, (iii) vehicle repair expenses, and (iv) tax gross-up for business expenses added back to Mr. Ardalani's income.

….

[67] I would not give effect to this submission, which is simply an attempt to reargue a factual point Ms. Glioza lost at trial. The judge's consideration of business expense add-backs was a highly factual matter, grounded in the evidence. While Ms. Glioza may disagree with the judge's conclusions, she has not shown any palpable or overriding error, or misapprehension of the evidence on this issue.

….

[75] Because Ms. Glioza did not raise the issue in a timely way at trial, Mr. Ardalani cannot be faulted for not calling the kind of evidence Ms. Glioza now says is lacking. Nor can the judge be found to have erred in failing to rule on the manner in which Mr. Ardalani allocated his business income.

[76] Ms. Glioza effectively seeks to raise the income splitting point as a new issue on appeal. I would not grant her leave to do so, due to the absence of a proper evidentiary record, and the absence of the necessary factual findings from the judge.

….

[80] I would not give effect to this submission. In my view, this argument raises a pure question of fact, or at most a question of mixed fact and law. Although Ms. Glioza disagrees with the judge's characterization of Mr. Ardalani's vehicle repair costs as reasonable business expenses, she has not shown that this conclusion is tainted by any palpable and overriding error.

….

[84] Applying that test in the case at bar, I do not accept that the judge's failure to gross-up add-backs to the parties' incomes meets the stringent misapprehension of evidence standard. Applying a tax gross-up to the particular business expenses the judge added back to Mr. Ardalani's income, the difference would not be material to the judge's conclusion. The gross-up would increase Mr. Ardalani's 2023 *Guideline* income from $53,082 to $59,867, yielding a monthly support obligation of $561. This is considerably less than the $1,000 per month Mr. Ardalani has agreed to pay on a voluntary basis.

….

[Spousal Support]

[94] There is no basis in the record to support an assertion that Mr. Ardalani's earning capacity was materially improved by contributions or sacrifices made by Ms. Glioza during or after the breakdown of the marriage. I therefore see no merit in her argument that the judge erred by failing to take into account some continuing economic advantage

to Mr. Ardalani as a result of the division of household and childcare responsibilities during or after the relationship.

[95] Ms. Glioza argues, as a separate point, that the judge erred in confusing the question of entitlement to spousal support with the determination of the quantum of support that Mr. Ardalani would have to pay if entitlement had been established.

[96] I accept the premise of Ms. Glioza's argument, namely that is important to distinguish between entitlement to spousal support and the quantum of support payable as determined under the *Spousal Support Advisory Guidelines*. Trial judges should consider and decide entitlement to spousal support, even in cases where the amount of support payable at the time of trial would be zero, because subsequent developments in child support obligations or other financial circumstances could produce a different outcome on quantum in the future: Rollie Thompson, "Ideas of Spousal Support Entitlement" (2015), 34 Can. Fam. L.Q. 1 at 16, 25–26.

[97] However, I do not agree with Ms. Glioza's submission that the judge erroneously conflated entitlement and quantum. The judge gave cogent, though brief, reasons in support of his conclusion that Ms. Glioza did not have an entitlement to spousal support, on either compensatory or non-compensatory grounds. He then added that the quantum of support "would be zero in any event": reasons at para. 84. This comment was not essential to the judge's reasoning, and it does not afford any basis for revisiting his conclusion on entitlement.

Janif v Chander, 2026 BCCA 118

Issue: The appellant and the respondent married in 2015 and divorced in 2020. The respondent made a family property claim seeking half of the increase in the value of a townhouse that the appellant owned as of the date of marriage. Following a nine-day trial, the judge granted the respondent's claim, having found no significant unfairness to justify dividing this family property unequally in favour of the appellant. The appellant appeals this ruling on the basis that the trial judge erred in her consideration of significant unfairness under s. 95 of the *FLA*.

Overview: Appeal allowed. The trial judge erred in law in holding that the discretionary nature of s. 95(2)(a) allowed her to consider the full context of the parties' relationship regardless of their actual separation date. On a correct statutory interpretation, "duration of the relationship" in s. 95(2)(a) means the period between the date the relationship between the spouses began and the date of separation.

Key Passages

[Meaning of "duration of the relationship" between spouses]

[32] It is clear from these provisions that the family property regime under the *FLA* concerns itself with the rights and responsibilities that arise during the period between the date the "relationship between the spouses" began and the date of separation.

When a court is given discretion under s. 95(2)(a) to consider the duration of the "relationship between the spouses", the period being referred to must necessarily be the same period as that referred to in ss. 84 and 85.

[33] The trial judge's interpretation of "the duration of the relationship between the spouses" as it is used in s. 95(2)(a) is not supportable when given its ordinary meaning, read in the context of the *FLA* as a whole. Section 95(2)(a) allowed the trial judge, in ascertaining whether equal division of family property would be significantly unfair, to consider the duration of time between the date of marriage and the date of separation. It was not open to the trial judge to consider the ongoing, post-separation relationship between the parties under s. 95(2)(a).

[34] It may be that in some circumstances, the particulars of an ongoing relationship between the spouses, post-separation, could be considered by a court under s. 95(2)(i) as "any other factor … that may lead to significant unfairness". However, since the trial judge's decision in this case was grounded specifically in her interpretation of s. 95(2)(a), and not 95(2)(i), this is an issue that should be left for another day.

[35] In my view, the trial judge was incorrect in law when she interpreted the phrase "the duration of the relationship between the spouses" as it is used in s. 95(2)(a) of the *FLA* as referring to a period of time that is different from the period of time between the beginning of the relationship between the spouses and the date of separation.

7. Child Support

Summary Table

Case	Importance/Issue
Der v Hlookoff, 2025 BCCA 193	ISSUE: Whether chambers judge was precluded from ordering RESP funds be paid out, when it appears to have been dealt with under other orders. OUTCOME: Appeal allowed. IMPORTANCE: This case should probably be in the "other" section of this paper, as it really is about whether or not the reasons are available as evidence when arguing the operation of an order. In this case, the chambers judge was firmly (arguably obstinately) against reading reasons. This case stands for the clear proposition that where interpretation of an order is in issue, it is a clear error to refuse to admit or consider the underlying reasons.
Ke v Zhang, 2025 BCCA 245	ISSUE: Giant hot mess of an appeal by a deeply unhappy litigant arguing among other things, the rarely successful claim in the civil context of the ineffectiveness of counsel. OUTCOME: Nevertheless, successful in one small way. IMPORTANCE: 1. Helpful insofar as the case provides a helpful one-stop shopping case for the principles governing the effectiveness of counsel complaint in the civil context (good luck with that). 2. On the child support front, in this case the trial judge seems to have gone a bit palm tree, making allowances that looked like hardship claims without applying the test (and the very hardship being addressed in property division in any event), and allowing a reduction to income for an expense that does not squarely fall under the CSG save and except as a part of a larger comparative standards of living test (again under the hardship test under s. 10).
J.A. v K.A., 2025 BCCA 375	ISSUE: Child support for a stepchild. OUTCOME: Appeal allowed, sent back for a new trial. IMPORTANCE: The law about stepparent support and the requirement of determining the income and obligations of a living parent first (*H.(U.V.); Sullivan*) were not in issue. The problem in this case was the state of the evidence about the missing biological parent payor. That evidence was either hearsay or served late or both. 1. Upshot: mind your required evidence. Dealing with hunting down information from bio parents who are hard to pin down is expensive and often frustrating but if you want your order……
Mackay v Mackay, 2025 BCCA 390	ISSUE: Retroactive Reductions in Child Support / Business Expenses Imputation OUTCOME: Appeal allowed in part. IMPORTANCE: 1. Retroactive reduction: the effective *Colucci* notice only occurred when the payor a) advised of the reduction and b) provided documents. It was only on the second step that "reasonable proof" (*Colucci* at 88) had been given. 2. Business Expenses: all that was added back was some fuel costs, but the case does address the shifting onus (*M.T.*) and the procedural notice requirements on such a complaint and response.
R.G.B. v J.G.S, 2025 BCCA 404	ISSUE: A 10-Year Reassessment (Issues about retroactivity; imputation.) OUTCOME: Appeal upheld.

	IMPORTANCE: 1. The Hildebrand Argument: (i.e. the order was so old it was tantamount to being a final order) Here, there were provisions in the order that contemplated a revisiting and there was a material change on the evidence anyway. Accordingly, whether it was final or not was not relevant. 2. On the notice issue (interesting that it comes on the heels of *Mackay*), the court below relied on "fair balancing" and "just outcomes" language of Colucci. Overall, lack of any "injustice" rules the day.
S.A. v. Z.R., 2026 BCCA 196	ISSUE: The evidentiary burden(s) under s. 19 of the CSG. Appellant complained that the CS recipient had the onus under s. 19 to prove both that a spouse is not working to capacity and that their un/under employment is not required by the needs of a child. OUTCOME: Appeal dismissed. IMPORTANCE: Change of the text and coming into line with other provinces. Under s, 19(1)(a), a party need only demonstrate a prima facie reduction in income (this is as easy as adducing tax returns); thereafter, the onus shifts to the payor to justify their choices and explain why their childcare obligations should permit the reduced or lack of income.

Der v Hlookoff, 2025 BCCA 193

Issue: Appeal from order requiring appellant to release RESP funds to reimburse living and educational expenses of daughter. Appellant claimed chambers judge precluded from making the order as expenses in question had been finally determined by court. Did the judge err in law by refusing to consider the reasons for judgment when interpreting the second Order?

Overview: Appeal allowed. Court orders are to be interpreted with regard to the context in which they are made, which includes the reasons for judgment. In this case, the reasons below made it clear that the issue before the chambers judge had already been determined by a prior court order. There was no basis on which that prior order could be varied or set aside. It was an error for the chambers judge to refuse to consider the reasons and his resulting order must be set aside.

Key Passages

> [Application]
>
> [30] The application before the chambers judge in this case required him to determine whether a prior order had finally determined what expenses could be claimed on behalf of M as 2022/2023 Expenses. That called for an interpretation of the Marzari Order. It is settled law that in interpreting an order a court is to examine the pleadings of the action in which it is made, the language of the order itself, and the circumstances in which the order was granted: see, among others, *Yu v. Jordan*, 2012 BCCA 367; *Sutherland v. Reeves*, 2014 BCCA 222; *S.R. v. A.B.*, 2021 BCCA 28; and *MacAdams v. Grewal*, 2024 BCCA 367. In *R. v. Rajaratnam*, 2019 BCCA 209, this Court explicitly included the reasons for judgment as part of the relevant surrounding circumstances, noting "the

[6] Text is included in spousal support sections below.

court's reasons, where they exist, will often be the strongest indicator of the objective meaning of the order": at para. 156.

[31] In my view, that is so even if the order appears at first to be unambiguous. In *Re: Sharpe,* [1992] FCA 616 (Aust.), (cited with approval in *Campbell v. Campbell*, 2016 SKCA 39 and *D.B. v. I.S.*, 2019 NBCA 6) Justice Drummond held:

> [20] … even if a judgment is not ambiguous, it is nevertheless proper (if not essential) in construing it to have regard to the factual context in which the judgment was given and that this context includes the pleadings, the reasons for the judgment and the course of evidence at the trial.
>
> [Emphasis added.]

[32] I agree with Mr. Der's submission that where, as here, there is a question of interpretation of a prior order, specifically what issue with respect to educational expenses was reserved for consideration in January 2024, it is a reversible error to consider the reasons for judgment to be irrelevant to the interpretative process. As the Saskatchewan Court of Appeal held in *Hertz v. Kille*, 2023 SKCA 3, an issue as to whether a court decision has been properly interpreted by a judge gives rise to a question of law. The recital of authorities in support of that proposition in that case bears repeating:

> [15] … [T]he interpretation of a judicial decision or court order is not governed by the subjective understandings of the parties … An issue as to whether a court decision has been properly interpreted by a judge gives rise to a question of law (see *Beauharnois Election Case (Loy v Poirier)* (1902), 1902 CanLII 49 (SCC), 32 SCR 111; *R v Telmosse*, 1944 CanLII 401 (SCC), [1945] 1 DLR 779 (SCC); *Pratt v Johnson*, 1958 CanLII 79 (SCC), [1959] SCR 102 [*Pratt*]; and *Letter Carrier's Union of Canada v Canadian Union of Postal Workers*, 1973 CanLII 183 (SCC), [1975] 1 SCR 178).

[33] In my view it is clear from her reasons for judgment that Marzari J. weighed the evidence before her, the same evidence that was before the chambers judge here, determined what 2022/2023 Expenses were reasonable and made an order approving the payment of those expenses. It is also clear that she "adjourned over" Ms. Der's request for payment of future, not previously incurred, educational expenses from the RESPs. Interpreting the existing order without reference to the reasons for judgment resulted in an error in interpretation that we should rectify.

[34] In my opinion Mr. Der is correct to say that there was no basis upon which the Marzari Order with respect to expenses could be varied or set aside by Branch J. I would therefore allow the appeal and set aside the order that $24,343.10 shall be payable from the parties' RESP to the respondent and the order requiring the appellant to provide necessary information and documents to allow for this amount to be withdrawn from the RESP and paid to the respondent.

Ke v Zhang, 2025 BCCA 245

Issue: Undue hardship; Appellant appealed every order made by the trial judge, except for the divorce. His main argument was ineffective assistance of counsel, alleging that counsel acted contrary to his instructions and failed to represent his interests. He also argued that the trial judge erred in failing to accept his position on certain matters at trial, including the division of property and child support.

Overview: The appellant was ordered to pay child support from the date of separation to the date he became the primary caregiver of the children in February 2021. At that time, the respondent moved to Singapore to resume her nursing career after being unable to obtain certification in Canada. The trial judge found the respondents' retroactive payments of child support would commence in January 2022 because she could not pay support immediately due to not having a job for 6 months and dealing with joint debts. For 2023, the trial judge found it would be unfair to use the respondent's reported income ($76,331) because she incurred costs to travel back to Canada for the trial and fixed her income at $72,000 per year for prospective support. Everything else was denied.

Appeal allowed in part. This is not one of the "rarest of cases" where the appeal court will give effect to a claim of ineffective assistance of counsel in a civil matter. This conclusion is dispositive of the bulk of Mr. Ke's grounds of appeal. With regard to the remaining grounds: (i) the trial judge erred in his determination of Ms. Zhang's guideline income for the purposes of child support, and the appeal is allowed to the limited extent of increasing the quantum of Ms. Zhang's retroactive and prospective child support obligations, and (ii) Mr. Ke has failed to show any other error in the trial judge's decision.

Key Passages

> [Complaint about the effectiveness of counsel]
>
> [31] I would not characterize the present appeal as extraordinary. The interests at stake are purely financial. There is no fresh evidence application, so the Court has only a "partial picture" of the conduct that is the subject of Mr. Ke's complaints. Furthermore, in my view, it would be unfair to Ms. Zhang to revisit the trial results based on issues that have nothing to do with her. Indeed, the appellant is now seeking to resile from positions taken in the court below, which is objectionable because it creates unfairness and undermines the principle of finality: *Deissner v. Boorsma*, 2023 BCCA 476 at paras. 19, 24. For all of these reasons, I would not give effect to any of Mr. Ke's arguments about the conduct of his trial counsel.
>
> ….
>
> [Property division challenge]
>
> [36] Mr. Ke has not shown that the trial judge's decision is tainted by any misdirection or is so clearly wrong as to be unjust. While it is true that Mr. Ke paid all the post-

separation carrying costs, he also received the proceeds from the rental of the basement suite, and he and his parents resided in the property from 1 February 2021 onward. The trial judge took all of this into account, concluding that Mr. Ke should receive credit for the reduction in the mortgage principal, but nothing else. Mr. Ke may disagree with the outcome, but he has not shown any reviewable error in the judge's analysis, or that the outcome is unjust. Finally, while the value of the property increased substantially from the date of separation to the date of the trial, that increase was due entirely to market forces, and Mr. Ke received credit for his reduction of the mortgage principal.

….

[Child Support]

[39] The standard of review governing an appeal from a support order attracts even greater deference than other decisions in family law matters: *Goldman v. Goldman*, 2024 BCCA 388 at para. 23. Absent an error in principle, a significant misapprehension of the evidence, or an error of law, the appeal court will not intervene: *Chandler v. Chandler*, 2024 BCCA 325 at para. 29; *Goldman* at para. 23; *Barendregt v. Grebliunas*, 2022 SCC 22 at para. 103.

….

[41] Dealing with the first of Mr. Ke's arguments, the basis for the trial judge's determination that Ms. Zhang was not obliged to pay child support for the last 11 months of 2021 was that she was dealing with joint debts and therefore unable to pay support immediately. Although the judge did not say so explicitly, it would appear that he acceded to Ms. Zhang's argument that requiring her to pay child support during this time frame would pose an "undue hardship" as contemplated in s. 10(1) of the *Federal Child Support Guidelines* [*Guidelines*], because she had to repay the $19,000 NUH debt arising from the breaking of her employment contract in Singapore after the parties made a joint decision to relocate to Canada for Mr. Ke's career.

[42] There are several problems with the trial judge's approach.

[43] First, there is nothing in the reasons to indicate that the trial judge considered and applied the "two-step" undue hardship analysis contemplated in s. 10 of the *Guidelines*, as discussed in *Kelly v. Kelly*, 2011 BCCA 173 at paras. 33–34. Although the judge is presumed to know the law, in this particular case it is not possible to discern that the judge took into account and applied the "stringent threshold" of hardship that must be met at the first step of the test: *Kelly* at para. 36. Perhaps more importantly, there is no indication that the judge undertook the comparative "standard of living" analysis comprising the second step of the test, per s. 10(3) of the *Guidelines*.

