

CITATION: X.L. v. Z.L. et al, 2025 ONSC 5880
NEWMARKET COURT FILE NO.: FC-19-59414
DATE: 20251016
AMENDED: 20251105

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:)	
X.L.)	
	)	Applicant) Alexandra Abramian, Counsel for the
	)	Applicant
– and –)	
)	
Z.L.)	
	)	Respondent 1)
Man Yee Shek)	
	)	Respondent 2) Self-Represented Respondents, Z.L., Man
Samuel Property Investment	)	Yee Shek, Samuel Property Investment
(Canada) Inc.	)	(Canada) Inc.
	)	Respondent 3)
Chi Wo (Brian) Yip)	
	)	Respondent 4) Pauline Cheuk Wai Leung, Counsel for the
2780837 Ontario Inc.	)	Respondents Yip and 2780837 Ontario Inc.
	)	Respondent 5)
Diquan Liao)	
	)	Respondent 6) Alexandra Abramian for Diquan Liao, for
Xueqing Zhang, Deceased	)	service
)	
	)	HEARD: November 20, 21, 22, 25, 26,
	)	27, 28, 29, 2024; December 3, 4, 5, 2024;
	)	February 11, 12, 13 and 14, 2025, with
	)	written and oral submissions heard on
	)	April 16, 2025

REASONS FOR DECISION*

D.A. JARVIS J.:

[1] The parties to these proceedings are:

- (a) The applicant wife, X.L. (“the wife”) and the respondent husband, Z.L. (“the husband”).
- (b) Man Yee Shek, a realtor and mortgage broker who acknowledges (as does the husband) that she and the husband were romantically involved between February

*Amended at para. [133](b) to provide deadline for cost submissions from respondent Z.L.

2019 and May 2021. The respondent, Samuel Property Investment (Canada) Inc. (“Samuel Investment”), is owned by Ms. Shek.¹

- (c) Chi Wo Yip is Ms. Shek’s former spouse. He owns 2780837 Ontario Inc (“278 Inc.”).²
- (d) Diqian L. (“Diqian”) and Xueqing Zhang are the husband’s parents.³ Ms. Zhang died on December 16, 2023. She had been ill for several years and suffered from depression and dementia. Diqian does not speak English, nor did his late wife.

[2] The principal family law issues for trial are the following:

- (a) Parenting.
- (b) Equalization (including post-valuation date adjustments).
- (c) Imputation of income (for both the wife and the husband).
- (d) Child Support (including arrears).
- (e) Spousal support (including arrears).

[3] In addition to the distinct family law issues, the husband claims that the wife should reimburse him for unpaid rent and lost profits related to the occupancy of Linacre by her and their children after the home was sold to Shek and for damages that the husband might owe to Yip when Linacre was sold pursuant to foreclosure proceedings. The husband also started a civil action in China against the wife, her sister and her husband relating to a business in which the husband claims that the wife is involved and in which he is advancing the same claims as in this proceeding (“the China action”). The wife’s sister and her husband reside in China. Diqian is also referenced in the complaint. The litigation in China was on-going during the trial.

[4] Ms. Shek contends that there was no fraudulent conveyance. She claims unspecified damages against the respondent and his late wife caused by this litigation and for costs. Mr. Yip contends that he was not involved in any fraudulent conveyance and, in turn, claims damages which he sustained against the wife, the husband and Ms. Shek relating to Linacre for unpaid rent and for all his losses.

[5] Diqian just wishes that none of this ever happened. He blames his son for the death of his wife. He says that his son and Ms. Shek abused his late wife and him and that his son took

¹ For convenience of reference only, Ms. Shek and her company shall be collectively described either as “Ms. Shek” or “Shek” except where the context requires a more precise descriptor. No disrespect is intended.

² For convenience of reference only, Mr. Yip and his company shall be collectively described as “Mr. Yip” or “Yip” except where the context requires a more precise descriptor. No disrespect is intended.

³ The husband’s father shall be described as “Diqian” throughout this ruling for convenience of reference only. No disrespect is intended.

financial advantage of their trust in him. Diquan does not speak or understand English. Neither did his late wife. They were left virtually destitute because of their son's actions.

A preliminary note about the trial and the court's duty to self-represented litigants

- [6] This case presented with a host of overlapping practical and logistical challenges which were reflected in its length, the admissibility of evidence and several of the parties' objections to the court's interventions. Initially, the trial was estimated at 6 to 7 days but was later revised to 10 to 15 days. The Trial Scheduling Conference Order ("the order" or "the TSC order") identified a host of ancillary issues and provided for a hybrid trial comprising of affidavits, time-limited supplementary direct testimony and cross-examinations. The parties testified in a mixture of Cantonese, Mandarin and English through rotating teams of interpreters. At various times, all parties were represented by lawyers but, at trial, the husband and Ms. Shek represented themselves.
- [7] Mindful of the court's duty to control proceedings to ensure trial fairness as set out in *Girao v. Cunningham*⁴ where self-represented litigants are involved, the following steps were taken:
- (a) When the trial began, Ms. Leung advised that Mr. Yip wished to represent himself and asked to be discharged as his counsel. I was not inclined to grant the request due to the gravity of the issues involved and the late date for the request. Mr. Yip was given an opportunity to reconsider his position and then chose to have Ms. Leung continue representing him. After the evidence portion of the trial was concluded and written submissions filed, the court was advised that Mr. Yip and his counsel did not agree about his submissions; I was not told, nor was I entitled to know, any other reason for the rupture of the solicitor and client relationship. Ms. Leung had filed a motion for a charging order when closing submissions were heard.
 - (b) Before the evidence was heard, the TSC order was reviewed with the parties to confirm the outstanding issues, the allotted examination times and witness availability. Each party was canvassed. With one exception, there were no changes. The change involved one of the husband's claims that the wife owned, and had failed to disclose, a purchasing and lending business in China; he informed the court that he would not be calling any witnesses relevant to those issues (several of whom lived in China, others in Ontario, all of whom had been identified in the TSC order). As matters turned out, he questioned the wife about her banking activities but declined the court's suggestion to question her about those activities relating to his allegations that she enjoyed a greater income than admitted and had business interests in China. After the wife had closed her case and the husband had used more than his allotted direct examination time, he brought an oral motion to amend the TSC order for leave to testify an

⁴ 2020 ONCA 260, at paras. 149-156.

additional day and to introduce 161 exhibits mostly dealing with evidence involving the wife and the witnesses in China associated with his case in that jurisdiction. The motion was denied.

- (c) No request had been made by any party before the trial to revise the TSC order, to adjourn the trial or, during the trial, to facilitate (in the husband's case) the attendance of the proposed witnesses in China or his other proposed witnesses located in Ontario. The husband told the court that the witnesses in China were probably "hostile" to him. He was told that was a decision for the court to make.
- (d) A Statement of Agreed Facts was filed when the evidence began. It contained admissions about the genuineness of a range of documents. The parties were also informed by the court that Books of Documents would not be entered as numbered exhibits (i.e., a document dump), only lettered for later identification purposes, and that only those documents belonging to the parties or put to them in questioning would be admitted. This was done.
- (e) The times for direct and cross-examination of the parties had to be extended to account for interpretation and, in many cases, the repeating of questions and answers to ensure that the witness understood the question and was able to provide a fulsome answer. Often this led to court intervention, and later objections about that intervention, by the husband and Ms. Shek in particular, when it was clear that no responsive answer was forthcoming.
- (f) The husband was given more time for his direct examination than set out in the TSC order. When that time passed and he had not testified about parenting issues (although he had referred to them in his trial affidavit), I asked questions about his past and current relations with the children, the challenges which he was experiencing and what he proposed as a parenting plan.
- (g) Disclosure, or rather non-disclosure, was a major issue in this case. Ms. Shek complained that the husband's cross-examination breached the time limits set out in the TSC order. It did. During his cross-examination dealing with the sources for payment of his expenses, he answered that he would "look into" or "investigate" the matter. His cross-examination was extended to give him an opportunity to obtain the requested documentation, part of which related to the wife's complaints about his non-disclosure contrary to court orders.
- (h) Some evidence was clearly irrelevant and disallowed. For example, I declined to hear the husband's allegations that the wife and his father were romantically involved (an allegation more salaciously described in his complaint in the China action) and to admit into evidence a video made by

the husband talking with his late mother (who was suffering from dementia) shortly before she died in hospital.

- (i) Ms. Shek took issue with Ms. Abramian’s use of leading questions in cross-examination and, for example, with this court’s rulings that lay witnesses were not qualified to express opinions on legal concepts. The court intervened to assist the husband and Ms. Shek in reframing questions. These are a couple of the many examples where efforts were made to keep the case within proper evidentiary guardrails without comprising the examiner’s ability to ask questions relevant to the issues.
- (j) The times for the oral evidence from all parties were extended where necessary, although every effort was made to keep the case on script.

[8] In his April 24, 2024, endorsement at the TSC, MacPherson J. noted that despite his earlier observations, the respondents “have a series of lawyers appear as agents and then never return. Despite that, the Respondents did not heed my warning.” It was also noted that disclosure issues remained five years after the litigation commenced which would result in adverse inferences being drawn at trial. Overall, the case was complicated by the serpentine nature of the claims and evidence, non-disclosure complaints, included a mid-trial adjournment for the translation of documents in the Chinese language disclosed by the husband near the end of his testimony and mid-trial motions (including a flurry of motions by the respondents on the day scheduled for final submissions).

Background facts

[9] All the parties exchanged Requests to Admit (“RTA”) and Responses to those requests before the anticipated May 2024 trial sittings. The wife filed a Statement of Agreed Facts (“SAF”) with which, with two minor exceptions, the parties agreed.⁵ The relevant facts as admitted by the parties and those principal facts as found by this court arising from the evidence of the witnesses (where unchallenged) and elsewhere corroborated by documents are the following:

- (a) The husband and wife were married in China on November 6, 2000, and emigrated to Canada in 2003. There are three children of the marriage, JL (a son) born October 18, 2004; BL (a son) born August 25, 2007; and AL (a daughter) born December 6, 2013.
- (b) In February 2005, the husband incorporated Rose Son Motor Tech Ltd. (“Rose Son Motor”). This business provided, installed and modified window coverings for residential and commercial spaces. The husband performed most of the work himself.

⁵ Ms. Shek wanted to change the reference to “transfer” of Linacre to her to identify that she was the “purchaser.” The husband took the position that Diquan was not his father.

- (c) In October 2006, the husband's parents immigrated to Canada and began residing with the husband, the wife and the children. They were granted permanent resident status in November 2010. The husband is their only child.
- (d) Linacre was purchased for \$647,100 on August 13, 2012.⁶ It was financed by \$100,000 from the husband's parents (from the sale of their home in China, their principal asset), a \$436,793 mortgage and the balance by the husband and wife. Title was registered in the names of the husband's parents.
- (e) On April 28, 2014, the husband and wife purchased an investment (residential) property located at 92 Osborne Family Way in Newmarket ("Osborne" or "the Osborne property"). Title was registered in the names of the husband and wife as joint tenants. The husband's parents began living at Osborne the next month. The husband paid all its carrying costs.
- (f) On April 15, 2015, the husband and wife purchased 296 Country Lane in Barrie, Ontario ("Country Lane" or "the Country Lane property"). This was also a residence. It was tenanted. Title was registered in the names of the husband and wife as joint tenants. Country Lane was sold in 2021 after the parties separated. Its net proceeds of sale were \$555,995. Pursuant to an order made by MacPherson J. on January 5, 2023 the wife received a \$200,000 advance. The balance of the sale proceeds was ordered to be held in trust.
- (g) On May 26, 2016, the husband and wife signed an agreement ("the Ballard agreement") to purchase a preconstruction property in Nobleton, Ontario for \$2,034,990 ("Ballard" or "the Ballard property"). A \$133,150 deposit was made. The anticipated closing date was early 2018.⁷
- (h) In late Spring 2017, the parties were experiencing difficulties in their relationship and began sleeping in separate bedrooms. This led to the husband preparing a separation agreement that was dated July 2017 but which the wife couldn't recall seeing then.
- (i) On November 12, 2017, the husband left Canada for a trip to Florida. The wife was distraught.
- (j) The parties separated on, and the valuation date is, November 12, 2017. When the husband returned to Canada on November 17, 2017, he went to live with his parents "to avoid contact with [the wife] and for my own safety."
- (k) In the months immediately following their separation, the husband presented the wife with several versions of a proposed separation agreement, one of which was dated July 2017 that she couldn't recall seeing before, but the contents of all of

⁶ All values will be rounded to the nearest dollar.

⁷ The Agreement of Purchase and Sale had a tentative closing date of January 10, 2018, but the builder reserved the right to extend the closing date twice, on notice, with the outside date being May 10, 2019. The January 2018 date was subsequently extended to May 10, 2018, on which date the transaction closed.

which proposed agreements were unacceptable to her. The parties were unable to resolve their matrimonial issues, particularly those relating to their properties.