[44] Second, the judge's analysis overlooked the fact that this was a retroactive claim, which in the particular circumstances of this case sheds important light on the question of hardship. Neither Mr. Ke nor Ms. Zhang paid any child support prior to the trial, and the trial judge was asked to consider lump sum awards for the unpaid amounts. This point is

particularly significant because the NUH debt that Ms. Zhang had to pay upon her return to Singapore in 2021 was accounted for as part of the trial judge's division of family property and debt. It therefore made little sense for the judge to use it as a basis for declining to make a lump sum award covering Ms. Zhang's past child support obligations. Further, although it is clear that Ms. Zhang did not, in fact, work for the first few months that she returned to Singapore, that was a short-lived situation and Ms. Zhang's retroactive child support obligation fell to be determined on her annualized guideline income.

[45] Having ordered a lump sum award for the child support Mr. Ke did not pay over the eight months that the children were primarily resident with Ms. Zhang, in my respectful view the trial judge erred in principle in failing to follow the same approach for determining a lump sum award for the support that Ms. Zhang did not pay over the first 11 months that the children were primarily resident with Mr. Ke. Based upon a guideline income of $35,845,[2] Ms. Zhang was required to pay child support of $575 per month for the final 11 months of 2021, leading to a $6,325 increase in Ms. Zhang's retroactive child support obligation.

….

[Error in determining guideline income for 2022 and 2023]

[48] For 2023 and following, the trial judge decided to "fix" Ms. Zhang's guideline income at $72,000, when her "paystubs" reflected a 2023 income of $76,331, which was the income amount Mr. Ke argued for at trial: Reasons at para. 46. The trial judge opted for this lower figure based on a finding that Ms. Zhang had to incur expenses to travel back to Canada for the trial. While the reasons do not include any explicit finding of undue hardship, I infer that this was the basis on which the trial judge set Ms. Zhang's income below the amount required under s. 16 of the *Guidelines*. The fact that a parent has incurred "unusually high expenses in relation to exercising parenting time with a child" is a circumstance that can cause undue hardship, per s. 10(2)(b) of the *Guidelines*. However, once again, the trial judge's reasons do not indicate that the two-step undue hardship analysis required under s. 10 of the *Guidelines* was applied. More specifically, there is nothing to indicate that the trial judge applied the "stringent standard" of undue hardship contemplated in the *Guidelines*, nor is there any indication that the judge conducted the requisite "standard of living" analysis under the second step of the test.

[49] I conclude that the trial judge erred in "setting" Ms. Zhang's 2023 guideline income below the amount of her stated income as contemplated in s. 16 of the *Guidelines*, without any articulated basis for doing so. The error is of some significance because the judge used Ms. Zhang's 2023 guideline income to determine her prospective child support obligations. It seems hard to justify a reduction of Ms. Zhang's guideline income by $4,331 per year, based on a return trip from Singapore to Canada

once per year, particularly without a comparative standard of living analysis as required under ss. 10(3) and (4) of the *Guidelines*.

….

[Directing that the quantum of support be reviewed annually]

[52] There is no reviewable error in this aspect of the trial judge's decision. The determination of a review date was within the discretion of the trial judge, who was in the best position to ascertain the most suitable date. The trial concluded on 21 December 2023, and judgment was given on 13 June 2024. Given the timing, it made eminent sense for the judge to set the first review for 1 July 2025. The alternate review date now proposed by Mr. Ke would have been a mere six months after the trial concluded, and less than one month after the delivery of judgment. There would have been little to no benefit in requiring a review of support obligations on this timeline, and the judge made no reviewable error in declining to do so.

….

[The Respondent's Debt]

[53] Mr. Ke argues that the trial judge erred in requiring him to compensate Ms. Zhang for one-half of the $19,000 NUH debt. Mr. Ke contends that the NUH debt was not a family debt, because it was a financial obligation incurred by Ms. Zhang before the marriage-like relationship. This submission is inconsistent with the position Mr. Ke took at trial through his counsel, who conceded that Mr. Ke should bear responsibility for one-half of the NUH debt. For the reasons given above, I would not allow Mr. Ke to resile from this position. I should add that trial counsel's position certainly fit with the evidence at trial, as Ms. Zhang testified that she incurred the NUH debt as a result of a decision to break her employment contract when the parties decided to relocate from Singapore to Canada, all of which occurred several years into the relationship.

….

[Spousal Support]

[54] Mr. Ke argues that the trial judge erred in finding that Ms. Zhang was entitled to spousal support. However, once again, his counsel conceded this issue at trial, and it is not appropriate to allow Mr. Ke to reverse this position on appeal.

J.A. v K.A., 2025 BCCA 375

Issue: The appellant, J.A., appeals trial orders that: (1) gave the respondent, K.A., sole responsibility for making parenting decisions for their child; (2) required J.A. to pay K.A.

indefinite spousal support; (3) required J.A. to pay child support for his stepson, T.J.; and (4) required J.A. to reimburse K.A. for Euros that went missing in her move from the family home. K.A. cross-appeals the trial judge's costs order.

Overview: Appeal allowed in part, and cross-appeal dismissed.

As to the appeal: (1) The trial judge made palpable and overriding errors of fact in her assessment of the child's best interests, which in turn was the basis for her decision to allocate all parenting responsibilities to K.A. The terms of the trial order relating to parenting responsibilities are set aside, and the issue is remitted for a new trial. Interim terms are ordered to govern the allocation of parenting responsibilities until such terms are varied by the Supreme Court. (2) The trial judge erred in principle in ordering indefinite spousal support in the circumstances of this case, without a review term. The terms of the trial order relating to spousal support are varied to provide that either party may request a review of spousal support, in relation to both entitlement and quantum, after July 1, 2026. (3) The trial judge erred in relying on inadmissible and unreliable evidence to establish the support obligation of the stepson's biological father, which was a first step to determining J.A.'s responsibility for child support. The terms of the trial order requiring J.A. to pay support and a portion of s. 7 expenses for the stepson are set aside, and the issue is remitted for a new trial. Interim terms are ordered to govern J.A.'s responsibility for child support for his stepson, subject to future adjustment, until such terms are varied by the Supreme Court. (4) There is no basis for appellate interference with the trial judge's order that J.A. must reimburse K.A. for the missing Euros.

As to the cross-appeal: It is unnecessary to determine whether K.A. required leave to cross-appeal the costs order because the decision on appeal undermines the basis for the cross-appeal in any event.

Key Passages

> [Issue 1: Did the trial judge err in her assessment of the child's best interest in giving all parenting responsibilities to the respondent]
>
> [123] K.A. acknowledges that the judge erred in finding that J.A. proposed that he have full custody of the Child at this time. However, she contends that the error is inconsequential and does not undermine the trial judge's critical factual findings about J.A.'s motives. For a number of reasons, we do not agree.
>
> [124] First, J.A.'s proposal on June 30, 2021, that the parties share custody of the Child on an equal basis tends to undermine any conclusion that he had, by then, developed a litigation strategy of gaining full custody. Indeed, it is difficult to rationalize such a strategy with an opening proposal of shared custody. K.A. did not respond to the proposal, other than by painting the walls, ceilings, and floors of a room in the Family Home with the word "despicable" early the next morning. There is little point in speculating how things might have turned out had K.A. meaningfully engaged in discussions with J.A. when the proposal for shared custody was made.

[125] Second, the trial judge's factual error in describing the content of the June Draft Separation Agreement tainted the lens through which she viewed J.A.'s evidence that the notes in his notebook simply related to questions he wanted to put to his lawyer. The fact that J.A. proposed shared custody in the June Draft Separation Agreement, after consulting with his lawyer, tended to support his evidence that his notes beforehand reflected the questions he had about the legal process rather than a formed legal strategy to gain full custody of the Child. However, the trial judge assessed J.A.'s evidence about the meaning of the notebook from the premise that his first proposal to K.A. was for full custody.

[126] Third, the trial judge's factual error also tainted her perception of the events that followed. The inference arising from the trial judge's reasons is that K.A. was effectively provoked into the painting incident because she was railing against J.A.'s legal strategy, aiming for full custody, as laid out in the notebook and the June Draft Separation Agreement. With the judge's factual error corrected, K.A.'s actions become more difficult to rationalize, and J.A.'s concerns about her behaviour more firmly grounded. It was objectively not "despicable" for J.A. to propose a shared parenting arrangement.

[127] Fourth, and relatedly, the trial judge's error also caused her to err in her characterization of the parties' communications in August 2021, once K.A. had retained counsel. The trial judge found as follows:

> [120] In August 2021, K.A. obtained some legal representation. Her lawyer suggested to Ms. Mauro that the McKimm Protection Order should be set aside as an overreach, so as to reset the situation toward a more cooperative one. This suggestion was flatly rejected by J.A.

[128] It is not unclear what evidence the trial judge was referring to in stating that "this suggestion was flatly rejected by J.A.". The evidence of the communication between K.A.'s then-counsel and J.A.'s counsel, Ms. Mauro, in August 2021 suggested that both parties wanted to adopt a more cooperative path forward. An email sent by K.A.'s counsel on August 6, 2021, stated that she and Ms. Mauro were "on the same page" in wanting to work together to reduce the conflict. Indeed, it was J.A.'s counsel who drafted the August Draft Separation Agreement, which attempted to reduce the conflict by proposing a process for the parties to work towards shared custody.

[129] Despite this evidence, the trial judge found as follows:

> [122] By mid-August, J.A.'s safety concerns about K.A., which were the basis for the McKimm Protection Order, had melted away. J.A.'s lawyer then attempted to use the Order as leverage to get K.A. to sign the separation agreement that J.A. had proposed some time ago. K.A. refused.
>
> [Emphasis added.]

[130] It is also not clear what evidence the trial judge is referring to in stating that J.A.'s safety concerns about K.A. had "melted away" by mid-August of 2021. The August Draft

Separation Agreement proposed that concerns about J.A.'s parenting of the Child would be addressed through a period of supervised parenting before the parties moved to shared parenting.

[131] In any event, the trial judge's finding that J.A.'s lawyer used the Protection Order as "leverage to get K.A. to sign the separation agreement that J.A. had proposed some time ago" reflects a further material misapprehension of the evidence. The June and August Draft Separation Agreements were different in substance, but neither proposed that J.A. would have full custody of the Child. As we have reviewed, the August Draft Separation Agreement, which was in evidence at trial, addressed the issues raised by K.A.'s then-counsel in her communication with J.A.'s counsel. J.A. proposed that: (1) the Protection Order be set aside by consent; (2) K.A. have at least four supervised parenting visits with the Child as a first step towards shared custody; (3) the parties jointly exercise parenting responsibilities; and (4) the dispute over interim possession of the Family Home be addressed in a court application to be scheduled for late August.

[132] The trial judge's errors on these factual issues fundamentally undermine her critical finding that J.A. had formed a legal strategy before the parties' separation to gain full custody of the Child and keep possession of the Family Home. This error in turn taints the trial judge's assessment of J.A.'s credibility, and her conclusion that he gave primacy to his own interests instead of the interests of the Child. It is unnecessary for us to decide whether these factual errors by the trial judge are alone sufficient to justify appellate intervention. There is a related, and more pervasive, error by the trial judge in her failure to grapple with, or even refer to, a large body of evidence that contradicted her key factual findings in her assessment of the Child's best interests.

….

[Evidence that was ignored or overlooked]

[133] The parenting time dispute between the parties at trial focussed on J.A.'s assertion that K.A. could not be relied on to act in the Child's best interests due to her hatred of J.A., and her inability to regulate her behaviour in expressing that hatred. J.A. argued the evidence showed that K.A. had persisted in making negative comments about him to the Child, thus involving the Child in the conflict between the parents, and that she lacked awareness of the emotional impact of her conduct on the Child. The argument and evidence on this point was relevant both to the assessment of K.A.'s capacity to act in the Child's best interests and the assessment of J.A.'s motives for resisting a move to shared parenting over the previous three years.

[134] Within this context, we conclude that the following evidence was either ignored by the trial judge or was not considered or examined in her assessment of the Child's best interests.

* * *

[172] We do not suggest that the trial judge was bound to accept the evidence of K.A.'s concerning behaviours, or the views of the professionals as to how they impacted the Child. However, the evidence was material to the central parenting issue at trial: the emotional distress experienced by the Child due to K.A.'s apparent inability to refrain from disparaging J.A. in his presence. The trial judge was, at a minimum, required to address the evidence and to explain how it could be reconciled with her findings or to explain her reasons for rejecting it. Without such an analysis, the trial judge's assessment of the Child's best interests was incomplete.

[173] The trial judge placed significant emphasis on the Protection Order that was granted on July 2, 2021. Eight pages of the Trial RFJ are devoted to the Protection Order. This includes the trial judge's critique of the evidence that was before the Provincial Court, and her view, "with the benefit of hindsight", that a Protection Order either should not have been issued or should have been issued on a time-limited basis: Trial RFJ at paras. 100–117. While the Protection Order was obviously relevant in providing context for the conflict between the parties, the question for the trial judge was not whether a Protection Order should have been issued in 2021, but rather what parenting arrangements were in the Child's best interests at the time of trial in 2024. In our respectful view, the trial judge's focus on remedying perceived past injustices to K.A. distracted her from a full consideration of the Child's current best interests.

[174] For these reasons, we conclude that the trial judge made palpable and overriding errors of fact that justify appellate intervention. The trial judge's material misapprehension of evidence, combined with her failure to address the substantial body of evidence that contradicted her findings, undermines her assessment of the Child's best interests. The errors go to the core of the trial judge's finding that K.A. "is better suited to be the parent making the *FLA* parenting decisions" for the Child in his best interests: Trial RFJ at para. 242.

….

[Issue 1: Prospective spousal support]

[Failure to impute income]

[191] In our view, it was open to the trial judge on the evidentiary record to conclude that it was not reasonable to impute employment income to K.A. as of January 1, 2023. There was evidence that K.A.'s cancer had been in remission since 2021. However, there was also evidence that the cancer had a continuing impact on her physical and mental health as of the time of trial. The question of whether K.A. had the capacity to return to full-time work as of January 2023 was a question of fact. We see no palpable and overriding error in the trial judge's conclusion that in the circumstances of this case, it was not appropriate to impute income to K.A. in 2023 and 2024.

[Termination or Review Date]

[192] As we have reviewed, the *SSAG* calculation relied on by the trial judge indicated a duration for spousal support of between 4.25–8.5 years from the date of separation; which would mean termination dates from September 2025–December 2029: Trial RFJ at para. 351. The trial judge's initial spousal support order did not specify a termination or review date for spousal support. At the supplementary hearing, the trial judge rejected J.A.'s request that such a date be set. Her reasons are set out in the Supplementary RFJ as follows:

> [14] There is no indication in the minimal time since the *Reasons* were issued – almost four months – that K.A. has been able to make any strides toward regaining employment.
>
> [15] I see no basis upon which to set any termination date for spousal support.
>
> [16] As for any review, J.A.'s counsel suggests a review date of July 2026.
>
> [17] I conclude that setting a review date is not appropriate under s. 15.2 of the *Divorce Act*. R.S.C. 1985, c. 3 (2nd Supp.). In doing so, I am mindful of the comments found in *Leskun v. Leskun*, 2006 SCC 25 at paras. 36-39 as to when review orders may be justified and, if so, on what terms.
>
> [18] After the lengthy and extremely contentious litigation history of this matter, I resolved the issue of spousal support based on the evidence before me where the relative financial circumstances of the parties were not in doubt, including into the near future: *Schmidt v. Schmidt*, 1999 BCCA 701 at para. 9; *Westergard v. Buttress,* 2012 BCCA 38 at para. 23. J.A.'s suggestion for a review date, only two years after that time, is only an invitation to continue this bitter and destructive litigation.
>
> ….

[Support on non-compensatory grounds]

[200] In the present case, the trial judge did not consider the circumstances relevant to the question of the quantum of spousal support in declining to order a termination or review date. The circumstances included: (1) the parties' relationship was relatively short; (2) K.A. received a disproportionate share of the proceeds of the Family Home due to the recognition of her claim for an exclusion (approximately $127,000); (3) the parties shared custody of the Child; and (4) K.A. appeared to have strong employment prospects and no medical condition (at least not one supported by medical evidence) that left her permanently disabled from working.

[201] We acknowledge that there was uncertainty about the timing of K.A.'s return to work. That uncertainty might justify deferring the question of duration to a review hearing at some future date. However, in our view the uncertainty did not warrant an order requiring J.A. to pay indefinite spousal support to K.A., subject only to a variation application if he could demonstrate a material change in circumstances. The effect of the

trial judge's order was to shift to J.A. the burden of proof that K.A. had no continuing need. The only reason given by the judge for declining to order a review term is that it would constitute "an invitation to continue this bitter and destructive litigation": Supplementary RFJ at para. 18. This reason might explain setting a termination date rather than allowing for future review. However, it does not warrant an order for indefinite support in circumstances where such an order is not justified by the principles underpinning an award of non-compensatory support.

[202] We also acknowledge the comments of Justice Binnie in *Leskun v. Leskun*, 2006 SCC 25 at para. 39, encouraging courts to avoid, as much as possible, making temporary spousal support orders that are subject to future review. However, in the circumstances of the present case, the principled choice is between setting a termination date for spousal support or to permit a future review. This Court is not well positioned to set a termination date given the state of the evidence about K.A. and her health issues. Furthermore, as we are ordering a new trial of other issues, a term permitting the review of spousal support is of less practical concern in terms of the finality of the proceeding.

[203] For these reasons, we conclude that the trial order should be amended to provide that either party may request a review of spousal support, in relation to both entitlement and quantum, after July 1, 2026. That timing should permit the parties to have any review heard at the same time as the other issues we are remitting to the trial court, assuming they consider this to be expeditious.

….

[Issue 3: Did the trial judge err in ordering the appellant to pay child support]

[213] The present case is unusual as T.J. is now 16 years old, and M. has never paid regular monthly child support to K.A., either pursuant to an agreement or a court order, despite his apparent ability to do so. This is not because K.A. was unable to enforce M.'s legal obligation to pay child support, such as occurred in *Shen* where the biological spouse moved to a jurisdiction where a support order could not be enforced. M. has apparently always been involved in T.J.'s life and been available as a support to both T.J. and K.A. Rather, K.A. chose not to ask for support, beyond the voluntary payments M. made on occasion, and she now says that M.'s circumstances now are such that he is unable to contribute.

[214] The central issue on this appeal is whether the trial judge erred in accepting K.A.'s evidence regarding M.'s current circumstances, either because it was inadmissible hearsay or because its late service caused prejudice to J.A. We consider it unnecessary to address J.A.'s argument that the trial judge should not have permitted K.A. to file her material three weeks past the deadline provided by the judge's own order. In our view, the trial judge erred in law in admitting K.A.'s evidence despite its hearsay nature when the conditions for the receipt of hearsay evidence were not established on the record. Specifically, there was no explanation of why it was necessary for the evidence to come

from K.A. instead of directly from M., and the evidence was unreliable in the absence of any explanation by K.A. of the source of her knowledge of M.'s income.

[215] The critical fact found by the trial judge was that M.'s annual income had reduced to approximately $22,500 by July 2024. There was no reliable and admissible evidence to support this finding. It may be inferred that K.A. was told this information by M.—indeed at times K.A. references income information "reported" to her by M.—although her affidavit is not clear on this point. It is also not clear why M. could not have provided the evidence himself, including the financial records to demonstrate his income.

[216] Although we do not need to address it as an independent ground of appeal, the late delivery of K.A.'s material compounded the issues with her evidence because J.A. was deprived of any opportunity to cross-examine her on it. As a result, there was no sound evidentiary basis for the trial judge to determine M.'s child support obligation, which was a necessary first step to determining J.A.'s obligation, if any.

[217] For these reasons, we would set aside the trial judge's order requiring J.A. to pay child support and s. 7 expenses for T.J. and remit this issue to the trial court for redetermination. As this is an issue of child support, we do not consider it appropriate to simply dismiss K.A.'s claim due to the evidentiary deficiencies we have identified. Rather, K.A. should have a further opportunity to adduce sufficient evidence to permit a proper determination of M.'s support obligation, and J.A. should have the opportunity to test the evidence. We will make an interim order that J.A. continue to pay $500 per month towards child support for T.J., and 60% of s. 7 expenses, pending the new trial to account for the possibility that J.A.'s responsibility to pay support for T.J. at that level may be affirmed (or even increased) following a new trial of the issue. Each of the parties may seek reimbursement from the other if the ultimate support order is either higher or lower than this interim order.

[218] There is also the issue that J.A. has raised about the trial judge's failure to recalculate spousal support after determining his monthly obligation to pay child support to T.J. The trial judge commented that the extra monthly $500 support payment did not affect spousal support. J.A. maintains that this is incorrect. Given that we have ordered there may be a review of spousal support, which could potentially occur at the same time as the re-trial of other issues, J.A. can raise this issue in the trial court in the event that his obligation to pay child support for T.J. is confirmed.

….

[Issue 4: Did the trial judge err in ordering that the appellant compensates the respondent for the missing Euros?"]

[222] Given the factual record, we see no basis for appellate interference with the trial judge's conclusion that J.A. should compensate K.A. for the missing Euros. Our view should not be taken to endorse the trial judge's observation that J.A. showed a "callous disregard" for K.A.'s possessions. However, there was sufficient evidence for her to

conclude that J.A. had knowledge of the location of the Euros, and in light of that knowledge, and his possession of K.A.'s belongings, it was reasonable to impose the responsibility on him for their loss. Therefore, we would not accede to this ground of appeal.

Mackay v Mackay, 2025 BCCA 390

Issue: Did the judge err (1) in retroactively adjusting child support back to July 1, 2022, (2) the failing to add back some or all of the respondent's business expenses to his *Guidelines* income, (3) in determining the parties agreed to vary the terms of the May 16, 2023, order concerning allocation of parenting coordinator costs, making the appellant solely responsible for such costs.

Overview: Appeal allowed in part. The judge erred in determining the period for which child support should be reduced and in finding the parties agreed to vary the May 16, 2023, order. With one exception, the judge did not err in declining to add the respondent's business expenses back to his income for the purposes of calculating support.

Key Passages

[Retroactive Adjustment of Child Support]

[Effective Notice]

[40] In addition, as para. 22 of the Chambers Reasons makes clear, the judge knew she was required to consider any "informational asymmetry" between the parties. She implicitly recognized the requirement that she do so for the purposes of determining when effective notice was given. Finally, the judge made a finding at para. 24 of the Chambers Reasons that Mr. MacKay provided "effective notice" of his intention to seek a variation in child support.

[41] In my view, there is no question the issue of when effective notice had been provided was raised in the court below. I would not accede to Mr. MacKay's argument that the question of whether and when he provided effective notice of his intention to seek a retroactive reduction in child support is a new issue.

….

[Error in determining the date of effective notice]

[46] In my view, although Mr. MacKay did not disclose all of the financial documents required under the Final Order in March 2023, the disclosure he did provide constitutes clear communication of his change in circumstances consistent with the requirements for disclosure set out at paras. 88 and 113(2) of C*olucci*. He set out that his corporate income fell substantially in 2022 and he had dropped his salary to $70,000. He alerted Ms. Herath to the possibility that he may apply to reduce monthly child support. In addition, the correspondence Mr. MacKay provided from his two largest corporate welding clients demonstrated the reduction in his corporate income was not

transitory. This information, along with the financial documents he did provide (his 2022 income tax return and draft 2022 corporate financial statements), constitutes sufficient "reasonable proof" to allow Ms. Herath to assess the likelihood of and to plan for a reduction in monthly child support.

[47] For the reasons set out above, I would conclude the judge erred in finding Mr. MacKay had provided effective notice of his intention to seek a reduction in child support in September 2022. Rather, I would conclude Mr. MacKay provided such notice on or about March 13, 2023. As a result, the presumptive date of retroactivity falls on the later date.

….

[Do the *D.B.S.* factors justify a reduction in child support prior to the presumptive date?]

[53] Given the parties relatively modest financial circumstances and the amount of child support at stake, it would not be in the interests of justice to remit this issue back to the court below for reconsideration. As a result, I will address the question whether, in consideration of the *D.B.S.* factors applied to the facts of this case, it would be appropriate to order a retroactive reduction in child support prior to the presumptive date of retroactivity.

[54] I would conclude, when applied to the circumstances of this case, the *D.B.S.* factors do not justify a departure from the presumption that child support should not be retroactively reduced prior to the date of effective notice. I will explain why.

[55] The first factor is whether Mr. MacKay had an understandable reason for the delay in giving Ms. Herath effective notice. The relevant period of delay is July 1, 2022, the date from which Mr. MacKay first sought a reduction in monthly child support to the date of effective notice, which is March 13, 2023. As set out in *Colucci* at para. 98, understandable reasons may include health problems or other difficulties that prevent the payor from confronting the situation, an unwillingness to disrupt a fragile parent-child relationship, or a lack of financial or emotional wherewithal to provide notice. There is no evidence to suggest any of these circumstances apply in this case and Mr. MacKay has not put forth any other compelling explanation for the delay.

[56] With respect to the second factor, payor conduct, *Colucci* confirms blameworthy conduct is that which has the effect of privileging the payor's interests over the child's right to support (at para. 101). In my view, Mr. MacKay's failure to comply with his financial disclosure obligations under the Final Agreement constitutes blameworthy conduct. For example, until September 2022, he did not disclose his corporate earnings for 2021, which were significantly higher than the previous years' earnings. By delaying disclosure of this information, he prevented Ms. Herath from seeking an increase in child support effective July 1, 2022, pursuant to the process set out in the Final Order. As well, the record demonstrates Ms. Herath made multiple requests and applied for financial

disclosure pursuant to the terms of the Final Order prior to March 13, 2023, and Mr. MacKay only substantially complied at that time.

[57] The third factor considers the circumstances of the child. Where a retroactive decrease in child support results in an order for the recipient to repay support, this may result in hardship for the child and recipient. In those circumstances, it is even more important for the payor to provide prompt notice of a decrease in their income, complete with necessary disclosure, to allow the recipient to meaningfully assess the extent of potential future repayment: *Colucci,* at para. 105. As was further set out in *Colucci,* at para. 106: "it will rarely be appropriate to retroactively decrease support to a date before the recipient could have expected child support payments received from the payor might need to be repaid at some future date".

[58] In this case, the amount of monthly child support paid by Mr. MacKay for two children, before the downward adjustment, was already relatively modest. A longer period of retroactivity would result in Ms. Herath receiving even less child support going forward, until any child support overpayment is repaid. This will obviously have an impact on the children.

[59] In my view, before March 13, 2023, Ms. Herath could not have expected she would have to repay child support payments made prior to that date, as Mr. MacKay had not provided the required financial disclosure. Accordingly, it would not be appropriate to have Ms. Herath repay the child support paid to her prior to March 2023.

[60] Finally, with respect to hardship, the payor must adduce evidence to "establish real facts" to support a finding that they will experience hardship if the period of retroactivity is not extended earlier than the presumptive date: *Colucci,* at para. 107. Although Mr. MacKay provided evidence supporting a finding that he was under financial stress at the time of the July 2024 hearing, he did not provide sufficient evidence to support a finding that he would suffer hardship if the period of retroactivity was not extended earlier than the date of effective notice. It must also be remembered, where a reduction in child support is sought, hardship must also be "viewed in context of hardship to the child and recipient": *Colucci,* at para. 113.

[61] I would conclude, had the judge turned her mind to the *D.B.S.* factors, viewing them holistically, she would not have determined it was fair to set the period of retroactivity earlier than the March 13, 2023, presumptive date.

….

[Business Expenses Deductions]

[81] In my view, on the record, the judge's failure to provide reasons was not material for <u>all</u> of the challenged business expenses.

[82] Dealing first with amortization expense, it is noteworthy that Ms. Herath did not raise this issue in submissions before the judge at the July 2024 hearing. As a result,

Mr. MacKay was not given an opportunity to respond. In general, this Court is reluctant to weigh in on an issue which was not argued in the court below (*Pickwell v. Rajwan*, 2025 BCCA 32 at para. 19, citing *1052387 B.C. Ltd. v. Forjay Management Ltd.*, 2024 BCCA 81 at para. 63).

[83] In any case, this Court has stated that "if there is some evidence supporting the reasonableness of the expense (beyond the fact that it [is] allowable under the Income Tax Act), the court is unlikely to deny the deduction in calculating the payor's income": *Egan v. Egan*, 2002 BCCA 275 at para. 30. There was evidence before the judge concerning amortization expense. In his affidavit, Mr. MacKay stated:

> 83. As provided in my Financial Statement, the equipment in New ZM Welding (the welding skid, other tools and a 4 year old iMac) has a value of $24,398. The amortization represents the declining value of these assets and the estimated cost to eventually replace them.

[84] This Court has found amortization expense is a legitimate corporate expense, which should not be added back to income: *Barker v. Barker*, 2002 BCCA 345 at para. 71.

….

[87] As was recently confirmed by this Court, "[a]bsent an error in principle, a significant misapprehension of the evidence, or an error of law, the appeal court will not intervene" in a support order. Such orders attract an even greater deference than other decisions in family matters: *Ke v. Zhang*, 2025 BCCA 245 at para. 39.

[88] Although the judge does not appear to have grappled with the issue of Mr. MacKay's corporate deductions, I would conclude the judge did not commit a material error in law or principle or misapprehended evidence in declining to add amortization, vehicle, and fuel expenses for the welding truck and skid back to Mr. MacKay's *Guidelines* income. However, I would conclude the judge erred in principle by not adding back the cost of fuel for Mr. MacKay's Jetta.

….

[Parenting Coordinator Costs]

[101] Unfortunately, the judge did not expressly set out in the Chambers Reasons whether she found Ms. Herath agreed to be responsible for payment of all the parenting coordinator's fees. At para. 79, she concluded Ms. Herath had agreed to vary the May 1, 2023 order requiring the parties to share parenting costs equally – but did not say how or for what period of time. Despite this omission, based on the judge's order dismissing Ms. Herath's application for an order re-allocating parenting costs or, in the alternative, an order that the parties share parenting costs equally, I infer the judge decided the parties had agreed to vary the order such that Ms. Herath would be responsible for payment of all of these fees. My analysis will proceed on this basis.

[102] The applicable standard of review in questions of contract formation is as follows:

> A conclusion that the requirements for the formation of a contract have or have not been satisfied is a question of mixed fact and law, reviewable for palpable and overriding error, unless the trial judge commits an extricable error of law: *Oswald* at para. 31; *Chhina v. Rebecca L. Darnell Law Corporation*, 2021 BCCA 430 at para. 18.
>
> *Angus,* at para. 31.

[103] There is no evidence that prior to or at the JCC the parties discussed varying the terms of the May 16, 2023 order, making Ms. Herath responsible for all of the parenting coordinator costs going forward. Rather, as is made clear from the summary of the discussion set out earlier, at the JCC, Ms. Herath offered to pay Mr. MacKay's $5,000 share of the parenting coordinator's retainer, "today", in exchange for his agreement to engage with the parenting coordinator and this offer was accepted by Mr. MacKay.

[104] As was explained by this Court in *Angus*, at para. 51, "it is settled law that to determine contract formation (as opposed to contract interpretation), the Court may consider subsequent conduct of the parties. In many cases, when the subsequent conduct is proximate in time to the disputed agreement, this will be the best evidence of the parties' intentions."

….

[107] In short, there is nothing in the record to support the judge's apparent finding the parties agreed Ms. Herath would be responsible for all parenting coordinator costs. Accordingly, in making her finding, the judge made a palpable and overriding error. I would substitute a finding that the parties only agreed Ms. Herath would pay Mr. MacKay's $5,000 share of the parenting coordinator's initial $10,000 retainer.

R.G.B. v J.G.S, 2025 BCCA 404

Issue: The appellant alleges nine errors by the chambers judge in assessing retroactive child support. Seven of the grounds of appeal allege errors in the approach taken to the retroactive variation of child support. The primary ground of appeal is that the judge erred in treating the Rawlins Order as if it remained purely provisional, as the appellant submits that it had become tantamount to a final order through the passage of time.

The remaining grounds allege errors in the manner in which the chambers judge imputed income to the respondent. In particular, the appellant alleges that the chambers judge erred in concluding that it was unfair for the respondent's income assessment to be founded upon employment in two jobs and in not imputing periodic support from his parents to his available income.

Overview: The appellant challenges the decision of a chambers judge to reassess the amount of child support owed by the respondent over a ten-year period. At issue is an order made in 2015

that required the respondent to pay retroactive and prospective child support based on an imputed income of $94,319. In 2018, the parties signed an agreement purporting to expunge all child support arrears. The chambers judge determined that the 2018 agreement was void as contrary to public policy. However, he characterized the 2015 order as provisional and found that the respondent could revisit child support arrears under that order. He then imputed a lower income to the respondent, thereby decreasing the amount of child support owed. The appellant raises multiple grounds of appeal relating to the retroactive assessment of child support and the imputation of the respondent's income.

Appeal dismissed. The chambers judge found that the respondent never earned close to $94,319 during the relevant period. It was open to him to impute income to the respondent in the manner he did and conclude that a retroactive adjustment of child support was fair and appropriate in the circumstances.

Key Passages

> [2015 Order]
>
> [31] I am not persuaded the chambers judge erred in considering the context surrounding the child support arrears in the Rawlins Order. The chambers judge recognized issues related to the respondent's lack of financial disclosure but found that sufficient disclosure had been made by 2017. At that stage in the Alberta proceedings, it would appear evident that both retroactive and prospective child support under the Rawlins Order were still live issues and were to be addressed at the EICC in 2018. The appellant accepts that an agreement was reached, at least with respect to arrears that had accumulated to that point. However, the parties disagree as to whether that agreement continued to be effective or enforceable in the ensuing years. The respondent consistently sought to rely on the EICC agreement up to and including in the proceedings before the chambers judge. Although the chambers judge ultimately found the agreement not to be enforceable, he found that it was understandable why the respondent would have relied on it. In effect, the appellant also appears to have relied on the EICC agreement when it was in her interest to do so. In my view, it was open to the chambers judge to conclude that the respondent could still "revisit child support arrears" under the Rawlins Order given his understandable belief that the issue had been resolved in 2018 by the EICC agreement.
>
> [32] The second relevant timeframe relates to prospective child support under the Rawlins Order. The analysis I have just set out with respect to arrears seems equally applicable to the period between the date of the order in June 2015 and the EICC agreement in 2018. I am not persuaded that much turns on the characterization of the Rawlins Order as it relates to child support between the date of the order and the time of the application before the chambers judge. Even if the Rawlins Order was tantamount to a final order, the prospective child support under that order could be varied upon the respondent establishing a material change in circumstances. Given the finding by the chambers judge that the respondent never earned anywhere close to the income imputed

in the Rawlins Order over the relevant period, a material change in circumstances was well-established in the evidence. To the extent the characterization of the order may be relevant, it would be in the context of deciding how far back to reassess child support. I will now turn to that issue.