- (l) On or about February 25, 2018, the Ballard developer agreed to release the wife from the Ballard purchase agreement. The wife's release did not relieve her from being jointly and severally bound with the husband by the terms of the purchase agreement. The husband became the sole purchaser.
- (m) On May 5, 2018, a second mortgage for \$705,000 was registered on Linacre in favour of UT Capital Mortgage Investment Corporation ("UT Capital"). The mortgage was due on November 4, 2018, six months later, and had an 8% interest rate. The funds were paid to the husband, and he used them for the purchase of Ballard. The mortgage financing was arranged through Ms. Shek. *The wife was unaware of this transaction.*
- (n) The Ballard purchase was completed on May 10, 2018, for \$2,014,767.18. Title was taken in the husband's name.
- (o) On July 3, 2018, the husband paid \$50,000 to UT Capital.
- (p) On September 26, 2018, two companies were incorporated by the husband. One company, Cedar Motorized Screen Inc. ("Cedar Motorized"), identified Diquan's late wife as the shareholder. The other company, Morning Star Home Automation Inc. ("Morning Star"), identified Diquan as the shareholder. Bank accounts were opened for each of the companies. The registered office address for each company was a residence owned by Ms. Shek ("Luzon" – see below). *According to Diquan (whose evidence on this issue I accept), the husband told him that he and Ms. Shek wanted to start a company with Diquan and his late wife, that they signed some documents at a bank and, afterward, neither he nor his wife knew anything more. They were given bank cards but didn't know how to use them.* Between the opening of the accounts in October 2018 and the accounts' last recorded activity in 2019 and 2020, respectively, over \$300,000 was deposited into and withdrawn from these accounts.⁸ None of these funds came from the husband's parents or him but mostly from third parties whom the husband called "a group of friends" and whose names the husband could not recall except for their anglicized first names. Some of the funds also came from Ms. Shek. The husband testified (corroborated by Ms. Shek) that the accounts were created, and operated, to demonstrate that the companies were active business entities (which they were not) "to secure business loans." At no time were corporate records such as Minute Books, director and shareholders' resolutions or financial statements prepared.
- (q) On November 1, 2018, Samuel Investment (Ms. Shek's company) bought Linacre from the husband's parents. Ms. Shek paid \$1,100,000. The two existing Linacre mortgages were discharged, and a new \$968,000 mortgage was registered. *The wife was unaware of this transaction.* The net sale proceeds were \$23,578. The husband

⁸ Between 2018 and 2020, a total of \$307,899.98 was deposited to the two accounts and \$305,787.87 was withdrawn (Exhibits 44 and 45).

testified that he used these funds to pay bills and that his parents agreed to this arrangement. Diquan's evidence (unshaken in cross-examination) was that he and his wife had "no idea of the sale price or any other information. After the sale of Linacre in November 2018 I have no idea what happened to the sale proceeds. I can only confirm that my wife and I did not receive any part of the net sale proceeds."⁹ For reasons set out below (see **Credibility**), I accept Diquan's evidence.

- (r) The husband began paying \$3,000 in monthly rent to Ms. Shek for Linacre for his wife and the children.
- (s) In December 2018, the husband sold Rose Son Motor to Ms. Shek for \$30,000. After a business valuation was obtained by the wife, the husband agreed that the fair market value of the business was \$66,000.
- (t) The husband and Ms. Shek acknowledge that they were romantically involved between February 2019 and May 2021, although the wife claimed that the relationship began much earlier.
- (u) In March 2019, the husband moved his parents from Osborne into a house in Markham that he rented from Ms. Shek. This occupancy lasted about four months. Diquan claimed that before his wife died, they were put to work for their son and abused by him and Ms. Shek (the husband and Ms. Shek dispute this). After a further relocation for a short while to Ms. Shek's residence ("Luzon" or "the Luzon property"), the parents approached the wife to ask whether they could live with her; she agreed. The police helped Diquan and his wife retrieve their belongings from Ms. Shek's residence. The husband resided at Luzon with Ms. Shek until their relationship ended and he moved elsewhere. Ms. Shek's son also lived at Luzon. Mr. Yip stayed there on occasion too.
- (v) At a Case Conference held on March 5, 2020, McGee J. made an order on consent ("the McGee Order") for the sale of Country Lane. A term of the order provided that the net sale proceeds would be held in trust subject to paying disbursements for experts' reports and reconciliation counselling involving the children. The property was subsequently sold and realized net sale proceeds of \$555,995.40.
- (w) In June 2020, the husband sold Ballard for \$1,950,000. The net proceeds of sale amounted to about \$224,430 from which the husband made \$150,000 in charitable donations, comprising \$100,000 to a church and \$50,000 to a school affiliated with the church.¹⁰
- (x) On or about September 30, 2020, Mr. Yip incorporated 278 Inc. Its registered head office was a commercial address owned by Ms. Shek. On November 9, 2020, he

⁹ Exhibit 18, para. 16, being Diquan's affidavit dated April 28, 2024. The sale proceeds were deposited into a bank account in the names of the husband and his parents that the husband operated.

¹⁰ The reporting letter for the sale of Ballard (Exhibit 33) disclosed that the husband was paid \$134,096.25 by cheque from his solicitor after closing and refunded \$90,333.75 representing the balance of the deposit remaining after payment of agent's commission.

purchased Linacre from Ms. Shek, sight unseen. He was unaware that the wife and the children were living there; Ms. Shek never disclosed this information to him. The husband discontinued making the monthly \$3,000 rental payments for Linacre to Ms. Shek.

- (y) On November 26, 2020, Yip initiated a Landlord and Tenant Board (“LTB”) application to obtain possession of Linacre for unpaid rent. The LTB proceedings were stayed pending the outcome of these proceedings.¹¹
- (z) On January 4, 2023, MacPherson J. ordered that \$200,000 of the Country Lane net sale proceeds be released to the wife as an advance of her equalization payment. The order was never appealed.
- (aa) At some point in 2023, likely around mid-year, the husband started his China action.
- (bb) On or about July 19, 2023, the mortgagee issued a Notice of Sale relating to Linacre and issued a Statement of Claim. *The wife was unaware of this development.*
- (cc) In June 2023, the Osborne property, which had been tenanted after the husband’s parents left, became vacant. As the husband was no longer paying the mortgage and property taxes for the property, the parties agreed to an order for sale which was made by MacPherson J. on September 28, 2023 (“the MacPherson Order”).
- (dd) On November 26, 2023, the wife was served with a Notice Demanding Possession of Linacre (“the Possession Notice”). *She had no prior knowledge of the foreclosure proceedings.* Upon being served with the Possession Notice, the wife brought a motion to set aside the MacPherson Order. The husband opposed the motion. On February 7, 2024, Daurio J. set aside the MacPherson Order and awarded the wife \$4,000 in costs (“the Daurio Order”).
- (ee) The wife and children vacated Linacre soon after the Daurio Order and began residing at Osborne. The wife needed to pay over \$17,000 for mortgage and property tax arrears. Significant renovations were needed to make the property habitable, all of which (costing more than \$35,000) the wife paid. She and all three children were living at Osborne when this trial began.
- (ff) The case was scheduled to proceed to trial during the May 2024 trial sittings, but the parties agreed to further settlement conferences (i.e., exit pre-trials), which proceeded on May 31 and July 4, 2024 with Bennett J., without success. Except for Ms. Shek, all parties were represented by counsel. On October 22, 2024, MacPherson J. directed that the trial proceed during the November sittings. As before, all parties except for Ms. Shek, were represented by counsel, but the husband filed a Notice of Intent to Act in Person. He was told by MacPherson J.

¹¹ In competing motions before the court on February 7, 2024, Daurio J. accepted that the LTB proceedings had been stayed in or shortly after April 2021.

that the trial would proceed and that any adjournment request to retain new counsel would be denied.

Credibility

- [10] Credibility and reliability feature prominently in this case. While they are distinct concepts, both are rooted in the application of common sense to the assessment of evidence, as observed by Rowe J. in *R. v. Kruk*¹²:

[73] “...common-sense assumptions underlie all credibility and reliability assessments. Credibility can only be assessed against a general understanding of “the way things can and do happen”; it is by applying common sense and generalizing based on their accumulated knowledge about human behaviour that trial judges assess whether a narrative is plausible or “inherently improbable” (*R. v. Kiss*, 2018 ONCA 184, at para. 31 (CanLII); *R. v. Adebogun*, 2021 SKCA 136, [2022] 1 W.W.R. 187, at para. 24; *R. v. Kontzamanis*, 2011 BCCA 184, at para. 38 (CanLII)). Common sense underpins well-established principles guiding credibility assessment — including the now-universal idea that witnesses who are inconsistent are less likely to be telling the truth — and assists in assessing the scope and impact of particular inconsistencies. Reliability also requires reference to common-sense assumptions about how witnesses perceive, remember, and relay information, invoking generalizations about how individuals tend to present information that they are remembering accurately and completely, as opposed to matters about which they are unsure or mistaken. A trial judge may, for example, infer that a witness was credible yet unreliable because they appeared sincere but displayed indicia that tend to suggest an unclear or uncertain memory (e.g., equivocation, phrases such as “hmm . . . let me see”, long pauses, or failure to provide much detail).

...

[81]...Credibility and reliability assessments are also context-specific and multifactorial: they do not operate along fixed lines and are “more of an ‘art than a science’” (*S. (R.D.)*, at para. 128; *R. v. Gagnon*, 2006 SCC 17, [2006] 1 S.C.R. 621).[4] With respect to credibility in particular, while coherent reasons are crucial, it is often difficult for trial judges to precisely articulate the reasons why they believed or disbelieved a witness due to “the complex intermingling of impressions that emerge after watching and listening to witnesses and attempting to reconcile the various versions of events” (*Gagnon*, at para. 20; see also *R. v. R.E.M.*, 2008 SCC 51, [2008] 3 S.C.R. 3, at para. 28; *R. v. G.F.*, 2021 SCC 20, [2021] 1 S.C.R. 801, at para. 81). The

¹² 2024 SCC 7, at para. 73.

task is further complicated by the trial judge's ability to accept some, all, or none of a witness's testimony.

[11] Mindful of these considerations, some of the following observations are relevant to the assessment of the parties' evidence:

- (a) Clarity and consistency of narrative. Overall, the wife's narrative of the family history and the circumstances involving the children's parenting, Linacre, the parties' other properties and their incomes, was clearer and more consistent than the evidence of the husband and was often corroborated by documentary evidence, Diquan's evidence and even that of the husband. She downplayed her reaction to the parties' separation, acknowledging in cross-examination that she had been hospitalized for suicidal ideation when the husband failed to return home from a vacation in Florida with Ms. Shek in November 2017. She was less than clear about the negotiations between her and the husband trying to settle their property issues, principally Ballard, but that did not materially impact her position (or her credibility) that she no longer wanted any part of the deal. She ignored, however, her liability under the Ballard purchase agreement. She denied being a Daigou, a descriptor for someone buying items in Canada and arranging for their sale by third parties in China. Although the husband accused her of operating a Daigou business and failing to disclose \$63,000 in cash at Linacre that he said belonged to him, she was unshaken in her denials. The wife knew that the husband wanted the property sold, but she was unaware of the sale to Ms. Shek until early 2019.

Diquan was 75 years old at the time of trial. He had received an elementary school education in China and worked there afterward as an electrician before immigrating to Canada in 2006 with his late wife. The husband was their only child. They trusted him with their life savings and relied on him to explain the various legal papers which he asked them to sign. He became agitated about how he and his wife had been treated (abused) by the husband and Ms. Shek, but I accept that he and his late wife were kept in the dark by the husband about what they were being asked to sign and the consequences of signing. He knew nothing about the companies or the business accounts which his son set up and by the time the wife allowed Diquan and his late wife to live with her and the children at Linacre, they were virtually destitute, except for their pensions from China. Despite the inconsistency surrounding the first time that he ever met Mr. Yip, Diquan was a credible witness. The husband did not seriously pursue his statements to the court that Diquan was not his real father.

The evidence of the husband, Ms. Shek and Mr. Yip was far more problematic and raised serious questions about their credibility and the reliability of their evidence.

- (b) Deceptive behaviour. The husband concealed from his wife the mortgage on Linacre to help fund the Ballard purchase because he knew that she was not prepared to cooperate. He told his parents to be careful not to tell his wife about it. The husband and, in my view, Ms. Shek, collaborated in opening business bank accounts for fictitiously operational companies in the parents' names through which

hundreds of thousands of dollars from persons other than the parents and the husband flowed but which included money from Shek and from vaguely identified, and unidentified, third parties. The accounts were opened to deceive a potential lender that the companies were *bona fide* businesses to obtain loans.¹³ The husband did not tell the wife when Linacre was sold to Ms. Shek. He did not tell Ms. Shek that his wife and children were living in the property when the purchase was completed. Ms. Shek did not tell Mr. Yip that Linacre was tenanted by the wife and children when she sold it to him.

- (c) Evasive testimony. Despite frequent translation challenges, the husband and Ms. Shek had to be constantly reminded to answer the questions put to them and to avoid lengthy, often meandering, responses. Not uncommonly, counsel had to repeat questions to non-responsive answers; this frequently required the court to intervene. Other examples involved the parents' companies. The operation of the company accounts was a revolving door of deposits and withdrawals, some of the funds belonging to Ms. Shek and the balance from "a group of friends" with whom the husband had no contact since 2018 and who he said "...were just a couple of Anglicized names...[T]here's a Tony, a Peter", maybe a John?, "...[k]ind of like that because that name's Paul." The husband responded to many questions pressing him on his banking transactions and the transaction records for his parents' companies by answering that he would investigate or "look into" the situation which resulted in lengthening the trial to give him an opportunity to clarify his evidence. His cross-examination time had to be extended accordingly.

Ms. Shek testified that she did not set up either of the parents' companies, which may have been technically true (the husband did, but that was a part of the work-around that the husband testified was recommended by Ms. Shek to ultimately sell Linacre when the UT Capital mortgage came due). Ms. Shek claimed that she did not know the names of the companies into which she acknowledged that funds from her had been deposited and withdrawn. I do not believe her. Elsewhere, Ms. Shek repeatedly refused to acknowledge that as a vendor of property she had a legal obligation to convey vacant possession of Linacre to Mr. Yip pursuant to the sale agreement (she was asked the same question three times and gave a different non-responsive answer to each). With respect to the deceptive intent behind the creation of the fictionally operational companies, Ms. Shek begrudgingly acknowledged to the court that she may have contravened the regulations of her profession governing the conduct of mortgage brokers. ("I have admitted that I have done something wrong.")

These are just a few of many examples.

- (d) Inconsistent evidence. Evidence may be internally inconsistent (i.e., where the witness gives different answers to the same event) or externally inconsistent

¹³ Shek testified that she had no idea how her name became involved with the parents' companies. I do not believe her. This is inconsistent with the husband's evidence and the cheques Shek wrote to the accounts and the funds repaid to her.

(i.e., where the evidence is inconsistent with documentary evidence or the evidence of other witnesses). In his cross-examination on November 28, 2024, the husband testified that he did not tell his wife about the Ballard mortgage. When pressed in cross-examination the next day about whose idea it was to place a mortgage on Linacre (it was Ms. Shek's recommendation) the husband answered that the wife *was* aware of the refinancing. She was not. The husband's evidence about his income between 2017 to 2023 (which averaged about \$25,971 a year, excepting 2021) was inconsistent with the hundreds of thousands of dollars which flowed through bank accounts he controlled and inconsistent with his charging, for example, over \$250,000 on a credit card issued to his business after he sold it to Shek (the business was failing!). Plainly put, the husband's evidence about his income was more than suspiciously vague. Frequently, I had the distinct impression during the husband's testimony that he was "hedging his bets" as to what he hoped would have traction with the court. There were many more examples where the testimony of the husband, Ms. Shek and Mr. Yip either made little sense or was inconsistent with, or could not be explained by, the documentary evidence.

- (e) Inherently improbable or implausible evidence. In *Faryna v. Chorny*¹⁴, O'Halloran J.A. observed that "... the real test of the truth of the story of a witness ... must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those circumstances." There are numerous examples in the case where the evidence of the respondents (other than Diqun) defied credulity. Some examples:
- (i) The husband. His evidence was that his income was historically very modest. Between 2017 to 2020 that income averaged \$25,375 a year, never more than \$36,908 (2018), yet when he sold Ballard in June 2020 he made over \$150,000 in charitable donations because (as he explained to his eldest child) he had "the right to do donation or do whatever I want." In the context of the husband's evidence that he needed to constantly borrow money to help pay bills because he was constantly in debt, this is not the action of a reasonable person. The Ballard mortgage alone cost \$7,159.56 a month.¹⁵
 - (ii) Ms. Shek. Her evidence about how the purchase of Linacre was funded is implausible and suspicious (see **Wife's fraudulent conveyance claims** below, para. 106). Her purchase of Linacre was funded with money flowed through accounts administered by the husband.
 - (iii) Mr. Yip. His evidence about the circumstances surrounding his \$1,400,000 purchase of Linacre was implausible. He had never invested in Canadian real estate before this purchase. He agreed to purchase Linacre from a

¹⁴ (1951), [1952] 2 D.L.R. 354 (B.C.C.A.), at para 9.

¹⁵ The husband's total income from all sources in 2020 was \$21,111.52. In 2021, his total income was \$126,684.84 of which \$95,721.61 was recorded as a taxable capital gain; the balance of \$30,963.32 comprised business and rental income. The non-deductible portion of his 2020 charitable tax deduction was carried forward. While the deduction in 2020 and the capital gain declared in 2021 may have been related, the husband never made the connection. No Notices of Assessment were disclosed.

photograph of the property shown to him by Ms. Shek during a parenting exchange. She drafted the offer. It was a short closing (four weeks). Mr. Yip did not inspect the property before agreeing to its purchase and he never visited it before the transaction closed. He incorporated a holding company to hold title (having as its registered head office a property owned by Ms. Shek). Surprised that the property was tenanted by the wife and children after the purchase was completed, he threatened to sue Ms. Shek but never did. No letter from his real estate lawyer complaining that vacant possession had not been provided was ever sent to Ms. Shek. The monthly mortgage payments were more than \$4,970. Mr. Yip's income as a self-employed home renovator was very modest.

- (f) Order non-compliance. The weight to be assigned to a breach of a court order in assessing the trustworthiness of a party is a variable, not a constant.¹⁶ Where the terms of an order are unambiguous, non-compliance relates directly to the integrity of a party, respect for the courts and can take on added significance when assessing credibility.¹⁷ The TSC order noted that the husband and Ms. Shek had not provided answers to any of their undertakings. Despite two orders (2020 and 2023¹⁸) and follow-up emails for disclosure of the origins of the funds used to purchase Linacre, Ms. Shek only produced before trial a two-page bank statement (previously redacted) recording transfers into and from her business account, mostly from other accounts. The actual source for the monies (i.e., how the funds were accumulated) was never disclosed. Mr. Yip was also required to disclose the origins of the non-mortgage funds used to help him purchase Linacre. He redacted balance entries in the bank statements he produced. There was no order permitting either of these respondents to arbitrarily redact their disclosure. The husband, Ms. Shek and Mr. Yip were represented by counsel when the 2020 and 2023 orders were made.

Conclusions on credibility

- [12] Overall, the evidence of the wife and Diquan is to be preferred to that of the husband, Ms. Shek and Mr. Yip wherever there is a material conflict. While the wife was not wholly candid about her reaction to the parties' separation, I accept as plausible her evidence about the occupation by her and the children of Linacre, the parties' parenting of the children, Linacre's beneficial ownership (supported by Diquan and inconsistently the husband) and the parties' financial affairs (such as she knew). I accept that she also earned some unreported income from providing daycare services at Linacre to help make ends meet. Overall, she was a credible witness. As was Diquan, who (with his wife) was illiterate, and unable to converse in English. He testified that his son and Ms. Shek mistreated them when they were made to work for them when they were living at a residence that Ms. Shek owned. I accept his evidence in preference to the denials of the husband and Ms. Shek. Diquan and his late wife were financially dependent on his son, signing whatever documents their son (whom they trusted) asked them to sign; they were left virtually

¹⁶ *R. v. M.C.*, 2019 ONCA 502, 146 O.R. (3d) 493, at para. 56.

¹⁷ *R. v. D.W.*, 2023 ONCA 767, at para. 24.

¹⁸ The 2023 order was made on April 14, 2023, by MacPherson J. at a settlement conference.

destitute in the end. His disappointment and anger with his son (and with Ms. Shek) were palpable and understandable but did not undermine his credibility.

- [13] By contrast, the evidence of the husband, Ms. Shek and Mr. Yip relating to Linacre (and, in the husband's case, about his income) was a Maytag of churned transactions whose provenance was superficially "transparent" (which is how these respondents described their financial activities) but whose actual source of funds was mostly opaque (i.e., the monies from "Tony", "Peter" and John whose name was "Paul"). In their submissions, these respondents impugned the integrity of the wife's counsel, criticized the conduct of the case management judge as arbitrary, unequal and unjust, insinuated (the husband) that during the trial this court was unduly influenced by, or colluded with, the wife's counsel and, according to Ms. Shek (supported by the husband and Mr. Yip), the wife was allowed to weaponize these proceedings "to harass, exhaust and financially burden the Respondents." The complaints by the husband and Ms. Shek alleging non-disclosure by the wife were never explored in any detail at trial; they relied on documents in their closing submissions (and motions brought on short notice returnable on the day scheduled for oral closing submissions) which had been ruled inadmissible, never tendered as evidence or otherwise put to the wife.
- [14] Each of the principal family law issues will be addressed first and will then be followed by consideration of the wife's fraudulent conveyance claims, the impact, if any, of those claims (if proven) on the equalization and related property issues and, finally, the overlapping claims made by the respondents against each other and the wife.

Parenting

- [15] Despite the priority given to all family law cases involving children, their parenting in this case occupied very little trial time; most of the time dealing with the children involved child support. In any event, the wife seeks a final order that grants her primary residence of the two youngest of the parties' three children together with sole decision-making responsibility (no parenting relief is sought with respect to JL, who was 21 years old when the trial started). There would be no structured parenting schedule; the parenting time for the next oldest child (BL) with his father would be as arranged between him and his father while the parenting time for the youngest child (AL,) would be arranged between the parties. At the start of trial, the husband sought an order that AL primarily reside with him but revised that request when final submissions were heard to seek shared parenting of BL and AL and very modest parenting time.¹⁹
- [16] Sections 16(1), (2), (3) of the *Divorce Act*²⁰ ("the Act") frame any analysis dealing with children affected by a breakdown of their parent's marriage. Those sections provide as follows:

¹⁹ In his submissions and proposed final order the husband referred to "joint custody" of the children.

²⁰ R.S.C. 1985, c. 3. (2nd Supp.).

Best interests of child

16 (1) The court shall take into consideration only the best interests of the child of the marriage in making a parenting order or a contact order.

Primary consideration

(2) When considering the factors referred to in subsection (3), the court shall give primary consideration to the child's physical, emotional and psychological safety, security and well-being.

Factors to be considered

- (3) In determining the best interests of the child, the court shall consider all factors related to the circumstances of the child, including
- (a) the child's needs, given the child's age and stage of development, such as the child's need for stability;
 - (b) the nature and strength of the child's relationship with each spouse, each of the child's siblings and grandparents and any other person who plays an important role in the child's life;
 - (c) each spouse's willingness to support the development and maintenance of the child's relationship with the other spouse;
 - (d) the history of care of the child;
 - (e) the child's views and preferences, giving due weight to the child's age and maturity, unless they cannot be ascertained;
 - (f) the child's cultural, linguistic, religious and spiritual upbringing and heritage, including Indigenous upbringing and heritage;
 - (g) any plans for the child's care;
 - (h) the ability and willingness of each person in respect of whom the order would apply to care for and meet the needs of the child;
 - (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;
 - (j) any family violence and its impact on, among other things,

(i) the ability and willingness of any person who engaged in the family violence to care for and meet the needs of the child, and

(ii) the appropriateness of making an order that would require persons in respect of whom the order would apply to cooperate on issues affecting the child; and

(k) any civil or criminal proceeding, order, condition, or measure that is relevant to the safety, security and well-being of the child.

[17] The reference to “parenting order” in s. (1) means an order made under s. 16.1(1) of the *Act*. Such an order can provide for parenting time and decision-making responsibility, which terms are defined in section 2(1) of the *Act* as follows:

Definitions

2 (1) In this Act,

...

decision-making responsibility means the responsibility for making significant decisions about a child’s well-being, including in respect of

- (a) health;
- (b) education;
- (c) culture, language, religion and spirituality; and
- (d) significant extra-curricular activities

...

parenting time means the time that a child of the marriage spends in the care of a person referred to in subsection 16.1(1), whether or not the child is physically with that person during that entire time

[18] The court’s jurisdiction to make a parenting order, including the discretionary scope of that order’s contents which are relevant to this case are set out in ss. 16.1(1)(a), (4) and (5) of the *Act*:

Parenting order

16.1 (1) A court of competent jurisdiction may make an order providing for the exercise of parenting time or decision-making responsibility in respect of any child of the marriage, on application by

- (a) either or both spouses;

...

Contents of parenting order

- (4) The court may, in the order,
 - (a) allocate parenting time in accordance with section 16.2;
 - (b) allocate decision-making responsibility in accordance with section 16.3;
 - (c) include requirements with respect to any means of communication, that is to occur during the parenting time allocated to a person, between a child and another person to whom parenting time or decision-making responsibility is allocated; and
 - (d) provide for any other matter that the court considers appropriate.

Terms and conditions

- (5) The court may make an order for a definite or indefinite period or until a specified event occurs, and may impose any terms, conditions and restrictions that it considers appropriate.

- [19] When the parties separated, their children were 13, 10 and 4 years of age and continued to live with their mother at Linacre until February 2024. The wife described the children’s interests and academic and extra-curricular activities before and after separation (for example, art, piano (for BL), CPR, spinning, swimming and taekwondo classes). She described the academic accomplishments of JL and BL. While she paid for most of the children’s s. 7 expenses, JL and BL also contributed from part-time work (since they turned fourteen years old). The wife denied preventing the children from seeing their father. She testified that the father was irregular in spending time with the children and often never showed up. He was always too busy.
- [20] The husband’s evidence is that he was actively involved with their care before separation but that changed afterward despite his repeated attempts to maintain a relationship with them. His evidence was that he had not seen the children since late November 2023. The wife submitted that the husband was never as involved as he suggested and that he did not actively pursue that relationship after separation. There is some truth to that. For example, before separation, the wife attended all the children’s dental appointments. The husband attended few parent and teacher meetings because he was too busy at work. He was unable to recall the names of the children’s dentist or orthodontist; he speculated about the name of the school AL was attending before separation and had no idea at what schools JL or AL were attending after they moved to Osborne in February 2024. He confirmed that while he had been represented by (at least) five lawyers since the parties separated (the wife suggested that there had been six lawyers), none had contacted Ms. Abramian’s offices until early 2023 about parenting time arrangements (although the conference endorsements recorded that parenting was an issue before the court on those occasions). Some parenting time was arranged that lasted about a month. The husband’s next lawyer made a parenting time request for summer 2024 to which the wife responded but the husband declined to pursue any further because he feared a “trap” by the wife that would lead to police

involvement accusing him, for example, of inappropriate behaviour (“violating” the children) or his safety being threatened by the wife.

- [21] Before he submitted his proposed final order, the husband testified that, ideally, he wanted to have one-half of weekday time with BL and AL when school was in session, a weekend to attend church, as well as alternating the children’s entire March Break and summer vacations every year with the wife. He proposed joint decision-making responsibility with the wife and even though they weren’t communicating at that time, he was confident that their ability to communicate and make decisions involving the children would improve after the case concluded. In his proposed final order, the husband sought “joint custody” of AL and parenting time with BL and AL every Sunday from 9am to 5pm. He also proposed that the parties make reasonable efforts to work together and with the children to improve their relationships and, in the event of any parenting time or decision-making dispute, that the parties first attempt mediation before seeking court intervention.
- [22] The fact of the matter is that despite the husband’s complaint about the wife’s lack of support for his involvement with the children, which I am not prepared to entirely reject, his evidence about his commitment, involvement and willingness to participate with the parenting of any of the children is unconvincing. It was clear when the court assisted him in his direct examination about the children, that he had given little forethought before trial to either a parenting plan or to an approach to decision-making. With respect to his opening trial request that AL primarily reside with him, he presented no plan when he testified where they would reside or evidence that he could or would modify his work commitments given his busy and often irregular work schedule.
- [23] In my view, considering the statutory criteria dealing with children as set out above, the evidence overwhelmingly points to the best interests of JL and AL being served by awarding their primary residence to their mother along with sole decision-making responsibility. The wife has provided stable homes for the children, maintained as best she could their lifestyle and has been very involved in their lives. No parenting time order is needed for JL. Given BL’s age when the trial started (he was 17 years old) and his attendance at university, no parenting time order would be appropriate either. He and his father can make such arrangements as they see fit. As for AL, the wife must provide to the husband within 30 days of this decision written directions to all the child’s school, health care and extra-curricular service providers to communicate with him on the same basis as with her. In my view, there should be in-person parenting time between AL and her father but too much time has passed since their last contact and neither party made a proposal how that could be achieved. Accordingly, they shall have 30 days from the date of release of this decision to settle on an in-person parenting time schedule for AL, failing which I am prepared to consider further written submissions. Arrangements can be made through the court office.

Equalization

- [24] The wife claims that the husband owes her an equalization payment of \$555,062.26 less \$44,337.20 for post-valuation adjustments thereby leaving \$510,725.06 owing to her. This claim is mostly based on her attribution to the husband of the net equity in Linacre without

reference to the Ballard mortgage. The husband acknowledges that he owes the wife an equalization payment but miscalculated it in his net family property statement. Before adjustments, he owes the wife \$157,108. He submits that considering his post-valuation date adjustments the wife owes him \$242,572.