….

[Retroactive Reassessment]

[44] The chambers judge instructed himself on the law as it applied to the scope of retroactivity. He set out the factors in *D.B.S.* and applied them to the case before him. He recognized that some of the factors, notably the respondent's conduct, did not favour a retroactive reassessment of child support. He explicitly acknowledged the direction in *Colucci* that any exercise of judicial discretion under s. 17 of the *Divorce Act* must in no way reward those who have improperly withheld financial information they ought to have shared. He set out in some detail why he considered the overall facts of this case to be "highly unusual" and ultimately concluded that retroactively adjusting child support to accord with the respondent's actual or fairly imputed income was not a "reward", but a fair and appropriate outcome in the circumstances. While the appellant may disagree with that result, I am not persuaded that the chambers judge gave insufficient weight to relevant considerations. I am also not persuaded that the manner in which the chambers judge exercised his discretion has led to an injustice.

….

[Imputation of Income]

[47] The chambers judge made clear findings with respect to the respondent's employment:

> [70] The [respondent] survived extensive cross examination relatively unscathed and I am satisfied that the employment and income history recounted above is accurate. I also accept his evidence and find as a fact that, except for the period 2015 - 2017, the [respondent] has not been deliberately unemployed or underemployed and that, except for those years, he has been diligent in attempting to find employment during periods of unemployment, including the years when the beverage and hospitality industry was decimated by COVID 19.

[48] Based on those findings the chambers judge imputed income to the respondent for 2014–2017. While he accepted that the respondent was underemployed during that period, the chambers judge also noted that the respondent never returned to having an income in the range of $94,319. From 2018–2023, the respondent's highest annual income was $57,919.

[49] In my view, the chambers judge's conclusion that income ought not to be imputed based on a year in which the respondent was working two jobs was clearly open to him on the record. I would not accede to this ground of appeal.

….

[Failure to Impute Parental Support]

[51] The chambers judge did impute an annual income of $50,000 to the respondent for 2014–2017. He found that the respondent's actual cumulative income during those four years was $47,738, meaning that a total of $152,262 in income was imputed. Presumably, much of the parents' support would have been needed during this period, particularly in 2016 and 2017 when the respondent earned less than $4,000 in total. Even assuming that that the funds received were gifts and ought to be imputed as income (neither of which is conceded by the respondent), it is not clear to me what the basis for imputing additional income during those years would be. The chambers judge imputed income for 2014–2017 because he found that the respondent was underemployed and was capable of earning $50,000 during those years. If the reason the payor is receiving support from his parents is because he is underemployed, I fail to see the basis for imputing income twice.

[52] I am not persuaded that the chambers judge erred in not imputing additional income based on support received from the respondent's parents.

8. Spousal Support

Summary Table

Case	Importance/Issue
Armstrong v Abramowicz, 2025 BCCA 318	ISSUE: Lump sum Retroactive Award OUTCOME: Appeal allowed in part. IMPORTANCE: 1. Lump Sum and the *Parton* Test: here there was some argument about whether the court had applied the test and/or whether the payor had in fact agreed or not with lump sum as a remedy. However, the error was more fundamental in nature: the court never determined duration. 2. Immediate Payment of Lump Support: this is new – where there are lump sum awards for both retroactive child support and spousal support, the child support must take priority. Here, making one payable immediately and the other periodic was at impermissible odds with s. 175 of the FLA (priority).
Huber v Atwal, 2026 BCCA 35	ISSUE: Spousal Support when a 71-year old leaves his job. Appealed both on the basis that he ought to have been allowed to terminate support and if not, that the income on which he paid should be lowed. OUTCOME: Allowed in part. Support would continue, but at a lower level. IMPORTANCE: On the two main issues: 1. The lower judge, applying *Eldridge*, refused to account for future "intentions to retire" and applied it. The court of appeal noted this, but clarified that *Eldridge* does not stand for the proposition that there can never be a case were an intended but not yet executed retirement may meet the test. The judge concluded that both parties were going to continue to work and determined that entitlement had not yet been extinguished. 2. Hope! The court of appeal found that the judge imputed an income to the payor without looking at the reality facing a 70 year-old. Ultimately it was misapprehension of the evidence. His income for support purposes was effectively halved.

Armstrong v Abramowicz, 2025 BCCA 218

Issue: Did the judge err in law by awarding lump sum spousal support without applying the balancing test established in *Parton v. Parton*, 2018 BCCA 273? Did the judge err in law in failing to apply all the *D.B.S.* factors to assess retroactive child and retroactive spousal support? Did the judge err in fact in determining the amount of spousal support? Did the judge err in fact in finding the appellant's financial disclosure inadequate?

Overview: The parties, who have one child, separated after just under four years. At trial, the judge ordered retroactive and prospective child support based on an imputed income and lump

sum spousal support for a retroactive period. The trial judge erred by not weighing the advantages and disadvantages before making a lump sum award and in not finding the commencement date for spousal support and determining a range of duration for the order. The trial judge was required to determine the duration of spousal support and to fix an amount based on the parties' incomes for the applicable years. That order was set aside.

On the issue of retroactive support, the trial judge expressly considered three of the four factors set out in *D.B.S.* but did not consider hardship. The trial judge discussed hardship in another part of the reasons when he rejected the father's submission to reduce the amount of child support based on undue hardship under s. 10 of the *Guidelines*. However, the analysis under s. 10 is not the same as an assessment of hardship for the purposes of retroactive support, which is a broader consideration. However, in this case the retroactive award was still appropriate.

The trial judge erred by ordering the appellant to pay lump sum spousal support immediately while also ordering a lower retroactive award for child support to be paid periodically because it is inconsistent with s. 173 of the *FLA*, which requires child support to take priority over spousal support.

Key Passages

> [Lump Sum Award]
>
> [18] However, in my respectful opinion, the judge made a more fundamental error in his assessment of spousal support because he did not determine the range of duration for a spousal support order or its commencement date. Both findings are necessary to assess the suitability of a retroactive award and, if a lump sum award is under consideration, to determine its amount: *Kerr v. Baranow*, 2011 SCC 10 at para. 211; *Spousal Support Advisory Guidelines: The Revised User's Guide* (April 2016), Ch. 10(c). While the SSAG are advisory, the court should follow the steps in the SSAG or explain why doing so is not appropriate in a particular case: *Beninger v. Beninger*, 2007 BCCA 619 at para. 51; *McEachern v. McEachern*, 2006 BCCA 508 at para. 64.
>
> [19] The trial judge's acceptance of the respondent's proposal that she be awarded lump sum spousal support of $74,207 raises further questions. The software calculation provided to the judge identified a duration of spousal support between two to 15 years from the date of separation, which could mean that part of the award was ongoing. The calculation also applied a net present value discount, which cannot apply to a retroactive award.
>
> [20] In order to assess the reasonableness of the respondent's proposed lump sum award, the judge was required to determine the duration of spousal support and to fix an amount based on the parties' incomes for the applicable years. The hypothetical scenario in para. 204 of the judge's reasons did not provide an adequate foundation for comparison.
>
> [21] For these reasons, I would set aside the spousal support order.

….

[Application of all *D.B.S.* factors to assess retroactive support]

[Retroactive Child Support]

[23] This Court has affirmed that a judge need not explicitly consider the *D.B.S.* factors. Most recently, Chief Justice Marchand wrote in *Bradley v. Callahan*, 2025 BCCA 69:

> [153] A court considering a claim for retroactive support is not required to refer to *D.B.S.* explicitly nor discuss each of the factors it highlights, but some discussion of the reasons for or against a retroactive award is expected: *Reis v. Bucholtz*, 2010 BCCA 115 at para. 67; *Ducharme* at para. 19. Even in the absence of any analysis, the trial judge's omission will not be fatal so long as the principles in *D.B.S.* and *Kerr*, applied to the findings of fact, support the judge's conclusion: *Hallgren v. Fry*, 2013 BCCA 15 at para. 27.
>
> [Emphasis added.]

[24] The judge considered hardship to the appellant elsewhere in his reasons. He rejected the appellant's submission under s. 10 of the *Federal Child Support Guidelines*, SOR/97-175 ("*Guidelines*") that the amount of child support payable should be reduced. He found the appellant had failed to establish undue hardship because his responsibility for most of the post-separation family debt was settled before support issues were resolved and there was a lack of evidence that his travel expenses for parenting time and his obligations to his second family were "unusually high": Decision at paras 82–86. The judge also declined to cancel or reduce the appellant's arrears of child support on the basis of significant hardship. He found the appellant had not established a material change of circumstances because he "chose to embark on a new relationship and incur the obligations he has to [his new spouse] and their two children" and he also chose "to incur significant tax liability": Decision at paras. 146–149.

[25] However, the assessments of hardship under s. 10 of the *Guidelines* and for reduction or cancellation of child support arrears are markedly different from the assessment of hardship for the purposes of retroactive child support. To establish hardship under s. 10, the payor must demonstrate undue hardship; the fact the payor is responsible for other children is not sufficient: *Van Gool v. Van Gool*, 166 D.L.R. (4th) 528, 1998 CanLII 5650 (B.C.C.A.) at para. 51. The test for cancellation or reduction of arrears of child support requires the payor to establish "prejudice by delay, serious hardship or unfairness in the circumstances": *Anderson v. Anderson*, 1999 BCCA 147 at para. 10.

[26] By contrast, the fourth *D.B.S.* factor requires "a broad consideration of hardship" that includes consideration of hardship to the payor parent's other children: *D.B.S.* at paras. 114–115.

[27] The fact that the judge rejected the appellant's hardship claims in relation to reducing the amount of child support and reducing or cancelling child support arrears does not support an inference that he would not have found hardship under the *D.B.S.* analysis. In particular, he was required to consider the impact of a retroactive award on the children in his current family.

[28] That said, I consider the *D.B.S.* analysis supports a retroactive child support award in this case. The judge found that the first three *D.B.S.* factors favoured a retroactive award: the respondent had a reasonable excuse for not having sought support earlier than she did, the appellant's conduct was blameworthy, and the child was adversely affected because the appellant did not pay an appropriate amount of child support. With respect to hardship, Bastarache J.'s application of the *D.B.S.* factors to the four appeals that were before the Court is instructive. In particular, the adverse impact on a second family may be mitigated by providing that the retroactive award is paid off relatively slowly: *D.B.S.* at para. 149. In light of the absence of credible evidence about the appellant's current financial circumstances, his imputed income of $150,000, a retroactive award requiring him to pay $644 each month for a total ongoing and retroactive monthly child support obligation of $2,000 does not amount to hardship. Accordingly, I would not set aside the retroactive child support order.

….

[Retroactive Spousal Support while lowering child support]

[30] Although not raised by the appellant, I think it is necessary to address the judge's order that the lump sum spousal support award be paid immediately: Decision at para. 224(13). Ordering immediate payment of what is characterized as retroactive spousal support in circumstances where the court has also ordered a lower retroactive award of child support to be paid periodically is inconsistent with s. 173 of the *FLA*, which provides that child support takes priority over spousal support. The judge erred by ordering the appellant to pay the greater amount of lump sum retroactive spousal support immediately.

….

[Quantum of Spousal Support]

[32] With respect to the first point, even assuming the dubious proposition that misapprehensions about this evidence could be sufficiently significant to invite appellate intervention under *Mills*, the judge did not misapprehend the evidence. The judge's finding that the respondent was self-supporting was grounded in her evidence that she had worked in Kamloops for several years but recently quit and moved to Fort St. John to find work as a rock truck driver to finance further educational studies: Decision at para. 185. The fact that she met the appellant while looking for work did not mean she was not self-supporting.

[33] With respect to the second point, I agree with the appellant that re-partnering is a significant consideration in determining the amount of a needs-based spousal support claim; however, it is much less relevant where entitlement to support is compensatory: *Rozen v. Rozen*, 2016 BCCA 303 at paras. 55–56. That is because re-partnering is likely to reduce a former spouse's needs but is unlikely to affect the economic disadvantages the spouse sustained because of the role assumed during the relationship. Compensatory support continues "until the economic consequences flowing from the marriage are redressed, even if the spousal support payee has, in the interim, achieved a measure of self-sufficiency": *Morigeau v. Moorey*, 2015 BCCA 160 at para. 37, citing *Tedham v. Tedham*, 2005 BCCA 502at paras. 58–60.

[34] The judge found the respondent entitled to support on both compensatory and non-compensatory grounds. He considered the impact of the respondent's re-partnering:

> [185] Before the relationship, the mother supported herself financially, had her own accommodation, and no restrictions on her plans to work to finance her further education. After the relationship, she relied heavily on the support of her parents, financially, and for accommodation. Her obligations as primary caregiver for the child necessarily restricted her work plans, and she took on low paying part-time work as a residential cleaner. Her plans for further education remained on hold. She has since re-partnered and has another child. Since she re-partnered, her prospects for achieving self-sufficiency have improved.
>
> [Emphasis added.]

[35] Applying the deferential standard of review, I see no basis for appellate intervention on these grounds.

….

[Fine for non-disclosure]

[40] The appellant says the judge did not identify what documents he failed to provide but does not refer to any authority for the proposition that, before making an order under s. 213, the court must specify what documents have not been disclosed. I do not see any principled reason for requiring a trial judge to do so, particularly when one of the grounds is non-compliance with the time limits set out in a court order.

Huber v Atwal, 2026 BCCA 35

Issue: The appeal concerns the question of whether monthly spousal support should have been terminated or lowered after the 71-year-old appellant left his job, resulting in a reduction in income. The appellant contends the judge misapprehended evidence concerning the parties' relative financial circumstances and his ability to earn income. He seeks an order vacating the judge's order and terminating spousal support one month following this Court's order. In the alternative, he seeks an order that the appellant make a final lump sum spousal support payment of just under $40,000.

Overview: Appeal allowed in part. The judge did not err in declining to terminate spousal support. The judge erred in principle by not considering whether it was reasonable for the appellant to voluntarily reduce his income before imputing income. The evidence establishes the appellant's income at the relevant time was substantially lower than the amount imputed by the judge.

Key Passages

> [Error in not deciding to terminate spousal support]
>
> [22] I agree the judge misapprehended evidence concerning the parties' assets. I also agree with the respondent's submission that this error was not overriding. Although the judge's determination of the parties' relative financial positions was relevant to the question of the respondent's entitlement to continued spousal support, I am not satisfied a correct determination of the difference between the parties' asset holdings would have altered the judge's conclusion.
>
> [23] The parties' assets were not the only consideration relied upon by the judge in determining entitlement to support, nor can it be said that it was the primary consideration. The judge also considered that the respondent required spousal support to maintain her pre-separation standard of living, continued to work full-time in a job earning far less than the appellant, earned less than her peers performing the same work due to her time away from the workforce, and had a strong claim to compensatory and non-compensatory support over a 26-year marriage.
>
> [24] Section 15.2(4) of the *Divorce Act* sets out that in deciding to make a spousal support order, the conditions, means, needs and other circumstances of each spouse should be considered, including the length of time the spouses cohabitated, the functions each spouse performed during cohabitation, and an order, agreement or arrangement relating to support. Section 15.2(6) sets out, as objectives, that any order should recognize any economic advantages to the spouses arising from the marriage or its breakdown, apportioning financial consequences arising from the care of any children, relieving any economic hardship arising from the breakdown of the marriage and promotion of economic self-sufficiency of each spouse within a reasonable period of time.
>
> [25] In my view, reading the Chambers Reasons as a whole, the judge considered the factors set out in s. 15.2(4) of the *Divorce Act* and the objectives set out at s. 15.2(6) in determining the respondent continued to be entitled to support.
>
> ….
>
> [28] The appellant's evidence was not that he had retired entirely but had retired from full-time work in Richmond and began to work part-time in Penticton and elsewhere. In response to questions from this Court during submissions, counsel for the appellant conceded the appellant had not chosen a retirement date. Counsel also conceded it was

open to the judge to conclude, as he did, both parties were likely to continue to work for some time.

[Error in imputing *Guideline* income]

[39] In this case, the judge found the appellant had voluntarily reduced his income. Although the judge did not use these words, it is apparent the judge concluded the appellant was intentionally underemployed and imputed income on that basis. In my view, the judge did not consider, as he should have when deciding whether to impute income, whether it was reasonable for the appellant to reduce his hours of work, in consideration of s. 19(1)(a) of the *FCSG* and the relevant factors set out in *Marquez,* including the appellant's age, health, and work availability.

[40] Where a payor spouse has had a long and productive career and is over 70 years old, the fact that they are capable of working full time does not mean that it is unreasonable to work less. The reasonableness of that decision must be assessed by considering of all of the circumstances. In my view, in this case the judge erred by not addressing the following evidence of the appellant:

> a) he moved to Penticton at the age of 68 in anticipation of his pending retirement;
>
> b) due to his age, he was not offered some work as it is frowned upon for critical care physicians to take on certain types of work at the end of their careers;
>
> c) his ability to work long hours at his age was waning; and
>
> d) he had fewer opportunities to secure locum work in Quesnel or in the north, as he had in 2023 and 2024, and it was increasingly beyond his ability to do this work due to the heavy on-call commitment required.

[41] As well, the judge did not address the evidence set out in a letter from the doctor responsible for scheduling anesthesiologists at the Penticton Hospital, that she did not anticipate any shifts would be provided to the appellant after October 2024. The judge's conclusion that the appellant "remains eligible to work at his discretion indefinitely" (Chambers Reasons, at para. 34) is at odds with this evidence and the appellant's evidence referred to in the preceding paragraph.