Land

Matrimonial home (Linacre)

- [25] Linacre was the matrimonial home of the wife and husband. They were its beneficial owners despite its title being registered in the names of Diquan and his late spouse. The wife contends that the husband drained the property's equity and that he fraudulently conveyed Linacre to Ms. Shek (and ultimately to Mr. Yip) to defeat her equalization claim.
- [26] The position of the respondents (excluding Diquan) is that all transactions involving Linacre were made in good faith, were commercially reasonable, that nothing was hidden and there was no fraud or collusion.
- [27] In his trial affidavit dated April 28, 2024 (Exhibit 18), Diquan stated (at para. 15) that neither he nor his wife had any expectation about being repaid "the money we paid for the purchase of Linacre because once we gave this money to our son and daughter-in-law, we did not expect this money to be returned to us." While the husband alleged at one point during the trial that his father's evidence about the money being a gift was brought about by a combination of the wife's influence and his (Diquan's) anger at him (and Ms. Shek) for their treatment of him and his late wife, Diquan's evidence was unshaken.
- [28] During the trial the husband modified his pre-trial position that the funds from his parents were a loan (or investment) and not a gift. This was confirmed in the following exchange with the court:

THE COURT: All right. And there isn't anywhere some kind of a written note that you said, I promise to repay you my parents these monies is there?

A. No.

THE COURT: All right. So when you're talking about this amount that you think you should pay back to your parents, it's not a legal obligation. It is a moral obligation as a son to parents. Is that what you're saying?

A. Yes, correct.

THE COURT: Do you understand the difference between legal and moral?

A. I understand.

- [29] In his net family property statement, the husband accepted that his parents' \$100,000 contribution was a gift to the wife and him.²¹
- [30] In short, the funds advanced to the husband and wife by his parents were clearly a gift that was used to assist in the purchase of Linacre. Title was registered in the parents' names to take advantage of mortgage policies which the husband described (without elaborating) were available to new immigrants. While the parents signed the closing documents (including a mortgage), Diquan's evidence (which I accept) is that they signed the documents presented to them without understanding English; they signed what their son told them to sign; they trusted him. In my view the parents held Linacre in trust for the husband and/or the wife who were either singly or jointly beneficial owners of the property.
- [31] The parties did not disagree that the value of Linacre on the valuation date was \$1,270,000. Both attributed that value and the mortgage debt associated with the property to the husband in calculating their net family properties. The wife pro-rated the mortgage on title to \$366,631 (rounded) and supported that figure with a statement from the mortgagee. I accept her calculation. Given my findings below about whether the sale to Ms. Shek was a fraudulent conveyance, the \$1,100,000 value of the consideration for that transaction will be ignored in preference to \$1,270,000.

Ballard

- [32] Pursuant to the Ballard agreement, the builder exercised its right to extend the closing date to May 10, 2018. The wife did not challenge the husband's evidence that the real estate market had deteriorated since 2016 or that the property's market value on the valuation date was less than its purchase price. An appraisal of the property obtained by the husband suggested that the "As Is" value of the half-completed property on the valuation date was \$975,000 and, if it were to have been completed as of that date, the value was \$1,780,000.
- [33] The parties could not resolve how to deal with Ballard (among other issues) which they were contractually bound to close. The husband felt that the parties had no choice except to complete the transaction, but he needed the wife's cooperation to fund the closing. He proposed terms to her which also involved the parties' other properties, but she rejected them. She wanted no part of the purchase. On February 25, 2018, the builder agreed to release the wife as co-purchaser but not her liability under the purchase contract. The husband decided to close the transaction without the wife's further involvement.
- [34] According to the husband and Ms. Shek, she had been contacted by the husband in September 2017 before the parties separated about financing options for the Ballard purchase. She met with him about one to two months later and agreed to help him secure short-term financing for the purchase. This would be done by placing a mortgage on Linacre and Ballard on the closing of the latter's purchase. As the wife was not prepared to have a mortgage placed on Linacre, the husband's evidence is that he had asked his parents to refinance the property. Diquan's evidence is that he and his late wife were told

²¹ The husband stated in his net family property statement about Linacre "As Diquan...confirms that his and [his late wife's] contributions to the matrimonial (*sic*) were a gift and not a loan [the husband] accepts that he and [the wife] each has a 50% beneficial interest in the property at 29 Linacre Drive."

by their son that he needed money to buy another property and that they (Diquan and his wife) had to sign mortgage documents for financing. He told them not to tell the wife. They were taken by their son to a lawyer's office. The husband testified that he, Ms. Shek and the lawyer explained the mortgage transaction and its details to Diquan and his wife. Diquan testified that neither he nor his wife had any idea about the amount of the mortgage or the identity of the lending entity. The dispute between Diquan and his son and Ms. Shek about what he and his wife had been told, by whom and whether they understood what they were being asked to sign, was a long-simmering issue before trial. The lawyer was never called as a witness.

- [35] The husband closed the Ballard purchase on May 10, 2018, for \$2,014,767.18 after accounting for a deposit and other closing adjustments. The purchase was funded by a first mortgage in favour of a bank and a second mortgage for \$705,000 in favour of UT Capital having a November 4, 2018, maturity date, also registered on title to Linacre.
- [36] The wife's evidence (which I accept) is that she first learned about the UT Capital mortgage around the time that she started these proceedings. In 2019 the husband placed a \$200,000 second mortgage on the property.
- [37] Ballard was sold on June 2, 2020, for \$1,950,000.
- [38] The wife claims that the only value attributable to Ballard on the valuation date was the \$133,150.37 deposit made when she and the husband signed the purchase agreement in 2016 and that since the husband was its purchaser, the deposit should be recorded as his asset. The husband claimed the value of Ballard was \$1,780,000 and that there was a loss of \$339,537.10 for which the wife should be responsible for one-half of that amount or \$169,768.55.
- [39] Neither party's position is reasonable. The wife co-signed the purchase agreement. She was never relieved of her liability under it and there was never any agreement between her and the husband whereby he agreed to assume full responsibility for the parties' contractual obligations. The husband's position ignores the fact that the actual amount due on closing of the Ballard purchase was \$2,014,767.18 such that when the property sold in 2020 for \$1,950,000, the actual loss was \$64,767.11.²² The property was tenanted after its purchase but full details about the rent paid was never made clear. The husband received about \$224,300 in net sale proceeds. The net gain from the Ballard sale was, therefore, \$159,533 (rounded). That amount should be recorded in the husband's column in calculating his net family property.

Osborne

- [40] The parties differed on the value they attributed to this property. The wife obtained an appraisal from a reputable expert indicating a \$885,000 fair market value for the property on the valuation date. The husband estimated that the current fair market value of the property was \$950,000. In my view, it is unnecessary to determine the property's value on

²² The closing amount is net of the parties' deposit and accounts for reciprocal closing adjustments as reflected in the final Statement of Adjustments.

the valuation date because it was then, and remains, jointly owned. For the purposes of calculating the equalization payment only, and not as expressing any view about Osborne's current fair market value, a value of \$950,000 shall be attributed thereby resulting in \$475,000 being recorded for each party's interest.

Bank accounts and Savings, Securities and Pensions

- [41] The wife disclosed savings totalling \$9,193.30 on the valuation date and attributed savings of \$19,837.40 to the husband. He disputed the value of the wife's chequing account with the Royal Bank of Canada and a joint chequing account he shared with the wife at TD Canada Trust. Her values were supported by banking statements; I accept them. As I accept the value of a joint account that the wife shared with JL (also documented).
- [42] The wife also attributed the full value (\$737.95) of an account that the husband shared with his parents whereas the husband acknowledged a third of that value (i.e., \$245.98). Given that the husband was using his parents' pension from China to help pay for their expenses and that he also incurred other expenses for them, his value is accepted.
- [43] The husband acknowledged that he had \$39.26 (converted) in a USD chequing account.
- [44] As for the husband's allegation (which the wife denied) that she had \$63,000 in undisclosed cash belonging to him located in a safe, the evidence is insufficient to warrant that finding given my view of the parties' credibility. The husband never explained how he had saved this much cash given his level of reported income (below the poverty line). The irony was lost on the husband.
- [45] Finally, the wife alleged that there should be attributed to the husband \$15,000 representing two payments made to a Canadian Tire Mastercard account a little over two weeks after the valuation date. The husband was vigorously cross-examined about the operation of this card and was unable to identify the source(s) for these payments. Given the court's finding about the husband's credibility on financial issues, I accept the wife's submission; \$15,000 shall be added to the husband's Part 4(c) bank accounts and savings column.

Business Interests/Money Owed

- [46] The husband sold his interest in Rose Son Motor to Ms. Shek for \$30,000 shortly after the valuation date. He eventually produced a business appraisal opining that the fair market value of his interest was \$66,000, a value with which the wife agreed. The expert also noted that there was \$7,979 recorded in the company's books owing to the husband as the only shareholder. The husband never disputed this finding. Accordingly, both of the expert's values shall be attributed to the husband on the valuation date.

Debts and other liabilities

- [47] The parties agreed on the values of their respective credit card debts on the valuation date but disagreed about the value of the mortgage on Osborne and the husband's inclusion of disposition costs associated with the post-valuation date sales of Linacre and Ballard. The wife estimated that the outstanding mortgage on Osborne was \$285,482.80 whereas the

husband estimated that it was \$259,783.96, neither of which values was anchored to a statement from the mortgagee and, in any event, do not impact the determination of the equalization payment since the property was jointly owned. The court will average the parties' estimates at \$272,630 and include \$136,315 in each party's debt column.

[48] The husband claims (and the wife does not accept) contingent disposition costs of \$77,660 for the sale of Linacre a year after the valuation date (i.e., \$73,660 for commission and \$4,000 for legal fees) and \$109,667 for the June 2020 sale of Ballard (i.e., \$104,666 for commission and \$4,400 for legal fees). I am unable to accept the amount of either claim.

[49] Section 4(1.1) of the *Family Law Act*²³ ("the FLA") permits the deduction of contingent liabilities in calculating a spouse's net family property, the onus of proving which rests with the claimant husband pursuant to s. 4(3) of the FLA. The husband has not satisfied the onus for these reasons:

(a) While it is more likely than not that Linacre would be sold and disposition costs inevitably incurred,²⁴ no reporting letter or other evidence was tendered dealing with these costs. In my view, the husband randomly chose these figures.

(b) In her affidavit evidence and testimony, Ms. Shek justified her \$1,100,000 private purchase of Linacre as being among other reasons, commercially reasonable, because Diquan and his wife would be "foregoing any real estate commission through this private sale."²⁵ There was, in other words, no commission ever paid when Linacre was sold.

(c) The Ballard sale was completed over two years after the valuation date and the \$224,300 amount paid to the husband was net of agent's commission.

[50] Even so, there would have been some notional disposition costs associated with the sale of Linacre and it would be unfair to the husband to disregard them entirely. In the exercise of my equitable jurisdiction and recognizing the husband's self-represented status (notwithstanding the five or six lawyers who periodically acted for him throughout these proceedings), I am prepared to permit a \$30,000 deduction for agent's commission and \$2,000 for legal fees for a total deduction of \$32,000. The commission is slightly less than one-half of an agent's commission of 5% on a \$1,270,000 sale and is discounted by the fact that the husband and Ms. Shek were more than business acquaintances on the valuation date. The amount for legal fees for the uncomplicated sale of a residence does not appear to be unreasonable.

[51] As for Ballard, it would be unfair to add back the agent's \$92,625 commission to the net amount paid to the husband because I have no doubt that he had to carry the costs of the

²³ R.S.O. 1990, c. F.3.

²⁴ See *Buttar v. Buttar*, 2013 ONCA 517, 116 O.R. (3d) 481, at paras 19-21.

²⁵ Exhibit 66 being the trial affidavit of Man Yee Shek dated May 8, 2024, at para. 21.

property for over two years after the purchase and, in any event, the wife remained liable under the purchase agreement had the purchase not closed.

Determination of equalization payment

[52] Based on the foregoing, the husband owes the wife an equalization payment of \$552,007.59, say \$552,000.

Post separation adjustments

[53] The husband claims that the wife owes him post-valuation date adjustments for “retroactive child support, private loan costs, rents (which includes occupation rent) and other financial considerations.” The reference to “other financial considerations” was never developed by the husband in evidence or his final submissions but, even so, he claims that he is entitled to be paid a net amount of \$242,572 from the wife, comprised of the following:

- (a) \$174,021.80 representing the wife’s one-half share (\$343,790.35) for what the husband estimated was a \$687,58.70 hypothetical loss on the Ballard sale less her share (\$169,768.55) of its actual loss of \$339,537.10.²⁶
- (b) A net \$68,550 arising from credits to him to the equalization payment he acknowledged of \$157,108 owed to the wife. These are expenses that he said were incurred after the valuation date, are noted in his trial net family property statement and include such claims as the Ballard mortgages (\$115,464); rent for Linacre for the wife and children before its eventual sale to Mr. Yip (\$86,500); the mortgage on Linacre from the valuation date until the property’s sale to Ms. Shek (\$14,805); Linacre utilities and the wife’s auto insurance (\$22,474.50); Osborne rent for the wife and children from February 2024 to September 2024 (\$13,400); and crediting the wife with \$6,061.55 for Osborne mortgage payments from December 2023 to September 2024.

[54] There are many problems with the husband’s submissions, not the least of which is that there is no evidence to support how much he paid or his net loss with respect to most of these expenses, some are based on hypothetical figures and others lack merit:

- (a) The husband estimated a net loss of \$339,537.10 on the sale of Ballard using an “As Is” appraisal as if the property had been completed on the valuation date, six months before the May 2018 purchase. It wasn’t. Why that merits consideration by the court was never explained. The husband further estimated that “the actual forced sale” of Ballard generated a “significantly higher loss of \$687,580.70.” There was no forced sale. The husband couldn’t explain this figure either. I had the

²⁶ In his submissions the husband directed the court’s attention to Exhibit 55 which was the “As Is” appraisal.

impression that the husband was playing with figures and providing various scenaria untethered to the evidence.