[42] As set out earlier, the appellant frames the judge's determination of the appellant's ability to work full-time as a misapprehension of evidence. In my view, the error is more appropriately characterized as a failure to consider relevant evidence in determining whether it was reasonable for the appellant to reduce his hours of work, before imputing income. This constitutes an error in law justifying appellate intervention.

[43] In my view, given the appellant's particular circumstances, it was reasonable for him to have reduced his hours of work and therefore his income. As a result, there was no basis for the judge to impute income.

9. Parenting Arrangements

Summary Table

Case	Importance/Issue
M.S. v V.D., 2025 BCCA 84 (Vaccine*)*	ISSUE: HPV Vaccines OUTCOME: Appeal Dismissed IMPORTANCE: In this case the parties were governed by a consent order they entered into after separation. The parent advocating for the vaccine had final say, and the appellant a right to seek orders. He did so and failed. On appeal, he argued that the Judge did not review evidence, was biased, and that his freedom of speech was being violated. 1. The court's analysis of the evidence was sound; 2. Bias was not (even close to) made out; 3. Charter issues were not properly before the Court. NOTE: This case is helpful to perhaps consider in concert with *N.R.G. v. G.R.G.*, 2017 BCCA 407.
T.F.R. v Y.T., 2025 BCCA 349	ISSUE: Scope of the BCCA to consider stay. OUTCOME: Appeal dismissed. IMPORTANCE: This case is a helpful and often forgotten reminder about s. 234 and the appropriate venue for the hearing of stays in family law and which can be confusing. Stays from orders under the FLA are always brought at the trial court level (s. 234) and if possible, but not mandatorily so, before the original presider. If the stay is also an appeal of a stay, or if there are truly extraordinary circumstances – the court of appeal has jurisdiction and/or residual jurisdiction – sometimes called a "sliver of jurisdiction": *Bennett*. 1. Important: this case modifies the earlier test, which was simply a recognition that there might be some jurisdiction. 2. Now, before even getting there, litigants are now required to: [19] Accordingly, I propose that, if this Court ever has jurisdiction to stay an order made by a lower court under the *FLA*, it may only exercise its jurisdiction where: a) A stay has been sought and refused by the court that made the order; and b) It is plain that the judge committed an obvious or egregious error in refusing the stay.
Jivraj v Keillor, 2025 BCCA 385	ISSUE: Parenting Arrangements / School and Communication OUTCOME: Appeal Dismissed IMPORTANCE: Parties had a final consent order. Part of it included a mediation dispute resolution clause. Appellant argued that the court ought to have proceeding in the face of the parties having a contractual obligation. 1. Dispute Resolution Terms: the lower court did not explain the issue, so the BCCA resolved it: a "dispute" cannot arise where there is a failure to comply with unambiguous terms. In those circumstances, mandatory mediation cannot

	apply. 2. S. 228: the discretion to fix a fine is wide indeed.
Chystiakova v Commisso, 2025 BCCA 420	ISSUE: Ineffective Assistance / Suitability of Summary Trial OUTCOME: Appeal Dismissed IMPORTANCE: There is a strange pattern of counsel's effectiveness and the summary trial process this year. Who knows, but in any event: 1. Ineffectiveness of counsel: *Ke* (referred to elsewhere in this paper) addressed this. Most of the arguments here were of the usual unsuccessful stripes; one was new (this year) but without merit for different reasons: not being warned about the summary trial process but which was not relevant because it cannot be consented into. The court was required to, and did, conduct independent analysis as to the suitability of a summary trial process.
S.F. v C.W., 2025 BCCA 422	ISSUE: Parenting Arrangements OUTCOME: Appeal Dismissed. IMPORTANCE: This was a case of rearguing the same case twice, only the second time with a nice basting with the bias argument. There was not basis to allege that evidence had been misconstrued, ignored, or forgotten. The judge was not required to go through s. 37 section by section, when the reasons as a whole can be read to infer that had occurred. This issue was a close to as it got to successful appeal. NOTE: urge the court to go through the section. Structure your submissions in a table or however you want, to deal with each of the mandatory subsections that apply.
Beri v Sachdeva, 2026 BCCA 20 (Hague Convention)	ISSUE: Hague Return of Children OUTCOME: Appeal Dismissed IMPORTANCE: Interesting case in that the court erred on one key issued but was saved by another: 1. The Burden to Establish Acquiescence: this case struggled with the "clear and cogent" test to establish acquiescence: *Katsigiannis*. 2. The appellant tried to assert that to satisfy the test under the 13(b) exception, the parent must prove that he local court cannot protect the child. That is not the question: the question is whether despite a similar or satisfactory legal regime is place whether nevertheless there is a risk of grave harm. Thus, factors like previous breaches of court orders are relevant.

M.S. v V.D., 2025 BCCA 84

Issue: On appeal, the appellant argued that the judge erred a) by not reviewing all of the evidence he submitted; b) by demonstrating bias against him and his beliefs; c) and by violating his freedom of speech and the rights of his children to receive health information by preventing him from speaking with them about the HPV vaccine.

Overview: Appeal dismissed. The appellant did not establish: (1) the judge ignored material evidence; (2) demonstrated a bias against him or his beliefs; or (3) improperly interfered with his rights. The judge correctly applied the best interests of the children test in the circumstances presented.

Key Passages

[Was the appellants evidence about risk ignored]

[26] The appellant did not point to any part of the judge's reasons that demonstrate the judge ignored his evidence or that she, in the appellant's words, "cherry-picked" the evidence. Rather, it is my view the judge simply preferred the evidence offered by the respondent. The respondent's evidence constituted publications from health authorities in Canada (including publications from the Canadian Cancer Society, Fraser Health Authority, and Public Health Agency of Canada). After reviewing the evidence, the judge concluded these publications "… make clear that health authorities/experts in Canada favour the HPV vaccine and recommend that it be administered to pre-teens" (at para. 16).

[27] The judge then went on to explain her reasons for preferring the evidence from the public health authorities in Canada over the evidence presented by the appellant. For example, she found the material about the U.S. lawsuits did not constitute medical information. The appellant is correct that there are outstanding lawsuits against HPV pharmaceutical companies, manufacturers, and distributers. The judge noted, however, that the existence of a lawsuit alone was insufficient to establish the appellant's point about risk. In addition, the judge's assessment of Dr. Lee's opinion was one available to her. She reviewed Dr. Lee's opinion and noted its limitations, including that some of his research is outdated. Finally, the judge questioned the opinion proffered by Christopher Shaw, the neurobiology professor. The judge stated she put no weight on Mr. Shaw's information because the appellant did not provide his background or his qualifications to render the opinion about the adverse risks of the HPV vaccine. The judge also noted Mr. Shaw's evidence had been rejected by another judge in a B.C. proceeding: *M.J.T. v. D.M.D.*, 2012 BCSC 863, at paras. 108–109.

[28] After reviewing the evidence presented by the parties, the judge tied her assessment to the legal test governing her decision, the best interests of the children:

> [21] Having considered all of the evidence and the submissions I am satisfied that [the appellant's] wait and see approach is not in the best interests of the children. I accept the advice of the health authorities in Canada who are entrusted with protecting public health that it is in the best interests of the children to get the HPV vaccination. I am further satisfied that it is in the best interests of the children to get the vaccination at the age when it is most effective, as determined by [the respondent].

….

[Bias]

[35] It is clear from the appellant's factum and from his oral submissions that the video, and its impact on L, featured heavily in the hearing before the judge. It is my view that neither the single use of the word "indoctrinate" nor the reasons as a whole, reveal any bias on the part of the judge. As I have stated, the appellant believes

strongly in his position. The judge was not so persuaded—based on the evidence presented. The appellant has not demonstrated based on the judge's reasons or the record of the proceedings, that "… a reasonable and informed person, with knowledge of all the relevant circumstances, viewing the matter realistically and practically, would conclude [her] conduct gives rise to a reasonable apprehension of bias …". I would not accede to this ground of appeal.

….

[Was the appellant's right to free speech violated]

[41] The parties made clear the video shown to the children was the subject of considerable discussion at the hearing before the judge. The appellant had a lawyer representing him (though the parties were self-represented before us). The judge's order is broad. In some circumstances, a conduct order, such as this one, may need to be confined. In this case, it is apparent the appellant had sufficient opportunity to discuss the HPV vaccine and its risks with his children. He agrees the video frightened L. However, he justified its disturbing subject matter with her need to be informed. In the circumstances of this case, I would not disturb the conduct orders. There was a basis in the record for the judge to impose them, the appellant had legal representation at the hearing when this topic arose, and the appellant had an opportunity to communicate with his children about the subject matter before the order was imposed. The appellant has a remedy available to him under s. 49 of the *FLA* should he wish to communicate with the children about the HPV vaccine in the future.

[42] I would not accede to this ground of appeal.

T.F.R. v Y.T., 2025 BCCA 349

Issue: This application raises the following issues: a) Has this Court jurisdiction to issue a stay? b) Assuming jurisdiction, are the materials adequate to support a claim for interim relief? c) Assuming jurisdiction and adequate materials, could a stay be justified in light of the mother's departure and the judge's findings?

Overview: The parties shared parenting of child. The respondent mother brought an application to take the child with her to China to visit her parents. An order permitting the travel was made. The appellant father appealed the order, which was dismissed. The respondent and child were scheduled to leave four days following that appeal. An appealed the BCSC decision.

This was also dismissed, the BCCA commented that the Court's jurisdiction to stay an order made under the *FLA*, to the extent that it exists, is limited to circumstances where (1) there was a previous application for a stay to the Court that made the order, which was refused, and (2) an obvious or egregious error warrants overriding that refusal. No such error was made out in the facts of this application.

The application also fails for want of a transcript or note of the reasons given in the court below, without which it is impossible to conclude that there is arguable merit to the appeal, and on the balance of convenience, because mother and child had left for China by the time the stay application was brought and no good purpose would be served by requiring the mother to cut the trip short.

Key Passages

> [Jurisdiction to issue a stay]
>
> [16] Turning to the second part of the order sought, this Court's authority to stay the Provincial Court order is doubtful. The order was made pursuant to the *Family Law Act,* S.B.C. 2011, c. 25 [*FLA*] and s. 234 of the *FLA* limits the ability of an appellate court to stay orders made under the statute. Section 234 provides:
>
> > 234 Despite any other enactment, if an order made under this Act is appealed, the order remains in effect until the determination of the appeal unless the court that made it orders otherwise.
>
> [17] Several decisions have considered the possibility that, notwithstanding s. 234, this Court may possess "a sliver of jurisdiction" to stay an order made under the *FLA* in exceptional circumstances: *Bennett v. Bennett,* 2002 BCCA 580 (Chambers) at para. 12; *Stasiewski v. Stasiewski,* 2006 BCCA 53 (Chambers) at para. 11; *Kapoor v. Makkar,* 2020 BCCA 132 (Chambers) at paras. 52–60, reversed 2020 BCCA 223; *J.T.P. v. K.S.,* 2023 BCCA 303 (Chambers) at paras. 19–20. In *J.T.P.,* Hunter J.A. offered the following considered assessment of this line of authority at para. 20:
>
> > I conclude from this Court's judgment in *Kapoor* that either the residual jurisdiction referred to by Justice Donald and Justice Abrioux does not exist, or if it exists, the circumstances in which it may be exercised are very limited. At its highest, jurisdiction may exist where it is plain that the trial judge has committed an obvious or egregious error of law, such as making an order not authorized by the *Family Law Act* or without any consideration of a mandatory requirement of that *Act*.
>
> [18] I agree with Hunter J.A. and would add the following. At the starting point of this line of cases, in *Bennett,* Donald J.A. hypothesizes the possibility of a sliver of jurisdiction in "a case in which this Court will have to act on an obviously wrong exercise of the Supreme Court's stay jurisdiction": at para. 12. Even if s. 234 does not wholly exclude appellate jurisdiction to stay an *FLA* order, it must at least be taken as requiring that a stay first be sought in the lower court.
>
> [19] Accordingly, I propose that, if this Court ever has jurisdiction to stay an order made by a lower court under the *FLA*, it may only exercise its jurisdiction where:
>
> > a) A stay has been sought and refused by the court that made the order; and

b) It is plain that the judge committed an obvious or egregious error in refusing the stay.

[20] Applying this test, there is nothing in the materials to suggest that Silverman P.C.J. committed an obvious or egregious error in refusing a stay. As required by s. 37 of the *FLA,* he directed his attention on the best interests of the child. The father's case was that the mother should not be permitted to take the child to China for fear that they would not return. The judge considered the flight risk and was satisfied that the possibility that the mother would not return with the child was unrealistic. He found the mother to be a credible and reliable witness and accepted her evidence that she considers Canada her home, and that the child has only a Canadian passport. She had only travelled to China once since 2018. Her desire to travel to China with the child was motivated in part by a desire to visit her grandmother, who had raised her, and her father, both of whom were experiencing health issues. The judge found that the health issues of the mother's family members constituted a material change of circumstance justifying a variation of the term of the 2024 consent order preventing removal of the child from the Greater Victoria area.

….

[Adequacy of the father's material on the stay application]

[24] The absence of any indication of the reasons given by the judge who made the order under appeal is a fatal defect to any application to stay that order, because it makes it impossible for a Justice of this Court to assess the merits of the underlying appeal.

[25] In the case of a decision rendered orally where a stay must be sought at once or not at all, it may be impossible to obtain a transcript of the judge's reasons. In this circumstance, this court will consider counsel's note of the oral reasons given by the judge for the purpose of hearing the application. The best practice is for both counsel to attempt to agree on a note of what was said by the judge. On this application, the father tendered neither a transcript nor a note of LeBlanc J.'s reasons for dismissing the appeal.

[26] In the absence of any indication of LeBlanc J.'s reasons, the father is not in a position to establish that an appeal is arguable. Even if this Court had jurisdiction to grant a stay, the application must be dismissed.

….

[Additional obstacles to granting a stay in the circumstances]

[28] Refusing a stay would allow mother and child to spend time with her relatives as the judge found is in the child's best interests.

[29] Granting a stay would impose great inconvenience on mother and child for no good purpose. Requiring the mother to return within a few days would deprive her and the child of time with her grandmother and her father. Having just endured a long journey to China, they would be obliged to undertake the return trip without delay. If Silverman P.C.J.'s finding is sound, the mother will return with the child on or before October 17 in

any event. If, contrary to the judge's finding, the mother does not intend to return as required by the judge's order, a further order from this Court is hardly likely to change her disposition.

Jivraj v Keillor, 2025 BCCA 385

Issue: The appellant challenges a chambers judge's decision arising from a final consent order dealing with parenting arrangements on a number of grounds. The chambers judge made orders enforcing a choice of school term and a conduct term governing the parties' communication with the children. Most significantly, the appellant argues the chambers judge erred by failing to give effect to the dispute resolution term in the final consent order and by imposing a $2,500 fine pursuant to s. 228 of the Family Law Act, S.B.C. 2011, c. 25.

Overview: Held: Appeal dismissed. While the chambers judge erred in failing to consider whether the final consent order required an attempt to mediate before bringing the enforcement application, the error was not material. Based on this Court's interpretation of the final consent order, the respondent's application was not barred by the dispute resolution term. The other grounds of appeal are dismissed on the basis that the chambers judge conducted the hearing fairly and made no reviewable error in finding a breach of the conduct order and imposing a $2,500 fine.

Key Passages

> [50] Turning to what I see as the central issue on this appeal, the appellant asserts the chambers judge erred in failing to determine whether the application to enforce the choice of school and conduct terms of the FCO was barred by its mediation requirement
>
> [Failure to consider dispute resolution terms of the order]
>
> [70] I conclude then, that properly construed, the FCO permits the respondent's application to enforce term 10, based on an alleged breach of its requirements. My view is the same with respect to enforcing the conduct term(s). In sum, an alleged breach of term 10 or a conduct term does not raise a dispute as contemplated by term 28, and consequently the requirement for mediation is not triggered. Further, term 10 can only be changed, absent the parties' agreement in writing, by court order, if a material change is established (a threshold requirement).
>
> [71] The legal error of the chambers judge in failing to interpret the FCO was therefore not material. As a result, I would not accede to this ground of appeal.
>
> ….
>
> [No finding of a material change]
>
> [75] At the same time, I see the chambers judge's finding of no material change as entirely supportable. In other words, had the issue required adjudication, I agree that the evidence of the appellant could not establish a material change warranting variation. I

also agree that the Children were too young for their views about school choice to be considered. Further, there is the obvious alignment between the appellant's longstanding, strongly held view about choice of school and his allegations regarding the Children's views. An available inference, and one that may well be implicit in the Reasons, is that given their very young ages, it was not only inappropriate to consider their views, but also not possible to be satisfied those views were their own.

[76] Finally, as it relates to material change, the appellant asserts the chambers judge made a variation order by granting the respondent "limited permission" to exercise sole parental responsibility to complete A's kindergarten registration, if the appellant failed to meet the seven-day deadline. He argues that, absent a finding of material change and an analysis of the Children's best interests, she committed a legal error. I disagree. Again, the choice of school term embodies the parties' final agreement that attending LB was in the Children's best interests and choice of school was intended to be "off the table" so to speak until the review. The chambers judge explained she was including the "caveat", given the timing of her decision—June 2024—and a concern about the need to submit the registration documents before registration closed over the summer months. It is clear the sole purpose and effect of her order was to ensure enforcement of the mandatory provision in term 10.

….