- (b) The husband was ordered by McGee J. in 2020 to produce an analysis of his income. In the TSC order, the husband represented that he would be tendering the evidence of an expert to testify about his income. Quite apart from the issue of support, the report could have shed at least some light on the total income available to the husband to fund the various expenses he claimed to be incurring. The husband decided not to call the expert. No report was tendered. An adverse inference is warranted about the husband's income and ability to pay.
- (c) No evidence was led by the husband about the fair market rental value of Linacre after the valuation date. This was one of his issues in this litigation since shortly after it started. It is noted that he paid nothing for support until May 2023.
- (d) The husband led no evidence about rental income from Ballard or, after he moved his parents from Osborne for income rental purposes in March 2019, rental income from that property either until the wife and children moved there in February 2024.
- (e) No evidence was led with respect to the fair market value rental of Osborne either after the wife and children moved there in February 2024.
- (f) The husband did provide evidence relating to Linacre's expenses (Exhibit 41), some of which the wife acknowledged and for which he has been given a credit, but he produced no comparable analyses for either Ballard or for Osborne.

[55] With respect to the mortgages on Linacre and Osborne, Linacre utilities and the wife's automobile insurance, the husband broke out from his claim \$108,833.95. This amount comprise his claim for \$7,105 for rent from November 2017 to the property's sale to Ms. Shek on October 31, 2018; the sum of \$72,000 at \$3,000 a month for the two years' rent that he paid to Ms. Shek from November 2018 to November 2020, when the property was sold to Mr. Yip; \$7,254.45 for mortgage/property tax/home insurance that he paid to October 31, 2018; and \$22,474.50 for various housing and automobile-related expenses between November 2017 and October 2020.²⁷

[56] The court clarified with the husband that his claim involving Linacre's mortgage/property tax/home insurance payments was based on his attribution to the wife and him of a 24.5% interest each in the property with the 51% balance owned by his parents, a position that he modified during trial to accord with the wife's claim that they were the property's beneficial owners. The wife did not challenge that she was liable for her equal share of

²⁷ These are summarized in Exhibit 41.

these payments.²⁸ The evidence was that the monthly mortgage was \$1,253.31²⁹, the annual property tax was \$6,290³⁰ and home insurance was about \$1870³¹ such that the eleven-month cost was \$21,916, of which the wife's share would be \$10,958. However, the wife also acknowledged owing \$21,932.75 for her share of the mortgage payments until October 2020. This cannot have related to the 2018 sale of Linacre, and it was unclear whether these further payments related to Osborne (they may have, considering a \$6,061 credit for Osborne's mortgage that the husband conceded). The difference is \$10,975 (i.e., \$21,932.75 less \$10,958). Accordingly, the best this court can do is add that amount to the adjustments to which the husband is entitled.

- [57] The wife also conceded that she owed the husband \$22,413.45 for the various housing and automobile-related expenses as set out in Exhibit 41, but she disputed owing a \$70 parking penalty. No evidence was led about that charge. I will accept the wife's amount.
- [58] Accordingly, the wife owes the husband \$44,346 as a post-valuation date adjustment (i.e., \$10,958 plus \$10,975 plus \$22,413.45, rounded).
- [59] I am unable to award the husband anything for losses he allegedly sustained on Ballard because he provided no accounting of his rental income and expenses other than his mortgage expense. The same applies to Osborne before the wife and children occupied that property.
- [60] The husband also argued that he was entitled to occupation rent for Linacre and Osborne. Occupation rent is a discretionary remedy that can be used to ensure financial fairness between spouses, the application of which will vary from case to case.³² An equal joint owner is not entitled to occupation rent as of right (which is what the husband submitted): rather, it is a tool for balancing competing equities and may be awarded where it is reasonable and equitable to do so.³³ As noted by the Court of Appeal in *Non Chhom v. Green*,³⁴ the order must be reasonable; it need not be exceptional.

The relevant factors to be considered when occupation rent is in issue in a family law context are: the timing of the claim for occupation rent; the duration of the occupancy; the inability of the non-resident spouse to realize on their equity in the property; any reasonable credits to be set off against occupation rent; and any other competing claims in the litigation: *Griffiths v. Zambosco*, at para. 49.^{35 36}

²⁸ In her submissions the wife said that her share of the mortgage payments from 2017 to October 2020 was \$21,932.75. It was unclear whether this related to Linacre or extended to the date when Osborne was sold; in other words, an additional \$10,975. That amount will be factored into the final post-separation adjust

²⁹ As per the wife's Net Family Property Brief (Exhibit 5, Tab 6).

³⁰ As per Exhibit 41.

³¹ As per Exhibit 41.

³² *Saroli v. Saroli*, 2021 ONSC 4450, at paras. 311-312 ["*Saroli*"]

³³ *Jasiobedzki v. Jasiobedzki*, 2023 ONCA 482, at para. 15.

³⁴ 2023 ONCA 692, at para. 8.

³⁵ (2001), 54 O.R. (3d) 397 (C.A.).

³⁶ *Non Chhom*, at para. 9.

- [61] The list is not exhaustive. In *Saroli*, Petersen J. listed other factors which are relevant, such as the circumstances under which the non-resident spouse left the home, whether the non-occupying spouse moved for the sale of the home and any financial hardship experienced by the non-resident spouse because of being deprived of their equity in the property.³⁷
- [62] In this case, some of the relevant considerations involve the husband deciding not to return to Linacre after his vacation to Florida with Ms. Shek, the absence of any evidence that he ever moved for the sale of the property (instead resorting to subterfuge to sell it to Ms. Shek), and the dubious evidence about the financial hardship he was allegedly experiencing (such as the hundreds of thousands of dollars to which he had access and managed through the accounts of his parents' shell companies, the revolving nature of his financial dealings with Tony, Peter and maybe John whose name was Paul and his \$150,000 in charitable donations in 2020 upon the sale of Ballard). There was no evidence about the fair market rental value of Linacre. Given the murky nature of the husband's income and management of the parties' finances, I am not inclined to exercise my discretion to award occupation rent.
- [63] The wife made no claim for post-valuation date adjustments ranging between \$26,000 and over \$35,000 for the renovations she made to the Osborne property after the children and her moved there in February 2024.

Support

- [64] The wife claims that there should be imputed to the husband annual incomes for 2018 to 2023 variably ranging from \$546,193 to \$832,881 on a grossed-up basis. He claims that there should be imputed to the wife an average income of \$93,379 between 2018 and 2022. Both parties claim that their income tax returns are accurate, and both allege material income non-disclosure by the other.

Wife's evidence about her income

- [65] The wife's evidence is that after the parties immigrated to Canada in 2003, she obtained some part-time work in a local daycare teaching Mandarin, but after the birth of BL in 2007, she didn't work outside of the family home until after the November 2017 valuation date. She reported earning no income in 2017, although I accept that she earned a modest unreported income for providing daycare services from Linacre. In 2018 she offered tutoring lessons in Mandarin from Linacre and, in late December 2018, she obtained some part-time work at a local fast-food operation. The Mandarin tutoring was irregular and paid her about \$200 to \$300 (in cash) that year and, combined with her fast-food work, her declared 2018 income was only \$684. The fast-food employment ended in June 2019. Shortly before that employment ended, the wife obtained seasonal employment teaching Mandarin with the Toronto District School Board ("TDSB") and later, in October 2019, she began working a second job with Childventures Early Learning Academy. She also continued some private Mandarin tutoring until March 2020.

³⁷ *Saroli*, at para. 312.

[66] During COVID the wife earned nothing from her tutoring as classes were canceled. She received CERB. Between July 2020 to March 2023, she tutored two students and was paid about \$2,800 in cash. From late August 2022 to early August 2023, she enrolled at a local community college, obtained a diploma in Early Childhood Education and resumed working part-time for the TDSB teaching Mandarin. In February 2024, she secured employment as an early childhood educator with a local childcare services organization. She disclosed a \$49,100 annual income from employment in 2024.

[67] The following summarizes the wife's assessed 2018 to 2022 incomes and her income for 2023:

2018- \$684

2019- \$20,238

2020- \$45,797

2021- \$42,399

2022- \$33,451

2023- \$33,451 (from the wife's April 29, 2024, trial financial statement).

[68] In his cross-examination of the wife, the husband challenged the veracity of the wife's assessed income alleging that an Excel spreadsheet he had generated from her disclosure suggested a great disparity that would reflect a Daigou income. The April 22, 2024, TSC order noted that the husband intended to commission an income stream analysis involving the wife's income, but the status of that was unknown at that time because no expert had been in contact with the wife or her counsel. Nothing appears to have been done about that by the husband in the following six months before trial; he told the court during his cross-examination of the wife that he had prepared his own expert report instead. The document was not admitted into evidence. The husband was invited to question the wife on specific transactions from her banking disclosures which he was challenging about her income testimony, but he declined to pursue that any further as well as declining to pursue at any length a line of questioning that she had also operated a daycare business (she admitted providing some after-school services).

[69] Likely, the wife did earn more income than she reported in her income tax returns. She acknowledged being paid cash which, in my view, would have been rather modest given the nature of the services she was providing. Accordingly, I shall accept the wife's declared incomes for 2018 to 2023 and \$49,100 for 2024 on an ongoing basis.

Husband's evidence about his income

[70] The husband obtained employment as a technician with a telecommunications company after the parties immigrated. In 2005, he opened his own business (Rose Son) which provided window coverings for residential and commercial spaces. He was the sole shareholder and the company's only employee on the valuation date. He testified that he

was the main breadwinner for the family. While the wife submitted that he earned an annual (grossed up) income averaging \$635,700 between 2018 and 2023, he claimed that his income tax returns and trial financial statement accurately disclosed his true income as follows:

2018 - \$21,958.

2019 - \$26,871.

2020 - \$21,111.

2021 - \$30,963 (excluding a one-time capital gain).

2022 - \$10,998.

2023 - \$37,740 (from the husband's February 2, 2024, financial statement).

2024 - \$ 37,740 (from the husband's financial statement).

[71] The average income, including 2024, is \$26,770, rounded.

[72] The husband was ordered by McGee J. in March 2020 to provide an expert report about his 2017 and 2018 income and a valuation of Rose Son Motor. The TSC order identified the husband's income as one of his trial issues and identified the expert who, as it turned out, the husband told the court he would not be calling when the trial began (the opinion of the expert about the value of Rose Son was accepted by the parties). It is inferentially obvious from the TSC order that the husband's income analysis report was purposed to map all his income up to trial (to the extent possible). The failure to call this witness without a persuasive explanation gives rise to an adverse inference about the husband's true income. The fact is that, as the evidence evolved, the husband's income *was* opaque and that, regrettably but necessarily, led to a more prolonged cross-examination of the husband than contemplated by the TSC order. The wife had also alleged that the December 2018 sale of the business was improvident.

[73] The thrust of the wife's case that the husband earned more than he declared involved comparing his income to the expenses which he contended were financed by debt. For example:

(a) In 2018, the husband declared that his income was \$21,958, but he made payments for Ballard, Linacre and Osborne, for credit cards and lines of credit and made unaccounted deposits to his parents' company accounts, all of which totalled \$288,591.

(b) This pattern repeated in 2019 (i.e., declared income of \$26,871 and \$354,221 for unaccounted payments and deposits) and 2020 (i.e., declared income of \$21,111 and \$64,699 for unaccounted payments and deposits).

- (c) There were relatively few comparable discrepancies for 2021 to 2024; the wife contended that the husband's disclosure was deficient.

[74] The only acknowledged source for any of the 2019 and 2020 payments could be a \$200,000 second mortgage that the husband placed on Ballard in July 2019, but any such connection was never explained by the husband. He was unable to satisfactorily explain the sources for the other expenses which he paid, and his own behaviour raised even more questions about his financial activities. For example:

- (a) The husband maintained that the wife held \$63,000 in his cash at Linacre. Given that his income in 2017 was \$16,608 and \$21,958 in 2018 the husband never explained how this cash was accumulated (he was the family's main breadwinner). I infer that he enjoyed an undeclared income, likely from his business.
- (b) He returned \$50,000 to UT Capital in July 2018 in circumstances where (according to his evidence) he was confronted with unmanageable debt relating to the parties' other properties and financial commitments. Pressed in cross-examination about the reason for this repayment and from where he obtained the \$50,000, the husband testified that UT Capital wanted some money back and so, working through Ms. Shek, he was given cash and cheques from third parties as loans which he later repaid. A most curious relationship with this mortgagee.
- (c) From 2018 to 2020, he deposited over \$300,000 into the bank accounts for the companies that he incorporated in his parent's names, which funds came mostly from third parties whom the husband couldn't identify for the court but which he said that he repaid, including money from Ms. Shek, also repaid.
- (d) He made charitable contributions totalling \$150,000 when Ballard sold in 2020. This, in my view, is not the behaviour of a person allegedly mired in debt.
- (e) The husband's trial financial statement disclosed no outstanding debt as of February 2, 2024, apart from the mortgage on Osborne (\$142,741) and a debt owing to his parents (\$79,584.80) about which he tendered no evidence at trial. If he incurred so much debt to continue financing the wife and children residing at Linacre, including paying for his parents, how did the husband satisfy his unidentified creditors?

[75] The husband's evidence about his income and how he managed his, and the parties' other expenses is wholly unsatisfactory. By his own admission he was represented by counsel until the last trial scheduling conference. He was under no illusion at any time during this case that his income was not a hotly contested issue. He represented to MacPherson J. that he would be tendering the evidence of an expert about his income but chose not to call that person. He disingenuously attributed to his former lawyer the responsibility for representing that he would be tendering expert evidence. In my view, this is an appropriate case to impute income to the husband, but that task is made more difficult due to the absence of a more detailed audit of his finances than merely drawing the inferences sought by the wife.

[76] The imputation of income requires a rational and solid evidentiary foundation grounded in fairness and reasonableness.³⁸ As noted by Chappel J. in *Laramie v. Laramie*³⁹:

[93] The imputation of income to a party is a fact-driven exercise that turns on the unique circumstances of the case before the court...Regardless of the basis upon which income is imputed, the amount of income that the court imputes to a party is a matter of discretion. The only limitation on the discretion of the court in this regard is that there must be some reasonable basis in the evidence for the amount that the court has chosen to impute (*Korwin v. Potworowski*, 2007 CarswellOnt 6852 (C.A.); *Froelich-Fivey v. Fivey*, 2016 ONCA 833 (C.A.)).

[77] The wife bears the onus of establishing, *prima facie*, the evidentiary basis for imputing income to the husband.⁴⁰ That burden will be lessened, or mitigated, by a payor's failure to make full, frank and intelligible financial disclosure.⁴¹ Once the onus has been made out, the evidentiary burden shifts to the payor to lead credible evidence regarding their actual income.⁴² An adverse inference will usually be drawn where the payor's evidence about their income is inconsistent with other more reliable evidence or is unintelligible. In my view, the wife has met her onus, but not to the extent of imputing to the husband the levels of income which she is proposing: the husband has failed to discharge his onus.

[78] In *Meade v. Meade*,⁴³ Kiteley J. dealt with the proof-of-income obligations for a self-employed person such as the husband in this case:

It is inherent in the circumstances of those who are self-employed or who have irregular income and expenses, that they have a positive obligation to put forward not only adequate, but comprehensive records of income and expenses. That does not mean audited statements. But it does mean a package from which the recipient spouse can draw conclusions and the amount of child support can be established. Where disclosure is inadequate and inferences are to be drawn, they should be favourable to the spouse who is confronted with the challenge of making sense out of financial disclosure, and against the spouse whose records are so inadequate or whose response to the obligation to produce is so unhelpful that cumbersome calculations and intensive and costly investigations or examinations are necessary [*Nardea v. Nardea*, heard March 5, 1998; *McLeod v. McLeod* [1998 O.J. No. 3976; *Reyes v. Rollo* released December 14, 2001].

³⁸ *McArthur v. Le*, 2022 ONSC 2110, 73 R.F.L. (8th) 177, at para. 14 citing with approval *Drygali v. Pauli* (2002), 61 O.R. (3d) 711 (Ont. C.A.), at para. 44.

³⁹ 2018 ONSC 4740, at para. 93.

⁴⁰ *Homsy v. Zaya*, 2009 ONCA 322, 65 R.F.L. (6th) 17, at para. 28.

⁴¹ *Zigris v. Foustanelas*, 2016 ONSC 7528, 92 R.F.L. (7th) 197, at paras 34-38.

⁴² *Lo v. Lo*, 2011 ONSC 7663, 15 R.F.L. (7th) 344, at para. 57; see also *Charron v. Carriere*, 2016 ONSC 4719, at para. 66.

⁴³ 31 R.F.L. (5th) 88 (Ont. S.C.), at para. 81.

- [79] The test for imputing income for child support purposes applies equally to claims for spousal support.⁴⁴
- [80] So what income should be imputed to the husband? There was no evidence that the husband enjoyed a lifestyle remotely reflective of someone earning an average \$690,000 annual income (grossed up). It is clear though that his income tax returns do not fully disclose the income available to him, that he has had access to undeclared funds since the valuation date (and may still have such access) and that as this case has progressed that access has either been compromised or, if not, buried by non-disclosure. The early years post-valuation date (i.e., 2018 to 2020) until the sale of Ballard coincide with much higher cash flows (the three-year average is \$236,503) and are significantly higher than the following four years (average \$29,360). Over that seven-year span, the average cash flow is \$118,289. One year (2022) the husband's declared income was only \$10,998. Considering that the husband had access to his parents' pensions from China (which he used to support them until the rupture in their relationship and, until then, he also used to help pay family expenses), there was no audited tracing of the husband's banking and funding records and that there was no evidence of any health or other issue impacting the husband's ability to work (the evidence of the wife, Diquan and the husband was that he was always busy at work), it is not unreasonable to impute a \$90,000 annual income to the husband for the 2018 to 2024 period. Given the regrettable nature of the evidence in this case, that is the best this court can do.

(a) *Child support*

- [81] The statutory and regulatory provisions dealing with child support relevant to this case are set out in ss 15.1(1) and (3) of the *Act*:

15.1 (1) A court of competent jurisdiction may, on application by either or both spouses, make an order requiring a spouse to pay for the support of any or all children of the marriage.

Guidelines apply

(3) A court making an order under subsection (1) or an interim order under subsection (2) shall do so in accordance with the applicable guide.

- [82] Section 19 of the *Guidelines* provides the Court with the discretion to impute income and sets out a non-exhaustive list of circumstances.⁴⁵ Given the imperfect nature of the husband's disclosure but accepting that he was responsible for paying most of the family's expenses, even after the 2020 sale of Linacre to Mr. Yip, it is not possible to determine for each year what child support should have been paid. The wife's calculations were based on grossed up incomes which were fueled by the circular and confusing nature of the husband's finances. Though no fault of hers, the husband's income remains a mystery.

⁴⁴ *Rilli v. Rilli*, [2006] O.J. No. 4142 (Ont. Fam. Ct.), at paras 14 and 16; also, *Perino v. Perino* (2007), 46 R.F.L. (6th) 448, at para. 28.

⁴⁵ *Bak v. Dobell*, 2007 ONCA 304, 86 O.R. (3d) 196.

[83] Mindful that child support is the child's right, and that the parties are each pursuing significant financial claims against the other based on inferred income (the wife) and generalized, untabulated family expenses (the husband), it is my view that the husband should pay table child support based on a \$90,000 imputed income from January 1, 2024 going forward, with credit to all child support paid to date (adjusted to account for the revised CSG as of October 1, 2025), he is relieved from paying any child support arrears accruing to December 31, 2023 and that this outcome sets off his claims to overpayment of child support and for the wife's contributions to the expenses of the family, including for the Ballard, Country Lane and Osborne properties.

[84] I accept that the wife's 2024 income is \$49,100.

[85] The wife claimed, and I accept, that she incurred \$40,990 in s. 7 expenses for the children between January 1, 2018, and December 31, 2024. The husband claimed that he paid about \$1,500 for his JL's basketball and art classes, which the wife did not vigorously dispute. As the ratio of the parties' incomes is 35% (wife)/65% (husband), he shall pay to her s. 7 arrears of \$25,669 (i.e., [$\$40,990 - \$1,500$] x .65).

(d) Spousal support

[86] Sections 15.2(1), (3), (4), and (6) of the *Act* provide as follows:

15.2 (1) A court of competent jurisdiction may, on application by either or both spouses, make an order requiring a spouse to secure or pay, or to secure and pay, such lump sum or periodic sums, or such lump sum and periodic sums, as the court thinks reasonable for the support of the other spouse.

...

(3) The court may make an order under subsection (1) or an interim order under subsection (2) for a definite or indefinite period or until a specified event occurs, and may impose terms, conditions or restrictions in connection with the order as it thinks fit and just.

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

(a) the length of time the spouses cohabited;

(b) the functions performed by each spouse during cohabitation; and

(c) any order, agreement or arrangement relating to support of either spouse.

...

(6) An order made under subsection (1) or an interim order under subsection (2) that provides for the support of a spouse should

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

(b) apportion between the spouses any financial consequences arising from the care of any child of the marriage over and above any obligation for the support of any child of the marriage;

(c) relieve any economic hardship of the spouses arising from the breakdown of the marriage; and

(d) in so far as practicable, promote the economic self-sufficiency of each spouse within a reasonable period of time.

[87] Sections 15.3(1) and (2) provide as follows:

Priority to child support

15.3 (1) Where a court is considering an application for a child support order and an application for a spousal support order, the court shall give priority to child support in determining the applications.

Reasons

(2) Where, as a result of giving priority to child support, the court is unable to make a spousal support order or the court makes a spousal support order in an amount that is less than it otherwise would have been, the court shall record its reasons for having done so.

[88] In my view, the wife is entitled to spousal support. The parties were married 17 years before their separation, the wife did not work outside the home for a decade before separation, she undertook primary care for the children and did her best afterward to upgrade her work skills. These contributions allowed the husband to devote his time to his business which, in my view, then and now (with a different name) he continues to pursue. I have no confidence that the husband's evidence about his real income or the value of any business is credible.

[89] Given my findings about the parties' incomes and the husband's child support obligations, the application of the *Spousal Support Advisory Guidelines* ("SSAG") would result in the wife and children having about 60% of the family's net income. Accordingly, no spousal support order is warranted currently for the reasons set out above.

Wife's fraudulent conveyance claims

[90] The wife claims that the husband collaborated with Ms. Shek to drain the parties' equity in Linacre and then fraudulently conveyed the property to Ms. Shek who, in turn, fraudulently

conveyed the property to Mr. Yip. Ms. Shek asserts that the impugned transaction was conducted in good faith, for legitimate purposes and at fair market value. Mr. Yip contends that his transaction with Ms. Shek was arms-length and conducted at fair market value too; there was no intent to hinder, delay or defraud the wife in her equalization claim.

Use of Artificial Intelligence (AI) in court submissions

[91] Before dealing with the substance of the parties' competing positions, a serious concern involving the use of artificial intelligence requires comment. The parties made written and oral closing submissions. Upon the court's later review of the respondent's authorities (not Diquan), it became obvious that Ms. Shek and Mr. Yip (and possibly the husband) used artificial intelligence and cited either fake cases or hyperlinked to cases which did not stand, even remotely, for the propositions submitted. A few examples:

- (a) On page two of her written submissions, Ms. Shek cited *Bank of Montreal v. Wilder*, [1986] 2 S.C.R. 118 for the proposition that fraudulent intent must be clearly proven and cannot be inferred from financial distress or suspicion. Upon clicking the hyperlink, the user is directed to *Schuldt v. The Queen*, [1985] 2 S.C.R. 592, a case that deals with an appeal involving a break and enter case. The proper citation for the *Wilder* case is [1986] 2 S.C.R. 551. *Wilder* has nothing to do with fraud whatsoever; it deals with a bank action on guarantees signed by shareholders of a company.
- (b) The next citation in Ms. Shek's written submissions is *Gowling Lafleur Henderson LLP v. Shorter*, 2011 ONSC 5840. Clicking on the link takes the user to a CanLII error page. The case cannot be found on Westlaw or Lexis.
- (c) Clicking on the next reference to *Royal Bank of Canada v. North American Life Assurance Co.*, [1996] 2 S.C.R. 325 takes the user to *Gordon v. Goertz*, [1996] 2 S.C.R. 27. The *Royal Bank* case does exist, but it involved the interpretation of certain sections of the *Bankruptcy and Insolvency Act*. Nowhere in the report is there any reference to the proposition submitted by Ms. Shek.
- (d) Again, in Ms. Shek's written submissions, when clicking the hyperlinks to *Pinto v. BMO Trust Company*, 2017 ONCA 120, *Duggan v. Durham Region Law Association*, 2022 ONCA 216 and *Indalex Ltd., Re*, 2013 SCC 6, the user is directed to an error page (*Pinto* and *Indalex*), the user is directed to a different case (*Duggan*), the case cannot be located on any reporting service (*Pinto* at the ONCA level and *Duggan*) or the case report (when found, as in *Indalex*) deals with entirely different matters (*Indalex* dealt with pension administration).
- (e) Mr. Yip referred the court to *Ontario Inc. v. Ranch Heating and Air conditioning (Barrie) Limited*, 2012 ONCA 182 as authority for the proposition that the wife needed to demonstrate an actual scheme to conceal or divert assets. The case involves negligence causing a fire.
- (f) Mr. Yip again. The reference to *Ontario (Attorney General) v. Trinity Bible Chapel*, 2023 ONCA 134 (CanLII) is cited for the proposition that sales made in the normal

course of business at fair market value do not constitute a fraudulent conveyance. *Trinity* is a Charter case involving breaches of Covid regulations.

[92] These are but a few examples. All the authorities submitted by Ms. Shek and Mr. Yip were AI hallucinations.

[93] In *Zhang v. Chen*⁴⁶, Masuhara J. held:

[29] Citing fake cases in court filings and other materials handed up to the court is an abuse of process and is tantamount to making a false statement to the court. Unchecked, it can lead to a miscarriage of justice.

[94] In *Ko v. Li*⁴⁷, Myers J. of this court echoed Masuhara J.’s alarm about AI’s potential to mislead a court. *Zhang* and *Ko* dealt with lawyers. Even though Ms. Shek and Mr. Yip were self-represented parties when their closing submissions in writing were submitted and later argued, and they are not bound by any professional duty to the court, the risk to the administration of justice is no different.⁴⁸ Of concern too is that the written submissions of the husband, Ms. Shek and Mr. Yip all bore the hallmarks of having been professionally prepared by a third party or parties having some kind of legal training. While there is nothing improper about a litigant choosing to represent themselves at a trial and relying upon off-the-record legal or unbundled legal assistance, the seriousness of making false representations to the court cannot be overlooked. Consequently, no reliance will be made on any of the authorities cited by either Ms. Shek or Mr. Yip for the legal propositions tendered by them. Their reliance on AI generated hallucinations will be addressed when considering costs.

Fraudulent Conveyances Act (the “FCA”)⁴⁹

[95] Sections 2 to 6 of the FCA provide as follows:

2. Every conveyance of real property or personal property and every bond, suit, judgment and execution heretofore or hereafter made with intent to defeat, hinder, delay or defraud creditors or others of their just and lawful actions, suits, debts, accounts, damages, penalties or forfeitures are void as against such persons and their assigns.

3. Section 2 does not apply to an estate or interest in real property or personal property conveyed upon good consideration and in good faith to a person not having at the time of the conveyance to the person notice or knowledge of the intent set forth in that section.

⁴⁶ 2024 BCSC 285, at para. 29.

⁴⁷ 2025 ONSC 2766.

⁴⁸ At the outset of closing submissions, Ms. Leung advised the court that Mr. Yip no longer wished to be represented by her. She had delivered shortly before the hearing a motion to be discharged as Mr. Yip’s solicitor of record.

⁴⁹ R.S.O. 1990, c. F.29.

4. Section 2 applies to every conveyance executed with the intent set forth in that section despite the fact that it was executed upon a valuable consideration and with the intention, as between the parties to it, of actually transferring to and for the benefit of the transferee the interest expressed to be thereby transferred, unless it is protected under section 3 by reason of good faith and want of notice or knowledge on the part of the purchaser.

5. Every conveyance of real property heretofore or hereafter made with intent to defraud and deceive the purchaser shall be deemed to be void only as against that person and the person's assigns and all persons lawfully claiming under that person or the person's assigns who have purchased or hereafter purchase for money or other good consideration the same real property or a part thereof.

6. Section 5 does not apply to and shall not be construed to impeach, defeat or make void a conveyance of real property made in good faith and for good consideration.