[Breach]

[81] In challenging the breach finding here, the appellant argues there was an "asymmetry" in how the chambers judge weighed the evidence related to both parties' conduct. He emphasized that he denied the respondent's allegations about telling the Children LB was a terrible school, but the respondent did not dispute his evidence that she made disparaging comments about him to the Children. The appellant asserts the chambers judge erred by (implicitly) preferring the respondent's evidence, without assessing their credibility.

[82] In my view, the breach finding is consistent with an objective determination based on the evidence. The chambers judge relied on the appellant's correspondence with the school to infer that the appellant was discussing school choice with or in the presence of the Children. There is also the appellant's evidence essentially acknowledging he discussed the Fraser Institute rankings with N. Deposing he was not the first to do so is an implicit admission.

[83] To the extent the appellant also argues the chambers judge erred in finding a breach without resolving his allegation that the respondent had breached the conduct terms, I disagree. In my view, the alleged breach is only relevant to the question of a proper penalty under s. 228: *C.A.L.* at para. 44.

[84] For all of these reasons, I can see no basis for interfering with the breach finding.

….

[Fine]

[98] Regarding the amount of the fine, I do view $2,500 as high, given the maximum of $5,000, the fact of no prior penalty, and recognizing that s. 228 provides for the imposition of progressively more serious penalties. At the same time, however, the serious nature of the breach and the context and timing of it—the parties had just finally resolved their long and entrenched dispute regarding choice of school and entered into the FCO—points to the need for a strong message to ensure compliance and therefore, a significant penalty.

[99] Ultimately, I am not persuaded that the chambers judge's exercise of discretion in fixing the amount is tainted by an error in principle or a failure to give sufficient weight to the relevant considerations.

Chystiakova v Commisso, 2025 BCCA 420

Issue: This appeal is from an order for parenting time determined by way of summary trial. The appellant alleges that she received ineffective assistance from her formal counsel. In particular, she says that she was not informed of the nature of a summary trial and would have objected to proceeding in that manner had she understood the consequences. She also takes issue with her counsel's submissions and alleged lack of preparation.

Overview: Appeal dismissed. The chambers judge concluded that a summary trial was appropriate because the issue before her was narrow. The appellant has not advanced any compelling arguments for why a full trial was necessary. Even taking the other alleged failings of the appellant's former counsel at their strongest, this is not one of the extraordinary cases in which an allegation of ineffective assistance would warrant a remedy on appeal.

Key Passages

[Ineffective assistance – citing *Ke v Zhang* 2025 BCCA 245 paras 24-30 (above)]

[12] As I understand the appellant's arguments, there are essentially three complaints about the conduct of her counsel that might be seen as relevant to the issue of parenting time.

[13] The first is that she did not have an opportunity to review the notice of application that was filed on her behalf on December 2, 2024. As noted earlier, the notice of application sought shared parenting time on a week-on/week-off basis. The appellant says in her affidavit that she had communicated to her counsel "my position on parenting time, specifically one week on/off with switches at school on Wednesdays, as recommended by the s. 211 Report or the *status quo* of 2-5."

[14] Before the chambers judge, the appellant's former counsel focused his submissions on the week-on/week-off parenting schedule. It would appear that the

appellant's complaint is that her counsel did not put forward the alternative of maintaining the *status quo* of 2-5. The author of the s. 211 report directly addressed the appellant's preference to be the primary caregiver and the reasons she recommended shared parenting.

[15] It is clear in the appellant's affidavit that she preferred the week-on/week-off recommendation to the 3-4-4-3 schedule proposed by the respondent. Arguing vigorously for a 2-5 schedule would clearly have been in tension with the recommendation in the s. 211 report. The very reason the s. 211 report suggested a week-on/week-off parenting schedule was to reduce the "back and forth" of exchanges.

[16] I am not persuaded on the materials before us that the position put forward before the chambers judge was clearly contrary to the instructions the appellant says she gave to her counsel, which in her own words framed the 2-5 schedule in the alternative.

[17] The second aspect of her counsel's conduct that the appellant impugns is his alleged lack of preparation in not having a particular binder or not being sufficiently familiar with certain aspects of the case. However, aside from a bare assertion that he was unprepared, the appellant does not point to any material facts that were not brought to the attention of the chambers judge. While her counsel did not object to certain alleged misstatements of facts by opposing counsel, the appellant does not allege any factual errors in the judgment. To the contrary, the chambers judge appears to have accurately set out the history of the child's care and understood the underlying facts that were relevant to the issue before her.

[18] Finally, the appellant alleges that her counsel failed to explain to her the significance of a summary trial. Under R. 11-3(15) of the *Supreme Court Family Rules,* B.C. Reg. 169/2009, on the hearing of a summary trial application, the court may grant judgment in favour of any party, either on an issue or generally, unless it is unable, on the whole of the evidence before the court on the application, to find the facts necessary to decide the issues of fact or law, or the court is of the opinion that it would be unjust to decide the issues summarily. The appellant says that had she been made aware of the consequences, she would have opposed proceeding by way of summary trial.

[19] The chambers judge did not simply accept the positions of the parties that the matter was appropriate for summary trial. She instructed herself on the law, setting out the relevant passages from *Gichuru v. Pallai*, 2013 BCCA 60:

> [30] In *Inspiration Management Ltd. v. McDermid St. Lawrence Ltd.* (1989), 1989 CanLII 229 (BC CA), 36 B.C.L.R. (2d) 202 (C.A.), the court confirmed that the court under this rule "tries the issues raised by the pleadings on affidavits", that "a triable issue or arguable defence will not always defeat a summary trial application", and that "cases will be decided summarily if the court is able to find the facts necessary for that purpose, even though there may be disputed issues of fact and law" provided that the judge does not find "it is unjust to do so" (p. 211). In determining the latter issue (whether it would be unjust to

proceed summarily), the Chief Justice identified a number of relevant factors to consider (at p. 215):

> In deciding whether it will be unjust to give judgment the chambers judge is entitled to consider, inter alia, the amount involved, the complexity of the matter, its urgency, any prejudice likely to arise by reason of delay, the cost of taking the case forward to a conventional trial in relation to the amount involved, the course of the proceedings and any other matters which arise for consideration on this important question.

[31] To this list has been added other factors including the cost of the litigation and the time of the summary trial, whether credibility is a critical factor in the determination of the dispute, whether the summary trial may create an unnecessary complexity in the resolution of the dispute, and whether the application would result in litigating in slices: *Dahl v. Royal Bank of Canada et al.*, 2005 BCSC 1263 at para. 12, upheld on appeal at 2006 BCCA 369.

[20] She went on to note that the narrow issue before her was the specific parenting schedule to be imposed. While there were contested facts in the affidavits before her, they largely related to issues such as alleged family violence that would not impact the decision on the parenting schedule and therefore did not need to be determined on the application before her.

[21] Considering this context, along with the parties' preference and the need for efficiency and proportionality in judicial decision-making, she concluded that it would not be unjust to render final judgment by way of summary trial.

[22] In my view, the appellant has not advanced any compelling grounds upon which a full trial would have been warranted in the circumstances, even if her counsel had taken a position opposing a summary trial. The parties are of limited means, and the issue before the court was a narrow one. The appellant does not point to any evidence that turned on questions of credibility upon which the chambers judge relied in coming to her decision. I am not persuaded that the chambers judge erred in proceeding by way of summary trial, nor am I persuaded her conclusion might have been any different simply on the basis of the appellant's preference for a full trial.

S.F. v C.W., 2025 BCCA 422

Issue: The appellant challenges three orders pronounced after a hearing on February 21, 2025, concerning parenting time, decision-making authority for, and international travel with, the parties' children. She argues the judge erred by ignoring or misapprehending material evidence and by failing to apply a best interest of the child analysis. She further argues the judge demonstrated bias against her.

Overview: Appeal dismissed. The appellant did not identify any evidence that the judge forgot, ignored, or misconceived, which would have resulted in a different decision. Reading the judge's reasons together with the record, it is clear he was well aware of his obligation to consider the best interests of the children and did so. An informed person would not conclude the judge treated the appellant unfairly or failed to give due consideration to her arguments on the facts and law.

Key Passages

[Did the judge misconstrue material evidence]

> [Parenting Schedule]
>
> [72] In conclusion on this issue, I am not satisfied S.F. has identified an error of law or evidence that the judge forgot, ignored, or misconceived. Again, I am of the view that S.F. impermissibly asks this Court to reweigh the evidence concerning allocation of parenting time and arrive at a different conclusion than the judge. I would not accede to this ground of appeal.
>
> ….
>
> [Travelling with children outside of Canada]
>
> [79] S.F. characterizes the judge's order with respect to international travel as granting C.W. with a "veto". In my view, S.F. mischaracterizes the judge's order. Although he gave C.W. final decision-making authority with respect to international travel, his reasons demonstrate he expected the parties to attempt to resolve disputes regarding international travel through negotiation. In particular, during the hearing on March 27, he advised the parties they should seek to work through this issue with their parenting coaches, and if they were not able to agree, they could come back to court.
>
> ….
>
> [Bias]
>
> [86] Having reviewed the exchanges between the judge and the parties during the February 21 and March 27, 2025, hearings, I am not satisfied an informed person would conclude the judge did not treat S.F. fairly or give due consideration to her arguments on the facts and law. Rather, the judge took great pains to encourage collaboration and offered both parties an opportunity to express their concerns.
>
> ….
>
> [Did the judge fail to provide sufficient reasons for judgment]
>
> [91] In my view, the only alleged deficiency in the judge's reasons particularized by S.F. concerns an alleged failure to address the best interests of the child factors set out in s. 37 of the *FLA*. Although the judge did not specifically refer to these factors during the course of the hearings on February 21 or March 27, 2021, the reasons, together with

the record, are sufficient to permit appellate review. As set out earlier, I would not conclude the judge failed to conduct this analysis or failed to provide sufficient reasons.

[92] I would not accede to this ground of appeal.

Beri v Sachdeva¸2026 BCCA 20

Issue: The appellant's petition, brought pursuant to the Hague Convention, seeking return of his children to their jurisdiction of habitual residence in California was dismissed. He appeals arguing the judge erred in finding that he acquiesced to their change of residence and in concluding that returning the children would expose them to a grave risk of harm from domestic violence.

Overview: Held: Appeal dismissed. While the judge erred in concluding the appellant had acquiesced in the move to British Columbia, the judge did not err in finding that returning the children to California would expose them to a grave risk of harm under Article 13(b) of the Hague Convention. Her findings of fact concerning the nature and extent of the domestic violence are entitled to deference, as is her conclusion that there was reason to doubt the children would be protected from the risk of harm from domestic violence given the family circumstances and the nature of the historic abuse if they were returned to California.

Key Passages

[Hague Convention]

[27] Article 13 provides exceptions to Article 12:

> Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that -
>
> > a) the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention; or
> >
> > b) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.
> >
> > [Emphasis added.]

[28] Several Canadian cases have found that the exceptions in Article 13 should be applied narrowly to further the objects of the *Hague Convention*. In *Solis v. Tibbo Lenoski*, 2015 BCCA 508, this Court quoted with approval from the "Explanatory Report on the 1980 Hague Child Abduction Convention," *Acts*

and Documents of the Fourteenth Session, vol. 3 (The Hague: 1981) 426, which explains the rationale for a restrictive interpretation of the exceptions in Article 13 (at para. 26):

> [34] To conclude our consideration of the problems with which this paragraph deals, it would seem necessary to underline the fact that the three types of exception to the rule concerning the return of the child must be applied only so far as they go and no further. This implies above all that they are to be interpreted in a restrictive fashion if the Convention is not to become a dead letter. In fact, the Convention as a whole rests upon the unanimous rejection of this phenomenon of illegal child removals and upon the conviction that the best way to combat them at an international level is to refuse to grant them legal recognition. … a systematic invocation of the said exceptions, substituting the forum chosen by the abductor for that of the child's residence, would lead to the collapse of the whole structure of the Convention by depriving it of the spirit of mutual confidence which is its inspiration.
>
> [Emphasis added.]

[29] Dealing specifically with Article 13(b), the Court in *Ibrahim v. Girgis*, 2008 ONCA 23 observed that "a broad interpretation of acquiescence is inconsistent with the purpose of the Convention, which is to secure the prompt return of abducted children, and with the correspondingly limited scope of the Convention's exceptions": at para. 29. Similarly, in *Droit de la famille — 1222*, 2012 QCCA 21, the Court found the lower court judge had erred by bringing the notion of the interests of the child into the *Hague Convention*, thereby giving an overly broad scope to the exception in Article 13(b): at para. 40.

….

[Article 13(a) exception]

[50] Ms. Sachdeva's removal of the children from their habitual residence without his consent in the events that transpired up to October 13, 2024, raised an issue of wrongful retention. Accordingly, the question before the judge was whether Mr. Beri subsequently acquiesced to the change in the children's habitual residence once he learned that Ms. Sachdeva had taken them to Canada. The October 13 messages could not reasonably be considered evidence of "subsequent acquiescence" considering they were his first communications after learning the children had been taken to Canada. Approving a parent's departure with children for a temporary break is not the equivalent of giving consent to the *retention* of a child in Canada: *Ahmed* at para. 32, citing *Katsigiannis*.

….

[52] That leaves the email message of February 4, 2025, as the primary basis for the judge's conclusion that Mr. Beri granted his acquiescence to the children's move to Canada. In my view, it falls far short of being clear and cogent evidence of acquiescence and certainly does not indicate Mr. Beri's unequivocal consent to a change of habitual residence.

….

[54] There are several reasons why I would conclude that this email does not provide clear and cogent evidence of Mr. Beri's unequivocal acquiescence.

[55] Mr. Beri does not directly state his agreement or acquiescence to the move. Rather, he set out matters that he proposes the parties need to "discuss and decide on with respect to winding up in the US and for creating a base in Canada". While his email contemplates a situation where all members of the family would live in British Columbia, it is premised on Mr. Beri's ability to "be close to the kids and an equal partner to [Ms. Sachdeva] in their upbringing". The email describes steps that he believed should be taken, and conditions that should be met to facilitate his possible move to Canada.

[56] Attempts by a wronged parent to affect a reconciliation or to reach an agreed voluntary return of children do not generally constitute acquiescence: *Katsigiannis* at para. 39. The rationale for this is both principled and practical. The circumstances giving rise to *Hague Convention* return applications invariably involve high levels of conflict between parents who may make statements against their interest to resolve their parenting dispute. British Columbia law encourages parents to attempt to do that through negotiation. The fact that the circumstances in question involve application of the *Hague Convention*, does not require a different approach. Parties should be encouraged to negotiate resolution of relocation disputes without fear that statements made in the context of their discussions to resolve an impasse could be considered decisive, unless of course agreement has been reached.

[57] This more guarded approach to acquiescence is demonstrated in *Raposo v. Raposo*, 2023 ONSC 346, where the Court observed that "[a] single text message in the context of ongoing proceedings" that conflicted with a party's stated positions and actions before and after, could not be relied on as clear and cogent evidence of acquiescence: at para. 58. The Court noted that concessions are often made by parties because they want to placate their spouse or avoid conflict and that such statements are often made without the benefit of legal advice: at paras. 56–58.

[58] A similar approach to consideration of acquiescence was taken in *Batten*, where the wronged parent, Mr. Batten, took a series of steps in an attempt to resolve the parties' dispute about whether a child should reside in Canada or France. The father obtained a six-month tourist visa, purchased a vehicle, entered into a guardianship and parenting agreement—which did not deal with permanent residence—and approved of the child's enrolment in school and various sporting activities. The judge found that the evidence did not suggest the father intended to remain in Canada on a long-term basis. He concluded:

[49] I find that the circumstances of Mr. Batten's temporary move to Canada and the subsequent negotiation between him and Ms. Batten regarding potential permanent relocation to Canada do not constitute clear and cogent evidence of unequivocal acquiescence by Mr. Batten for [the child]'s continued residence in Canada on an indefinite basis.

[59] The circumstances here have much in common with those in *Raposo* and *Batten*. Mr. Beri was responding to Ms. Sachdeva's decision to take the children to Canada. His communications expressed his wish to be an active parent living in close proximity to his children, and his general opposition to the move to Canada. Initially he asked that the children not be removed from India and later that they be returned to India or California. While Mr. Beri's email of February 4 considered the possibility of the parties both living in British Columbia, in my view, it does not rise to the level of clear and cogent evidence of his subjective intention regarding the children's residence in Canada.

[60] Further, the February 4, 2025 email could not be regarded as a formal expression of unequivocal intention: *Raposo* at paras. 56–58. Acquiescence requires "an act or statement with the requisite formality, such as testimony in a judicial proceeding; a convincing written renunciation of rights; or a consistent attitude of acquiescence over a significant period of time": *Raposo* at para. 48 citing *Friedrich v. Friedrich*, 78 F (3d) 1060 (6th Cir. 1996) at 1070. There is good reason to require some level of formality to establish acquiescence for such an important parenting decision. While a statement of "requisite formality" is not always required, where a party has not shown "a consistent attitude of acquiescence over a significant period of time", the evidence must be examined in full to determine if the parent has expressed their unequivocal acquiescence: *Raposo* at para. 48. In such cases, some level of formality—correspondence from counsel, a form of agreement, a sworn statement—can provide clear and cogent evidence of a parent's agreement to a change of habitual residence.

[61] Respectfully, it is my view the evidence relied on by the judge to find that Mr. Beri acquiesced to the relocation to Canada does not come close to satisfying the required standard. I also find that the judge improperly dismissed the evidence of Mr. Beri's subjective intentions contained in the post February 4 emails. The judge determined that those statements were not "free from mental illness" even though: (1) the issue of Mr. Beri's capacity to express his intentions was not the subject of expert evidence; and (2) neither party argued that any of his statements should be disregarded because he lacked the mental capacity to express his views. It would set a dangerous precedent to disallow statements of intention based on "mental illness" for the purpose of determining acquiescence in the absence of medical evidence supporting such an approach. The difficulty in doing so is evident from the circumstances here. Although Mr. Beri was under psychiatric care from June 2024 onward, it is unclear how the judge was able to pick and choose which statements were "free from mental illness" in the absence of evidence or argument.

….

[Article 13(b) exception]

[66] I accept Mr. Beri's contention that the judge erred in finding that Ms. Sachdeva's immigration status in the United States was a relevant factor for the risk of harm analysis. While it is my view that the judge erred in her approach to this consideration, Ms. Sachdeva's immigration status was not essential to the judge's conclusion that returning the children to California would place them at a grave risk of harm. Accordingly, I would not interfere with the judge's conclusion on this basis. I will, nevertheless, briefly explain why I find her approach to this question was incorrect.

….

[69] The onus of proving the existence of a risk of harm is on the parent relying on the exception: *Parsons v. Styger* (1989), 67 O.R. (2d) 1, 1989 CanLII 4326 (S.C.) at para. 25, aff'd 67 O.R. (2d) 11, 1989 CanLII 4179 (C.A.). The standard of proof is on a balance of probabilities. To rely on the Article 13(b) exception, a parent must establish the existence of "physical or psychological harm… to a degree that also amounts to an intolerable situation: *Thomson v. Thomson*, [1994] 3 S.C.R. 551, 1994 CanLII 26 at 596. To meet that threshold, there must be considerable evidence that is credible: *Pollastro* at para. 31.

[70] If Ms. Sachdeva's immigration status was an important factor in the risk of harm analysis, she bore the onus of proving that with clear and convincing evidence. Given that the analysis involved the application of foreign law, the proof of that law required expert evidence: *Friedl v. Friedl*, 2009 BCCA 314 at para. 20; *U.K. v. N.A.*, 2021 ONCJ 73 at para. 121. As Mr. Beri argues, the evidence presented by Ms. Sachdeva fell far short of establishing that she could not return to California.

[71] The judge should have rejected the claim for an Article 13(b) exception based on immigration status because of the inadequacy of the evidence for this basis of the Article 13(b) exception. Had Ms. Sachdeva's immigration status been critical to the judge's analysis on whether the Article 13(b) exception applied, she could have invited the parties to present further evidence on the issue.

….

[Risk of harm of domestic violence and establishing grave risk]

[75] Courts in this country have accepted that returning a child to a jurisdiction where the child would be placed in an intolerable situation because of domestic violence can be a basis for applying the Article 13(b) exception: *Pollastro*; *Droit de la famille — 131963*, 2013 QCCA 1248; *Landman v. Daviau*, 2012 ONSC 547, aff'd at *Husid v. Daviau*, 2012 ONCA 655; *Sampley v. Sampley*, 2015 BCCA 113.

[76] *Pollastro* is the seminal Canadian case applying the exception in this context. Justice Abella, as she then was, writing for the Court stated:

> [33] Although every case depends on its own facts and the onus remains on the person resisting the child's return, it seems to me as a matter of common sense

> that returning a child to a violent environment places that child in an inherently intolerable situation, as well as exposing him or her to a serious risk of psychological and physical harm.

….

[80] Mr. Beri does not challenge the judge's statement of the *Thomson* test. Nor does he seriously challenge the judge's findings of fact about the incidents of abuse or violence including her credibility assessment. Instead, he challenges the judge's conclusion that the authorities in California could not protect Ms. Sachdeva and the children from the real risk of harm posed by Mr. Beri's behaviour given that California law is similar to that of British Columbia. Referring to *Batten*, at paras. 54–55, he submits that Ms. Sachdeva was required "to produce evidence which is both 'credible and meets a high threshold,' and must rove that the courts of the place of the child's habitual residence cannot protect the child from alleged harm" (emphasis added). Mr. Beri submits the judge failed to apply what he describes as the second part of this "test" and says this amounts to an error of law.

[81] In my view, there is little merit to Mr. Beri's submission that a parent relying on spousal abuse as the basis for a finding of risk of harm "must prove" that the courts of the foreign jurisdiction cannot protect the child. This misstates the analysis that a court is required to undertake when considering a return application that is being defended on the basis of the Article 13(b) exception. It does so in two ways. First, there is no two-part test requiring a parent to "prove" that the courts "cannot protect the child from alleged harm". Second, Mr. Beri's narrow focus on the similarity between California and British Columbia law misses the point of the analysis that must be undertaken.

[82] The proper approach to the question was set out in *Sampley*:

> [41] Thus, in the absence of reason to doubt otherwise, we should accept that the jurisdiction from which the child was removed has the capacity to adjudicate the merits of the custody and access issues, including the allegations of abuse, and make the necessary orders to protect the best interests of the child.
> The *Convention* does not, through Article 13(b), displace the jurisdiction of the courts of the place of habitual residence to adjudicate those matters.
>
> [Emphasis added.]

[83] Accordingly, the question a court must ask is whether the evidence establishes "a reason to doubt" that the jurisdiction can not only adjudicate the merits of the parenting issues including the allegations of abuse, but also whether the best interests of the child can be adequately protected given all that is known about the parties and the history of domestic abuse. In other words, it is not simply a question of whether the legislation and court system in the jurisdiction of habitual residence are similar to those in British Columbia but whether that system will be sufficient to protect the children's interests given the family circumstances and the nature of the historic abuse.

[84] As noted by the authors in N. Bala and J. Chamberland, "Family Violence and Proving 'Grave Risk' for Cases under the Hague Convention Article 13(b)" (2015) *Queen's University Legal Research*, Working Paper No 2017-091, there is more to the Article 13(b) analysis than acceptance of the presumption that the foreign court system operates effectively (at 10):

> The presumption that the justice system of the jurisdiction of the child's habitual residence operates effectively is, however, not determinative of an Article 13(b) case. It must be recognized that if there is a concern about "coercive controlling violence", or there has been an escalation in violence after separation, no justice system can provide complete protection. In every country in the world, victims of spousal violence (especially women) are subjected to harassment, assaults and even death, despite restraining orders or other civil or criminal orders being in place to protect them. The reality is that some abusers, particularly in "coercive controlling violence" cases, will not comply with court orders and pose significant risk of further violence. On the other hand, many of those who have perpetrated isolated acts of domestic violence will comply with court orders. In *Hague* cases courts must take account of the likelihood that a victim of domestic violence will be able to seek legal protection and that she will actually be protected.
>
> This may require, on a case by case basis, an assessment of whether the applicant is likely to comply with protective orders or undertakings, as well as the seriousness of the threats.
>
> … While no country has a justice system that can provide absolute guarantees of safety, in dealing with *Hague Convention* cases, account must be taken of the nature and history of violence, the actual responsiveness of the police and courts in the child's jurisdiction of habitual residence to this abuse, and the future risk that posed to the child and caregiving parent if the child is returned.
>
> [Emphasis added.]

[85] I agree with these observations. Specifically, when children are to be returned to a jurisdiction that has a justice system similar to that of British Columbia, a court must nevertheless consider all the evidence of domestic abuse including: the number of incidents; the nature and severity of the alleged abuse; the effectiveness of preventative measures that have been attempted in the past; the cause of the abuse; whether it is likely to continue in the future; and whether the offending parent has obeyed court orders. As a result of that analysis, a court may conclude that the evidence establishes a reason to doubt that the children would be protected from the risk of harm posed by the specific circumstances before the court.

….

[94] Having first assessed the nature of the historic abuse and Mr. Beri's continued animosity and harassment, the judge then appropriately considered evidence relevant to

whether Ms. Sachdeva and the children could be adequately protected in California should they be returned. She noted that three jurisdictions—California, India, and British Columbia—had been involved in addressing Mr. Beri's behaviour. However, Mr. Beri's harassing behaviour had continued, despite the involvement of doctors, the police, and the No Contact Order.

…..

[96] In summary, I am of the view that the judge did not err in law by failing to apply the proper test when considering the ability of the authorities in California to protect the children. In addition, there was ample evidence to support the judge's conclusion that Mr. Beri's conduct was "irrational and dangerous" and that, in the absence of evidence that his mental illness and addiction had been successfully treated, there was reason to doubt that the best interests of the children could be protected in California. Those conclusions are entitled to deference on appeal, and I would not interfere with the judge's conclusions on these essential questions of mixed law and fact.

10. Relocation

T.G.T. v L.K.M., 2025 BCCA 251

Summary: A decision to proceed with a summary trial is one of broad discretion and which attracts the standard of clearly wrong. Here, the judge took great pains to conduct and record the analysis. In the end there was no legal error. Where the appellant came closest was the alleged failure to advance a workable parenting plan should the move be allowed. Given that her circumstances were unsettled, the judge found it acceptable that they be worked out at a later date.

Issue: Challenge to an order permitting the respondent to relocate from BC to Ontario with the child to pursue an employment opportunity. Complained about were both the suitability of proceeding summarily as well as the best interests outcome.

Overview: Appeal dismissed. The summary trial judge did not err in determining the matter was appropriate for summary trial. He did not misapprehend the evidence, and he had a sufficient evidentiary record to determine the child's best interests, which is the only focus of this application.

Key Passages

> [Suitability for summary trial]
>
> [72] I see no error in the judge's conclusion that, despite the competing and disparate affidavit evidence, he was able to find the necessary facts and determine that the matter was suitable for summary determination. He set out the test for suitability from *Inspiration Management* and considered each of the factors in light of the evidence in the extensive affidavits and the discovery transcripts before him. His assessment was not unbalanced; in fact, many of the factors were determined in favour of T.G.T.
>
> [Error in allowing the relocation]
>
> [77] Relocation decisions are notoriously difficult. Assessing what is in a child's best interests in a case in which parents no longer wish to reside in the same community, is done knowing that any decision is likely to significantly impact one parent's relationship and time with the child. Nonetheless, these applications are not unusual and the *FLA* provides a child-centred framework for making them. The focus throughout must be on the child's best interests.
>
> [78] It is apparent from the summary trial judge's reasons that he considered the applicable statutory sections (ss. 37(2), 38 and 46 of the *FLA*) and the parties' extensive evidence. He considered all of the factors relevant to G.'s best interests based on the affidavits and discovery transcripts before him. He reached evidentiary conclusions that were available to him on the evidence, many of which favoured T.G.T.

[79] This case presented a unique circumstance as G. had to relocate from her home in Whistler—it had been sold. The judge had two options: 1) have G. reside with T.G.T. in Kelowna, or 2) have her reside with L.M.K. in Pickering. G. could not live in both places at the same time.

[80] T.G.T. did not point to any specific error in the trial judge's reasons, rather, in my view, he sought to reargue the summary trial application, seeking a different result.

[81] The summary trial judge did not misapprehend the evidence and he had a sufficient evidentiary record on which to determine G.'s best interests which was the judge's only focus.

11. Separation Agreements

Hamdiv v Ali, 2025 BCCA 418
Summary: clear mistake by a Judge who ought to have had the benefit of better submissions. She focused on the substance of the agreement and court order, and not the basis upon which they might be set aside.

Issue: The appellant and respondent entered a settlement agreement to resolve issues of spousal support and division of family property. The parties filed a consent order reflecting the terms of the settlement agreement. In 2022, the appellant filed a notice of family claim seeking, among other things, to set aside the settlement agreement and consent order. The chambers judge granted the respondent's application to strike the appellant's claim on the basis it was res judicata and therefore an abuse of process. The appellant asserts the chambers judge erred in doing so.

Overview: Appeal allowed. The chambers judge erred in law. The chambers judge did not decide the main issue she needed to decide. The chambers judge focused on the substance of the settlement agreement and consent order rather than whether they might be set aside on the grounds raised by the appellant.

Key Passages

> [20] Fundamentally, the chambers judge did not decide the main issue she needed to decide, namely whether Mr. Hamdi's application to set aside the consent order was vexatious, an abuse of process, *res judicata* and/or time-barred.
>
> [21] After correctly citing a number of legal principles regarding *res judicata* and abuse of process, the chambers judge applied them to matters not in issue on Ms. Ali's application to strike. She focused on the substance of the Agreement and consent order rather than whether they might be set aside on the grounds Mr. Hamdi raised. Essentially, the judge applied the law to the wrong question. Failing to apply a legal test correctly is an error of law: *Ding v. Canam Super Vacation Inc.*, 2024 BCCA 102 at para. 38.
>
> [22] There is no dispute that, subject to certain exceptions, the Agreement and consent order were a final and binding resolution of all the parties' claims arising out of their long-term marriage, except their divorce. Had Mr. Hamdi's notice of family claim simply aimed to re-open and re-try those issues in hopes of a different outcome, the judge would have been quite right to strike it out on the basis it was an abuse of process. But that was not the nature of Mr. Hamdi's claim.
>
> [23] Rather, Mr. Hamdi's claim sought to set aside the Agreement and consent order on the basis they were unconscionable and had been obtained by Ms. Ali in an exploitative fashion. It also appears to seek remedies in relation to a period of alleged reconciliation. Those issues were not the subject of the Agreement or consent order and had not been previously litigated or resolved.

[24] The law is well-established that the Supreme Court of British Columbia has inherent jurisdiction to set aside a final order on the same basis as the agreement underlying it. As this Court recently held in *Esteghamat-Ardakani v. Taherkhani*, 2023 BCCA 290, leave to appeal to SCC ref'd, 40928 (21 March 2024):

> [114] … [A] consent judgment is a formal expression of an agreement between the parties. It is not a judicial determination on the merits. That is why a consent judgment may be set aside or varied by the court "in circumstances which justify the same treatment to the underlying contract": *Shackleton* at para. 12; see also *Racz* at para. 8 and *Rick* at para. 64.

[25] Here, the grounds raised by Mr. Hamdi for setting aside the Agreement and consent order were among the possible grounds for doing so. In addition, Mr. Hamdi has raised new issues relating to a period of alleged reconciliation arising after the parties entered the Agreement and consent order.

12. Other

Summary Table

Case	Importance/Issue
Garousi v Garousi, 2025 BCCA 392 (Ongoing Non-Compliance with Order)	ISSUE: Whether to Hear a Deadbeat. OUTCOME: Hard pass, thx. IMPORTANCE: The appellant tried to prove a material change and failed and then tried again in a collateral attack. He failed. He then tried to appeal those failures. The respondent sought a finding that he should not be heard given his refusal to honour court orders. This case is a helpful annotation of the cases which came before on this a point (*Berry*, *Larkin*, *Morey*).
Jones v Jones, 2025 BCCA 463 (Summary Trial)	ISSUE: Another challenge to the suitability of summary trials (see the relocation section above). OUTCOME: Appeal dismissed. IMPORTANCE: Both of the cases in this paper underscore a lesson to be taken: the decision to proceed summarily is not a green light to an appeal or even a basis to consider an appeal more likely to succeed. Where unsuitability exists, it will look like itself; in neither of the cases that were addressed by the court of appeal this year the complaints didn't come close.
Glassen v Glassen, 2026 BCCA 99 (Family Pet)	ISSUE: Thank god – a pet case to the BCCA. OUTCOME: Appeal shockingly, unbelievably, amazingly, dismissed. The self-represented party was simply rearguing. IMPORTANCE: The appellant argued several of the bases under 97(1)(4.1). His problem was that at trial he had argued 50/50 sharing, which is statutorily barred. He tried to change his position at the BCCA and then argue that the judge failed to do the analysis as if he had taken that position below (a slippery little argument if there ever was one). Court said first that is not how it works, and second even if the judge had the destination was always going to be the same.

Garousi v Garousi, 2025 BCCA 392 (*Refusal to hear appeal of support order which has not been complied with*)

Issue: The appellant failed to pay any child or spousal support for over a decade. He applied to vary the orders (in 2023 and 2024) but both applications were dismissed because he did not establish a material change in his financial circumstances and the second was a collateral attack on the 2023 order and he failed to show a material change

Overview: The respondent objected to the court hearing the appeal. The application granted and appeal dismissed. The appellant failed to satisfactorily explain his persistent and ongoing noncompliance with the consent order. In the circumstances, the Court exercised its discretion to refuse to hear the appeal.

Key Passages

[16] It is within the discretion of the Court to refuse to hear an appeal from a support order with which the appellant has failed to comply: see *Larkin v. Glase*, 2009 BCCA 321 at para. 30; *Hokhold v. Gerbrandt*, 2015 BCCA 268 at para. 10.

[17] Where the appellant has provided a convincing explanation (see e.g., *Morey v. Morey*, 2017 BCCA 439) or where it is in the interests of justice (see e.g., *Berry* at para. 2), the Court may exercise its discretion in favour of hearing an appeal despite the appellant's non-compliance: see *de la Fuente v. Breen*, 2022 BCCA 424 at para. 10.

[18] Dr. Garousi has not provided a convincing explanation for failing to make any payments from 2014 until December 2024. He asserts that his earnings were dramatically reduced after he left the University of Calgary and the respondent received the benefit of the properties pursuant to the Consent Order. He acknowledges that he should pay about $80,000 but has not taken any steps to transfer even this reduced amount to the respondent.