- [96] The FCA voids a transfer made with the intent to “defeat, hinder, delay or defraud creditors or others” or their “just and lawful actions, suits debts, accounts, damages, penalties or forfeitures.” An exemption is provided for a transfer of property by a debtor for good consideration and in good faith to a person (i.e., the transferee) who does not have notice of the debtor’s unlawful intent.⁵⁰
- [97] To void a transaction under the FCA, the wife must establish three things:
- (a) A “conveyance” of property. Both the Ballard mortgage and the transfers of Linacre are conveyances.
 - (b) An “intent” to defeat. Fraudulent intent is a question of fact to be proved in the circumstances of each case.⁵¹ It is to be assessed at the time of the impugned transaction.⁵²
 - (c) A “creditor or other” towards whom that intent is directed.⁵³ As a separated spouse, the wife, like the husband, is protected under the FCA because she is entitled to assert an equalization claim under the *Family Law Act*.⁵⁴
- [98] Fraudulent conveyance cases fall into one of two categories: those where the conveyance is for no consideration or for only nominal consideration, in which case it is only necessary to show the fraudulent intent of the transferor, and those where there is good consideration

⁵⁰ *Devry Smith Frank LLP v. Chopra*, 2018 ONSC 1303 at para. 43.

⁵¹ *Purcaru v. Seliverstova*, 2016 ONCA 610, 80 R.F.L. (7th) at para. 5 [“*Purcaru*”].

⁵² *Purcaru*, at paras 9-12; *Business Development Bank of Canada v. Samarsky*, 2012 ONSC 3002, at para. 22.

⁵³ *Stevens et al. v. Hutchens et al.*, 2022 ONSC 1508, 98 CBR (6th) 246, at para 35, affirmed by the Court of Appeal in *Stevens v. Hutchens*, 2022 ONCA 771.

⁵⁴ *Stone v. Stone* (2001), 55 O.R. (3d) 491 (C.A.), at paras 22-25.

for the conveyance, in which case it becomes necessary to show the fraudulent intent of both parties to the conveyance.⁵⁵ This case is of the second type.

[99] In determining whether a conveyance was made with the intent to defeat, hinder, delay or defraud creditors or others, the court may consider as indicia of fraudulent intent the well known and recognized “badges of fraud” only one of which is sufficient for the court to infer fraud. These badges are circumstantial evidence supporting an inference that the conveyance was fraudulent and include the following:

- (1) the transferor continued in possession and used the property as their own;
- (2) the transaction was secret;
- (3) the transfer was made in the face of threatened legal proceedings;
- (4) the transfer documents contained false statements as to consideration;
- (5) the consideration is grossly inadequate;
- (6) there is unusual haste in making the transfer;
- (7) some benefit is retained under the settlement by the settlor;
- (8) embarking on a hazardous venture; and
- (9) a close relationship exists between parties to the conveyance.⁵⁶

[100] The legal or persuasive burden of proof remains on the wife in this case on a balance of probabilities.⁵⁷ If she can satisfy the court that one or more of these badges of fraud exist, then the evidentiary burden shifts to the husband, Ms. Shek and Mr. Yip to show an absence of fraudulent intent.

[101] In this case, the wife submits that the badges of fraud applicable to the husband’s transfer of Linacre to Ms. Shek are those set out above in paragraph [99](i), (ii), (iii), (v), (vi), (vii) and (ix) and, with respect to Mr. Yip, subparagraphs (ii), (vi) and (ix).

Transfer to Ms. Shek

[102] I accept that the wife was never made aware of the Ballard mortgage or about Linacre’s sale to Ms. Shek and I cannot accept at face value the submissions of the husband and Ms. Shek that the circumstances surrounding, in particular, the sale were wholly “lawful, transparent, arm-length transaction (sic) and executed in good faith” (the husband), and “lawful and commercially reasonable” (Ms. Shek).

⁵⁵ *Devry Smith Frank LLP v. Chopra*, 2018 ONSC 1303, at para. 44.

⁵⁶ *Stevens*, #45, at para. 37.

⁵⁷ *Indocondo Building Corp. v. Sloan*, 2014 ONSC 4018, 121 O.R. (3d) 160, at para. 151.

- [103] The wife's refusal to sell Linacre and the looming November 2018 maturity date for the UT Capital mortgage led the husband to explore financing options with Ms. Shek's guidance. One option involved having the husband's parents apply for a mortgage, which was denied, and the other was the scheme to incorporate two fictionally operational companies owned by the husband's parents to obtain third party mortgage financing. It was not clear whether the mortgage application and refusal preceded the incorporation of the companies or followed their formation. In any event, the companies continued to have over \$300,000 in the aggregate flow through the company accounts in the following years.
- [104] While the husband and Ms. Shek admitted that they had a personal relationship between February 2019 and May 2021, I find that the relationship began much earlier than that. I accept Diquan's evidence that he had first met Ms. Shek at his son's business in 2016 and often afterward whenever he went there to help. He learned of the parties' separation on November 12, 2017, when the wife contacted him asking if he knew the whereabouts of her husband. This was followed by a telephone call from his son telling him that he (the son) was boarding a plane to Florida. The next time that Diquan saw his son was several weeks later when his son and Ms. Shek visited them at the Osborne property. His son described the relationship with Ms. Shek as "boyfriend/girlfriend". I accept Diquan's evidence in preference to that of the other respondents. He was candid, acknowledged an imperfect recollection at times and provided details about his interactions with his son and Ms. Shek which were plausible. The husband did not cross-examine his father about the relationship he alleged between his father and the wife.
- [105] In my view, the husband and Ms. Shek were involved in a personal relationship when they collaborated in the mortgage of Ballard and the sale of Linacre. Diquan's evidence was that he and his wife were told by their son that he needed money to purchase Ballard and, later, was going to sell Linacre to a company to be set up by him and Ms. Shek and that he (Diquan) and his wife needed to sign documents, which they did. With respect to Linacre, they had no idea of the sale price or, after the transaction closed on October 30, 2018, what happened to the sale proceeds. In an affidavit that he submitted in these proceedings dated December 28, 2022, the husband appended an appraisal of Linacre that he had obtained which indicated that the fair market value of Linacre on the valuation date was \$1,270,000.⁵⁸ That is also the value that he attributed to the property in his trial net family property statement. Ms. Shek acquired the property for \$1,100,000. The purchase was mostly funded by a \$968,000 mortgage that required monthly principal and interest payments of \$6,127.68.
- [106] Ms. Shek's evidence is that she was unaware when she agreed to purchase Linacre, and when the transaction closed on October 30, 2018, that the wife and children were living there. I don't believe her. Her evidence, among other things, is inconsistent with the husband's evidence and with a tenancy agreement that she (Ms. Shek) and the husband signed on the closing date for occupancy of the property by the wife and children. The husband wanted the property sold. Ms. Shek knew that the wife didn't want to move or sell

⁵⁸ The parties filed an Agreed Statement of Fact when the trial began (Exhibit 1). Paragraph 22 stated "On December 28, 2022, as Exhibit "A" to his affidavit [the husband] provided an appraisal for the property as of the date of separation, November 12, 2017, indicating a fair market value of \$1,270,000." The husband was represented by a lawyer at the time.

the property and facilitated the transaction. *In fact, the money used for the cash component of the transaction came from the accounts of the parents' companies administered by the husband (i.e., Exhibits 44, 45 and 52); Ms. Shek testified that this money represented repayments to her of money loaned to the husband, however implausible and suspicious that sounds.*

- [107] Based on the parties' financial statements, their net equity in Linacre on the valuation date was about \$940,000 (i.e., \$1,270,000 less a mortgage of \$272,600 and less an estimated \$57,000 for agent's commission and legal fees). The husband retained the net sale proceeds of slightly less than \$24,000, he owned Ballard, and the wife received nothing.
- [108] Notwithstanding that the consideration for the conveyance of Linacre was about \$170,000 less than its value on the valuation date, the conveyance of Linacre to Ms. Shek was fraudulent. The lesser consideration paid by Ms. Shek will be disregarded when calculating the net family property of the wife and the husband (with an appropriate adjustment for estimated contingent disposition costs).

Transfer to Mr. Yip

- [109] The wife submits that the transfer to Linacre was also a fraudulent conveyance because its unusual haste (four weeks) between non-arms length parties (even though Ms. Shek and Mr. Yip were divorced) is evidence supporting an inference of fraud. It is true that the circumstances surrounding Mr. Yip's hasty foray into real estate investment in Canada, the short closing, his failure to inspect the property at any time before closing and the incorporation of a holding company having for its head office a property owned by Ms. Shek are suspicious. As is Mr. Yip's failure, or reluctance, to undertake any action against Ms. Shek after he discovered that, contrary to the purchase agreement, the property was tenanted. Noteworthy too is that the same law firm acted for the husband with respect to the Ballard mortgage and the purchases of Linacre by Ms. Shek and by Mr. Yip.
- [110] But to what end the wife's claim against Mr. Yip, a third party once removed from the transaction between the husband and Ms. Shek, especially after the property was foreclosed? Never made clear to the court by the wife, and never referenced in her proposed final order, was the relief she sought against Mr. Yip. While the circumstances of his purchase of Linacre are indeed suspicious and likely warrant an inference of fraud, in my view, he was a dupe of Ms. Shek and the husband to rid themselves of their troubles with the wife, to end their financial losses and to pass those along to Mr. Yip. Accordingly, and with some reluctance, I am not prepared to find that the conveyance of Linacre to Mr. Yip was fraudulent.

Husband's claims against wife.

- [111] As framed in the TSC order, the husband raised issues about the wife earning income as purchasing agent (a Daigou) and having an interest in a private lending business in China. These relate to the parties' respective support obligations and the equalization of their net family properties. The husband submitted that the wife would be unjustly enriched should the court ignore his claims.

[112] The fact of the matter is that the court cannot step into the husband's shoes and undertake to prove his case when he has had so many years and opportunities to gather and organize his evidence in a trial-ready and intelligible format, especially since (as already noted) he has had the benefit of five to six lawyers throughout these proceedings, although none at trial.

China

[113] After these proceedings started in 2019, amendments were made to the pleadings. In his Amended Amended Answer dated February 20, 2023 the husband claimed that the wife had multiple income sources in Canada and China and operated a purchasing agency and private lending business in China owned by her sister and her husband. The wife denied these allegations. The husband then started a civil action in China that was later expanded to include allegations against Diquan. The claim alleged that the "common property" of the wife and husband was used in the business and that he (the husband) was entitled to compensation for unjust enrichment.

[114] A trial was held in China in late 2023. It did not go well for the husband. His case was dismissed. On January 4, 2024, he appealed and claimed, among other things, that the trial judge was biased, there was new evidence to overturn the judgment and that the wife, her sister and her husband lied to the court. The following exchange with this court is relevant:

THE COURT: All right, so is the Daigou and also private lending. So you were suing Ms. Lan and her sister and the third fellow, I don't remember his name, but for the private lending and Daigou business, she doesn't admit that, in China, right?

A. Yes, privately to act as a privately lender- private lender.

THE COURT: And that case, that case has not come to a conclusion has it? It's outstanding. It's not finished

A. Not yet. So the entry level of the court...

THE COURT: That wasn't my question. My question....

S. LO (interpreter): I think he wants to explain.

THE COURT: No, the case is not over is it?

A. No, not yet.

THE COURT: And in here in this case, you are also making very similar claims involving Daigou and the private lending business aren't you?

A. Yes.

THE COURT: Do you know you can't have – so let me put it this way. So you've got the same fact situation Daigou, private lending business, your allegations. And you are pursuing those claims in Canada and you're also pursuing them in China. Is that correct?

A. You can put it this way.

[115] Before the evidence in this case concluded, the husband advised the court that his appeal had been successful and that he would continue to pursue his remedies in China if he couldn't "get judgment in Canadian court."

[116] The wife denied earning income as a Daigou and having any business interests in China. The husband chose not to call any of the witnesses in China and Canada to prove these claims. Except for some records relating to, for example, the wife having a WeChat account in Canada and sending some items to China, all the other records relating to the husband's claims were in China and belonged to, or were in the possession of, witnesses there whom the husband elected not to call. Why the husband never chose to call his Ontario witnesses was never shared with the court.

[117] In my view, the husband's simultaneous pursuit of similar actions in different jurisdictions, representing that he intended to call witnesses for trial, then electing not to call them, choosing not to question the wife about her banking activities, then waiting until she had closed her case, using (and having extended by the court) the time scheduled for his direct evidence, then asking to testify for another day and trying to tender over 160 exhibits not put to the wife, many of which related to proceedings in China and which belonged, not to the wife, but to the witnesses who would not be called, was an abuse of process (as well as offending the rule in *Browne v. Dunn*⁵⁹). As observed by Kiteley J. in *Greco v. Wang*⁶⁰ "[m]embers of the public who are users of civil courts are not entitled to unlimited access to trial judges. The duration of the trial must be proportionate to the issues at stake and the judicial resources available." While that case involved a family law trial management conference, that observation is even more pertinent in the circumstances of this case, especially where the husband has had the benefit of legal assistance, if not throughout these proceedings, then for much of them, including the trial scheduling conference.

[118] Accordingly, this court will not deal with the husband's claims about Daigou, his allegations about the wife having an income from China or interests in any business there. He can continue to pursue those claims in that jurisdiction.

Ms. Shek's claims

[119] In her Amended Amended Answer dated February 20, 2023, Ms. Shek denied any fraudulent intent with respect to her purchase, and later sale, of Linacre and that neither

⁵⁹ 1893 CanLII 65 (U.K. H.L.) at paras. 70-71.

⁶⁰ 2014 ONSC 5366, at para. 3.

conveyance was fraudulent. Ms. Shek only seeks costs against the wife and Diquan. She was unsuccessful with respect to her purchase of Linacre.

[120] As noted, none of the legal authorities upon which Ms. Shek relies will be considered as they are the product of AI hallucinations, which will be addressed when the cost of these proceedings is considered. In supplementing these hallucinations, Ms. Shek also chose at great length (unwisely in my view) to engage in a broad-ranging attack on the wife, Diquan and their counsel accusing them of conspiracy, of trying “to manipulate the legal process for personal gain, undermining the integrity of her [i.e., the wife’s] claims and the authority of the court”, impugning the professional integrity of the wife’s counsel, the “indefensible and grossly unfair” interim rulings of the case management judge in releasing Country Lane funds to the wife and not to the husband, the general conduct of this trial and indiscriminately referencing as evidence documents never tendered or sought to be admitted as evidence. Several times, I had the impression that Ms. Shek was making submissions for the husband.