[19] Dr. Garousi's financial disclosure was found to be deficient before Justice Lamb and similarly inadequate before Justice Gibb-Carsley. Justice Lamb specifically addressed this deficiency in her reasons, stating:

> [43] Dr. Garousi says his income was significantly less when he was a professor in Turkey from 2014 to 2017 and somewhat less when he was a professor in the Netherlands from 2017 to 2019. However, Dr. Garousi has failed to prove a material change in income prior to December 2019. In particular, Dr. Garousi failed to meet the onus on him to provide sufficient reliable evidence of his earnings and the then-current exchange rate in order to establish his Canadian-equivalent earnings for those years. He also failed to provide sufficient reliable evidence to establish that his lower salary was not one of choice.
>
> [44] Dr. Garousi failed to prove what he earned prior to 2019 and the Canadian equivalent of his line 15000 income for the years 2014 to 2019. He failed to provide tax returns for the years 2014 to 2019. The payslips he attached to his affidavit were not in English, and he failed to provide admissible evidence of currency conversion rates.
>
> [Emphasis added.]

[20] When Dr. Garousi filed his second variation application, he provided additional income information relating to 2023. However, he did not seek to provide additional financial evidence to support his bald assertions about his earnings in 2014–2019. In other words, he did not attempt to correct the deficiencies identified by Justice Lamb in her reasons.

[21] In addition, Dr. Garousi failed to comply with Justice Lamb's costs order ($2,000 payable forthwith) or Justice Gibb-Carsley's costs order ($2,000 payable within 30 days of the date of this order).

[22] In my view, it is not in the interests of justice to hear this appeal from two orders dismissing Dr. Garousi's application to vary the Consent Order, entered into over a decade ago, and by agreement.

Jones v Jones, 2025 BCCA 463

Issue: The appellant challenges an order made following a summary trial in a family law proceeding. She argues the judge erred in finding the matter suitable for summary determination, in her findings on property division and spousal support, and in awarding fixed costs to the respondent. The appellant also argues the judge proceeded unfairly by determining an issue that was not in the respondent's pleadings. The respondent's primary position on appeal is that the judge made no reversible error. In the alternative, the respondent has filed a cross appeal arguing the judge erred in excluding the expert report he sought to adduce

Overview: The Appeal and cross appeal dismissed. The judge made no error of law, fact or principle that would justify appellate intervention. It is clear from her careful and detailed reasons that the judge applied the correct legal test in deciding to proceed summarily, in determining property division and support obligations, and in awarding fixed costs.

Key Passages

[Determination that the matter was suitable for summary trial]

[66] In contrast, there was no conflict in this case in the expert evidence. Nor did either party seek to cross-examine the expert on the XPS report. Rather, the issues for determination regarding the expert evidence were the weight to be attributed to it given the assumptions and reasoning upon which it was based and the inferences that should be drawn.

[67] Moreover, in making her suitability determination, the judge considered and accounted for relevant factors identified in the jurisprudence. For example, she noted that the amounts in question were not large, and the issues were not complex. I agree with Mr. Jones that the First Separation, 2006 Reconciliation, and Final Separation were factually unusual and, as a result, the outcome on spousal support was difficult to predict. However, that did not mean the matter was unsuitable for summary determination.

[68] I also agree with Mr. Jones that it was unlikely the conventional trial that Ms. Jones unilaterally scheduled could have concluded in ten days in October given Ms. Jones' approach to the litigation. Nor is it clear that Ms. Jones would have had counsel at a conventional trial. In any event, Ms. Jones' decision to allocate her resources to a possible future conventional trial and self-represent on the summary trial she was facing did not render the matter unsuitable for determination by summary trial.

….

[Was the appellant denied procedural fairness?]

[80] In other words, the length of the relationship for spousal support purposes was a question raised by the form of the amended notice and it did not extend beyond the application. Rather, it was a necessary factor for consideration in the determination of spousal support. While Mr. Jones should have referred to his position and authorities on the length of the relationship in the application notice, it was not a positive defence to the claim that needed to be specifically pleaded. The onus was on Ms. Jones to establish her spousal support entitlement based on, among other things, the length of cohabitation based on all the circumstances, which included the First Separation and 2006 Reconciliation: Gichuru 2013 at para. 35.

[81] Moreover, and most importantly, after Mr. Jones' counsel made his arguments, the judge provided Ms. Jones with an opportunity to consider her position, make responsive submissions, and apply to introduce additional evidence. As noted, having heard Mr. Jones' arguments on July 13, Ms. Jones sought a one-week adjournment to consider and formulate her response, and, as events unfolded, she had an additional three-months in which to do so. She went on to present thorough submissions, including responsive arguments regarding the length of the relationship for spousal support purposes and why she contended the cases upon which Mr. Jones relied were distinguishable. However, at no point did Ms. Jones attempt to adduce additional relevant evidence despite applying to reopen the summary trial, nor has she suggested what other evidence or argument she could have advanced had she been alerted earlier to Mr. Jones' argument. In my view, this is telling and supports the conclusion that the judge provided Ms. Jones with a fair opportunity to be heard and fully respond to the length of the relationship issue.

….

[Property Division]

[87] I see no error in the judge's factual findings. She did not fail to account for established facts with respect to the parties' property, as Ms. Jones alleges. Rather, Ms. Jones failed to provide sufficient evidence to establish the alleged facts. Nor did the judge value the goodwill in the All-Pro Businesses without an evidentiary basis. On the contrary, she considered and weighed all the evidence regarding the businesses, including the XPS evidence, drew available inferences, and assessed the value of the goodwill based on the evidence she accepted and the inferences she drew from the evidence.

….

[Length of the relationship for spousal support purposes]

[97] The judge was entitled to infer that the parties had a common intention finally to sever their relationship in June 2006 when the court made the s. 57 declaration. While I

agree with Ms. Jones that the purpose of the s. 57 declaration was to establish a triggering date for property division, the fact it was made was circumstantial evidence of an intention to end the relationship. In addition, and importantly, the judge was also entitled to conclude, as she did, that Ms. Jones "gave up her right to seek spousal support" for the period preceding the 2006 Reconciliation: Reasons for Judgment at para. 194.

[98] In my view, the evidence amply supported the judge's conclusion. For example, as she noted, in 2003, during the First Separation, Ms. Jones confirmed in writing that she would not claim spousal support, made no such claim in the First Action in 2006, and testified on discovery that by 2006 she was financially self-sufficient. In other words, contrary to Ms. Jones' submission, the judge concluded that the parties finally dealt with spousal support for the pre-reconciliation period such that it was appropriate to find the length of the relationship was seven years for compensatory spousal support purposes

Glassen v Glassen, 2026 BCCA 99 (*Custody of Family Pet*)

Issue: The appellant husband appeals from the trial judge's orders granting equal division of family property, final parenting decision-making authority to the respondent wife, and possession of the family dog to the respondent. He seeks to adduce new evidence in support of his position that the judge made errors in her findings of fact.

Overview: Held: Appeal dismissed. An appeal is not a re-trial, and this Court must treat with deference a trial judge's findings of fact, application of the law to those facts, and exercise of discretion. The appellant repeats the arguments made at trial and has not demonstrated a reviewable error. Moreover, the new evidence the appellant seeks to introduce was either available pre-trial or is irrelevant to the issues on appeal.

Key Passages

[Property]

[30] The judge identified Mr. Glassen's many arguments regarding unequal contributions, now repeated on appeal. She considered the full circumstances of the parties during the relationship and post-separation. The judge ultimately rejected Mr. Glassen's argument that his contributions were greater and would therefore make equal division significantly unfair. The judge's findings on these points were consistent with the evidence and a proper application of the law.

[31] As for the judge's findings regarding the loans and gifts from Mr. Glassen's mother, these findings were based on evidence the judge was entitled to accept and do not reveal any error. Neither Mr. Glassen nor his mother had ever treated the loan she made to the parties as bearing interest, pre-separation. Mr. Glassen's mother also signed a gift letter and conducted herself as though the gift she made was to the couple, not to Mr. Glassen alone. Mr. Glassen has not shown that the judge overlooked or misapprehended evidence on these matters.

[32] Mr. Glassen has also not shown any error in the judge's consideration of the relative living expenses each party contributed post-separation. Mr. Glassen asserted that he maintained the family home by making mortgage payments post-separation, but in fact these were largely funded by a line of credit that was treated as family debt, which was divided equally. The judge therefore decided to take into account, in her equalization of property and debt, a portion of rent that Ms. Mildon was required to pay post-separation. This approach was consistent with the findings of fact made by the judge and consistent with legal authority, including *Stasiewski v. Stasiewski*, 2007 BCCA 205 at paras. 27–33.

….

[Family dog]

[36] Prior to trial, the parties had attempted regular transfers of the dog between households. However, according to the trial judge's findings, difficulties arose because of Mr. Glassen's communication issues and unwillingness to cooperate with Ms. Mildon.

[37] Mr. Glassen's new position on appeal is that he should have sole possession of the dog. He submits the judge erred by failing to engage in a review of the factors set out in s. 97(4.1).

[38] In my view, given Mr. Glassen's position at trial and the evidence, the judge was not required to engage in a detailed analysis of the factors listed in s. 97(4.1). These factors in part relate to a party's degree of attachment to the animal, a child's attachment to the animal, and a party's ability to care for the animal. Mr. Glassen's position at trial implicitly recognized that both parties and the child were attached to the dog and that both households were appropriate for the dog. He seemed to suggest there was a need for shared custody of the dog for the child's sake, so that the dog could provide emotional support to the child when she transitioned between households. The judge considered K's relationship with the dog and found that the parenting schedule gave them sufficient time together at Ms. Mildon's house.

[39] Further, had the judge referred to additional evidence, the conclusion would have been the same. Ms. Mildon's evidence was that she acquired the dog after the child was born and that she took primary responsibility for related expenses such as pet insurance, vet bills, and licensing. Mr. Glassen wrote to Ms. Mildon around the time of separation and told her that she would get the dog.

[40] In my view, there is no basis for finding that the judge erred. The judge properly considered Mr. Glassen's position at trial and properly rejected it as not available on the law. There is no basis for interfering with her exercise of discretion to award possession of the dog to Ms. Mildon.

….

[Parenting issues]

[46] The judge carefully and sensitively reviewed the evidence regarding the parties' co-parenting efforts post-trial. The parties had several occasions of conflict. The judge reviewed examples of situations where Mr. Glassen's animosity towards Ms. Mildon led to him taking unreasonable positions that were not in the best interests of the child. The judge nevertheless crafted a co-parenting order that, for the most part, provides for decision making to be shared. Her conclusion that Ms. Mildon was better suited to make final decisions in relation to the child, if the parties could otherwise not agree, was a wise and prudent exercise of discretion in all the circumstances.

….

[Bias]

[49] The meritless allegations of bias reflect very poorly on Mr. Glassen. There is nothing objectively reasonable about his allegations. The transcript of the trial and the judge's reasons reflect nothing but a respectful and careful approach. The judge's findings that disagreed with Mr. Glassen's perspectives were well-founded, and there is no basis for suggesting they are a result of bias.

….

[Proposed additional evidence]

[57] The vast majority of Mr. Glassen's proposed additional evidence is evidence of matters that occurred pre-separation or pre-trial which, if relevant and admissible, was available to him to call at trial. He seeks to rely on evidence to reshape the facts and bolster his case on points he either lost at trial or which the trial judge found irrelevant (such as evidence of the difficulties in the parties' relationship pre-separation). Much of it is argument, inflammatory, and irrelevant and would not qualify as admissible evidence even if he had tried to introduce it at trial.

[58] While ostensibly Mr. Glassen submits that evidence of problems in the marriage pre-separation supports his view that the parties' post-separation communication difficulties were Ms. Mildon's fault, this evidence is irrelevant to co-parenting the child post-separation. Many of these allegations speak to intimacies in the marriage and appear designed to denigrate Ms. Mildon and bias the court against her. He also seems to rely heavily on evidence of a pre-separation email from a family counsellor that expressed encouragement to him but is entirely based on hearsay. He has no basis to suggest that any of this would have properly been admissible at trial.

13. Trial Level Decisions of Note

Summary Table

Case	Importance/Issue
M.J. v. R.J., 2026 BCSC 143	ISSUE: Imprisonment under s. 231, s. 228 Fines, Restraints on Freedom of Speech (Social Media Posting) OUTCOME: Imprisonment dismissed, $100,000 fine, social media restrictions a reasonable limit of freedom of expression. IMPORTANCE: This unfortunate case developed the law in several areas: 1. The court determined that an application for imprisonment under s. 231 of the FLA was subject to the same safeguards as required under civil contempt (personal service; clear materials on the basis of trial-quality evidence; benefit of the doubt in ambiguity, etc.). 2. A fine of $100,000 (similar to than in *A.N.*) was pronounced. 3. Striking the balance set down in *A.B.* (BCCA), the court concluded that restrictions on freedom of speech in the social media context was appropriate where: a. The order targeted specific harm to children and was proportionate to those harms; b. Were clearly grounded in the evidence; c. Were specific in their language; and d. Leave room for liberty to apply for adjustment as necessary ..
Kolias v. Kolias, 2025 BCSC 715	ISSUE: Tort of Conspiracy and Unconscionable Procurement OUTCOME: Neither amendment was allowed. IMPORTANCE: In this case, the applicant sought to amend her pleadings to add claims under the tort of conspiracy (predominant purpose conspiracy) and the doctrine of unconscionable procurement. The tort of conspiracy is a remedy of mixed treatment across the country and has not been reconciled by the SCC. In other provinces the tort has been blessed (*Veitch* – very recently followed elsewhere in *Lavoie*) but here, approached with significant caution (*Waters*, following *Frame*). The court ultimately concluded that the tort was available in BC because of the problem of "invisible litigants" provide that a remedy is not available elsewhere (Waters). Unconscionable procurement remains unresolved, as does the even shakier proposition that it could be brought derivatively. It was not properly set out in this case and so died on the vine, so remains a flawed legal entity which remains on the sidelines waiting for the perfect fact pattern to ride into relevance.
Montaine v. Montaine, 2026 BCSC 588	ISSUE: Disclosure Applications OUTCOME: Applications dismissed. IMPORTANCE: Following on the trend towards requiring greater attention to the quality of materials and conformity to the SCFR which began with Dupre and Zecher, this case stands for the proposition that it is not role of the court to sift through broad, unfocused paragraphs of relief sought looking for an order – some order – which can be made. Those applications will be dismissed, with liberty to re-file a properly structured application.
M.D.F. v. D.O.T.C., 2026 BCSC 358	ISSUE: What does "primary residence" even mean? OUTCOME: Mom overreached.

	IMPORTANCE: The argument made was that since the mother had "principle residence" with the child, on review the only thing that was open for consideration were changes to the parenting schedule but which still remained under that macro schedule, barring the demonstration of a material change. The court rejected this creative argument outright.
Gass v. Hill, 2025 BCSC 1602	ISSUE: Interim Ownership and Possession of a Dog OUTCOME: Application re: Dog Dismissed IMPORTANCE: The dog issue addressed some helpful questions: 1. A prima face case of a spousal relationship is sufficient to make interim orders where the nature of the relationship is in issue provided that care is taken to avoid an ability to recover later; 2. Orders under s. 97 may be made pursuant to s. 216 generally, including if a prima facie case for a spousal relationship is made out; and 3. Notwithstanding the factors set out in 97(4.1) it is simply <u>impossible</u> to ignore dogs.
McCann v. Idrobo, 2025 BCSC 1286	ISSUE: Non-Guardians and Relocation IMPORTANCE: This case reiterates that only guardians have standing to oppose relocation and clarifies that even persons holding valid contact orders similarly have no standing.
J.S. v. R.B., 2025 BCSC 1287	ISSUE: S. 7 Nannies IMPORTANCE: In this case the court stretched the language of s. 7 to include a nanny expense where it was required to permit the parent to undertake their parenting time obligations (including maintaining sobriety) finding them "extraordinary" as opposed to the more traditional "special".
Finnbogason v Norseman, 2025 BCSC 66	ISSUE: Damages IMPORTANCE: Helpful case that reconfirms the principle that damages awards cannot be determined when the heads of damage are not made out; also would be a very helpful case in compelling disclosure otherwise covered by settlement privilege: the personal injury mediation briefs.
S.O.S. v. T.Z., 2025 BCSC 813	ISSUE: Gambling and Reapportionment IMPORTANCE: Interesting rare case where pre-separation conduct is considered. The court distinguished Kumar, where gambling was successfully characterized as being similar to any other form of entertainment. For this court, it was a question of scope, finding: [128] First, I find that there were marked, prolonged, and intentional or unexplained disparities in respect of the respondent's contributions to the family as the result of her intentional unemployment and her casino activities. She refused to find a job, and I have found that the time that she spent at the casino was marked, prolonged, and excessive in comparison to her familial responsibilities. She made it clear both to the claimant and to the Court that she did not regard herself as obliged to share casino winnings with the respondent. Her attitude towards the claimant appeared to be that it was his obligation to provide for the family while her time and money was hers to do with as she wished. However, this ignores that fact that s. 95 generally only applies to wasting conduct post-separation.

Howell v. Howell, 2025 BCSC 33	ISSUE: Re-Partnering and Compensatory Support / Retro SS IMPORTANCE: Very unusual case where court reviewed compensatory support back to 2017 (on the basis of an old review clause that neither party had pursued), found that despite it being compensatory that it ought to have reduced by 10% each year due to re-partnering and as a result had reduced to nothing and should end.
Mainwaring v. Mainwaring, 2025 BCSC 740	ISSUE: Exclusive Occupancy of Laneway Homes OUTCOME: The court found that the laneway home was not the "family residence" so made an order for possession under s. 91(2)(a).
Ward v. Ward, 2025 BCSC 1803	ISSUE: Suitability for Summary Trial OUTCOME: Turns out you can't argue against summary trial suitability on the basis that your own materials are terrible.