[121] The TSC order referenced that one of Ms. Shek’s trial issues involved a claim for damages caused by this litigation, but there is no plea in Ms. Shek’s Amended Amended Answer for that relief, no evidence of any request to further amend pleadings before the trial, no reference in her trial affidavit to this putative claim, nor in her trial testimony and no request to amend her pleadings during the trial either. In her submissions, Ms. Shek estimated that she lost \$121,764 in lost profits in defending this case. No evidence was ever led dealing with this claim; in any event, it goes to the issue of the costs.

Mr. Yip’s claims against the Applicant and the other respondents

[122] Mr. Yip denied that his purchase of Linacre was a fraudulent conveyance and claimed against all the other parties for damages for unpaid rents and, more generally, for losses which he sustained as a result of the purchase. He estimated that he sustained direct financial losses of \$821,667.96 and another \$200,000 for abuse of legal process against the wife and Diquan (\$50,000 each), mental distress (\$50,000) and punitive or bad faith damages (\$50,000). The total claim is \$1,021,667.76.

[123] The TSC order identified as Mr. Yip’s trial issues “damages caused by this litigation”, unpaid rent and water bills from the wife and losses on the Power of Sale proceedings. In his trial affidavit Mr. Yip identified the following:

- (a) The Linacre purchase was completed on November 9, 2020 for \$1,400,000.
- (b) The purchase was financed by a \$1,112,000 mortgage to a local bank and \$307,365.81 from savings.
- (c) The purchase agreement did not contain any terms or conditions indicating that Linacre was being sold subject to a tenancy. Three weeks after closing, Mr. Yip initiated an LTB application for unpaid rent.
- (d) The monthly carrying costs for Linacre were \$7,067 (the mortgage was \$6,958.02 and property insurance was \$108.92).

- (e) Pursuant to foreclosure proceedings a judgment was issued on November 2, 2023, ordering Mr. Yip to pay the mortgagee \$1,136,756.81 with interest and costs.
- (f) There is \$298,148.70 held in trust with respect to the foreclosure proceeding pending final disposition.

[124] Mr. Yip's direct financial costs claim is grab-bag of unproven amounts, hypothetical loss and fanciful requests untethered for the most part to the evidence (bracketed references are to Mr. Yip's listing of his losses as per his written submissions):

- (a) Unpaid rent (#1). Mr. Yip calculated that Ms. Shek owed him \$123,000 for rent at \$3,000 a month for 41 months. No evidence was ever led about the fair market value of the property at any time or whether the wife ever agreed with that amount. It was a figure arbitrarily chosen by the husband and Ms. Shek. In my view, Ms. Shek breached her obligation under the purchase and sale agreement to give vacant possession to Mr. Yip and purposely concealed from him that the property was tenanted before the transaction closed. Mr. Yip had a cause of action for breach of the agreement against Ms. Shek but never pursued it. Moreover, the cases cited by Mr. Yip were AI generated; a citation to a Superior court judgment was correct but that case was decided by the Ontario Court of Appeal and dealt with relief from the striking of pleadings; it had nothing to do with unjust enrichment and compensable damages as submitted.
- (b) Loss of Rental Profits (#3). Mr. Yip submitted that the monthly fair market rental value shortfall was \$1,500 (thereby implying that the actual rental was \$4,500 a month) which over a 41-month period would result in \$61,500 being owed. As with his unpaid rent claim, no evidence about Linacre's rental value was ever tendered.
- (c) Hydro arrears (#5). The submission is that Mr. Yip paid \$6,251.87 for hydro costs. The wife did not dispute this figure.
- (d) Penalties and Interest imposed by mortgagee due to power of sale (#7). No evidence.
- (e) Interest on Unpaid rent (#2), Rental profits (#4), Interest on Hydro arrears (#6), Interest on Penalties by mortgagee (#8), Interest on Funds held in Trust (#9). Mr. Yip submitted calculations for hypothetical entitlements never explored at trial and based on calculations (such as applicable interest rates) for which no evidence was led either.
- (f) Private loan costs (Interest and Fees on \$150,000: #10). Mr. Yip claimed that he had "recently been compelled to secure a private loan to cover essential legal and living expenses" at 11% and that he owed \$26,514.35. There was no evidence about Mr. Yip's overall financial circumstances at trial; this loan appears to have been obtained after the evidence was concluded; from whom it was obtained was not disclosed or how the interest was calculated. This is not recoverable as damages in these proceedings.

- (g) Loss of Income due to litigation (#11). Mr. Yip estimated that he lost \$49,000 for being involved as a party in this case (i.e., 98 days at \$500 a day). Mr. Yip led no evidence about lost workdays. He led no evidence about his income. The claim is arbitrary and disallowed as unproven.
- (h) Legal fees (LTB & Superior Court (#12)). The claim is for \$145,000. The LTB proceedings were stayed and were likely rendered moot after Linacre was sold. There was no evidence about any LTB fees paid by Mr. Yip and, as for this case, costs will be addressed at the conclusion of these proceedings. Another example of an AI hallucination; the Ontario Court of Appeal case cited in support of this claim dealt with issue estoppel not “bad faith litigation” pursued “with disregard for merit.”
- (i) Estimated loss in Property value due to wife’s refusal to vacate the property (#13). Mr. Yip estimated a \$150,000 loss. There was no evidence supporting this claim.

[125] There is no question that Mr. Yip sustained a loss with respect to Linacre, but he has failed to prove the extent of that loss. It is not for the court to guess the fair market rental for Linacre or to gather together for him and identify the losses claimed. That was *his* obligation ever since he delivered his Answer dated March 8, 2023. Like the husband, Mr. Yip was serially represented by lawyers in pre-trial proceedings (two different law firms) and represented by a third lawyer during this trial. In my view, Mr. Yip was duped by Ms. Shek and the husband in their efforts to rid themselves of the wife and her occupation of Linacre.

[126] There is no merit to any of Mr. Yip’s claims for abuse of process and emotional harm. With respect to the abuse claims, Mr. Yip submitted that it was improper for the wife to maintain him as a party and that she and Diquan were not credible. The former complaint can be addressed when dealing with costs and, with respect to the second complaint, this court has found that the wife and Diquan’s evidence was to be preferred to all the other respondents. The case cited as authority for mental distress recovery is the same as the estoppel case referenced in [123](h) above. Anyway, there was no evidence about mental distress tendered at trial. As for Mr. Yip’s claim for punitive or bad faith damages, the evidence in this case comes nowhere close to any such finding.

[127] Mr. Yip’s claim against the wife and Diquan is dismissed as unproven except for the \$6,251.87 hydro expense. The funds in trust are to be released.

Pre-closing submission events and motions

[128] The evidence concluded on February 14, 2025, with directions for delivery of written submissions and hearing closing arguments on April 16, 2025. No request was made for leave to bring motions and none was requested when the hearing date was scheduled. After delivering their written submissions, the husband and Ms. Shek requested leave to revise them; that relief was granted.

[129] After the date was scheduled for argument, the following events occurred (all motions referenced were made returnable at the hearing):

- (a) On March 24, 2025, Mr. Yip served a Notice of Change in Representation (“NOCR”) deciding to act in person. Ms. Leung, solicitor of record for Mr. Yip, then brought a motion dated April 1, 2025, to be removed as solicitor of record and for a charging order with respect to the net sale proceeds from the Linacre foreclosure proceedings held in trust. Mr. Yip countered with a motion dated April 7, 2025, in which he indicated that he did not oppose Ms. Leung’s removal (noting that he had already filed a NOCR in that regard) but opposing her request for a charging order. Although it was not strictly necessary in light of the NOCR, Ms. Leung was removed by order before argument started and a formal endorsement to that effect was made on April 17, 2025. As for Ms. Leung’s request for a charging order, Mr. Yip delivered a responding affidavit opposing the request. I indicated that I would not deal with that matter then but would address it later, which was done by endorsement the next day. The order was granted.
- (b) The husband brought a motion dated April 11, 2025, seeking my recusal due to a reasonable apprehension of bias or declaring a mistrial or that the case be transferred to another judge. This motion was supported by an affidavit from the husband citing as grounds that the court’s intervention of Ms. Shek’s cross-examination of Diquan in which she sought his opinion whether the Linacre sale was a fraudulent conveyance was improper, his objecting to the court’s ruling denying him an additional full day for his direct evidence and for not allowing him to tender 161 exhibits. This motion is supported by an affidavit from Mr. Yip dated April 15, 2025, in which Mr. Yip complained about the length of the cross-examinations of the husband and Ms. Shek. This motion was dismissed as, in my view, it was an abuse of process.
- (c) Mr. Yip brought a motion dated April 13, 2025, requesting that the net proceeds of the sale of Linacre be released to his holding company. This motion was supported by an affidavit from Mr. Yip repeating (and arguing) trial evidence and claiming that since the wife had not replied to his written closing submissions the court should conclude that she had no defence to the relief claimed in his motion. This motion was never brought to my attention during closing argument but, in any event, its outcome would have been dependant on final disposition in which, as it turns out, Mr. Yip was successful in defending the wife’s fraudulent claim.
- (d) The husband brought a motion dated April 14, 2025, asking for the immediate release of \$200,000 from the balance of the funds held in trust relating to the Country Lane sale that MacPherson J. ordered in September 2023 be held in trust pending final disposition. The motion was supported by an affidavit from the husband dated April 14, 2025. This is also a motion that was not brought to my attention when closing submissions were heard but the motion is, in any event, an impermissible appeal from a temporary order of the court, the ultimate disposition of which is this trial’s decision. It is dismissed.

[130] Mr. Yip delivered his closing argument himself after Ms. Leung was discharged as his solicitor of record. During the course of the hearing, the wife raised an issue involving her travelling with AL to China to visit AL’s ailing maternal grandmother (90 years old,

suffering from dementia); the husband objected. The court was informed that details with respect to the proposed travel were made known to the husband shortly before closing submissions were argued. That matter was directed to proceed by 14B motion after closing submissions were heard.

[131] After the conclusion of argument, the following events occurred:

- (a) The wife brought her 14B motion for permission to travel with the child to China. The details for that travel had been provided to the husband when the issue was first raised and then repeated in greater detail (with supporting documentation) in the wife's supporting affidavit. The husband delivered a responding affidavit insisting on several conditions being met before he would give his consent. I found the husband's evidence unpersuasive, granted the order sought and awarded the wife \$1,500 for costs.
- (b) The husband brought two motions dated April 22, 2025. One motion requested that the travel order made on April 16, 2025, be set aside ("the travel order"). The other motion requested relief involving non-publication of the names of the parties' children and for leave to publish selected and redacted excerpts of the official court transcripts from this proceeding ("the publication motion"). Both motions were supported by affidavits from the husband. The husband's remedy with respect to the travel order was an appeal but that matter is likely moot now since the travel was to have taken place between April 24 and May 19, 2025. As for the publication motion, I am only prepared to grant the relief seeking the initializing of the family name and identities of the family. If the husband is dissatisfied with the trial rulings and final disposition, his remedy is an appeal.

Disposition

[132] The following are ordered:

- (a) The husband shall pay to the wife an equalization payment of \$552,000.
- (b) There shall be credited \$100,000 toward the husband's equalization payment reflecting one-half of the Country Lane advance ordered by MacPherson J. on January 4, 2023, thereby reducing the equalization payment to \$452,000.
- (c) The husband shall be credited with \$44,346 for post valuation date adjustment which shall be deducted from his equalization payment obligation.
- (d) The lands and premises located at 92 Osborne Family Way, Newmarket, Ontario shall be sold and the net proceeds of sale paid to the parties in equal shares. They shall equally share all mortgage, realty tax and property insurance costs incurred from and after January 1, 2024. If a party has overpaid their presumptive share, then that amount shall be considered as an adjustment in that party's favour when determining the parties' distributive shares of the net sale proceeds.

- (e) The husband's claims involving the wife's alleged income from China and having any business interests there are dismissed without prejudice to the husband continuing his pursuit of those claims in that jurisdiction.
- (f) There shall be imputed to the husband an annual income of \$90,000 effective January 1, 2024. The wife's income for 2024 is \$49,100.
- (g) The husband shall pay to the wife table child support for three children effective January 1, 2024 and shall be credited with all payments made for child support from and after that date.
- (h) The parties' ratio for sharing the children's s. 7 expenses is 35% (wife)/65% (husband). The husband shall pay to the wife \$25,669 representing his share of the children's s. 7 expenses from January 1, 2018 to December 31, 2024.
- (i) The conveyance of Linacre to Ms. Shek was a fraudulent conveyance.
- (j) Ms. Shek's claim against Diquan and his late wife is dismissed.
- (k) The wife's fraudulent conveyance claim against Mr. Yip is dismissed.
- (l) Mr. Yip is entitled to be paid \$6,251.87 for hydro expenses by the wife. His other claims against the wife are dismissed.
- (m) No order is made with respect to any claim that Mr. Yip may have against Ms. Shek.
- (n) A Support Deduction Order shall issue.
- (o) All other claims in these proceedings are otherwise dismissed.

Costs

[133] If the parties are unable to resolve the issue of costs of these proceedings by October 31, 2025, the following directions shall apply:

- (a) The wife shall deliver her submissions by November 10, 2025.
- (b) The husband, Ms. Shek and Mr. Yip shall deliver their submissions by November 20, 2025. In their submissions Ms. Shek and Mr. Yip shall address their use of AI-generated submissions to the court.
- (c) Reply (if any) from the wife is to be delivered by November 27, 2025.
- (d) Submissions shall be single page, double-spaced and, in the case of (a) and (b) a-dessus, limited to four pages; reply is limited to two pages.
- (e) The parties are to advise the judicial assistant when they have filed their submissions and uploaded them to Case Center.

- (f) Offers to Settle, Bills of Costs and any authorities upon which a party may wish to rely shall be filed by the deadlines above but not form part of the Continuing Record.

Justice D.A. Jarvis

Date: October 16, 2025

CITATION: X.L. v. Z.L. et al, 2025 ONSC 5880
NEWMARKET COURT FILE NO.: FC-19-59414
DATE: 20251016
AMENDED: 20251105

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

X.L.

Applicant

– and –

Z.L.

Respondent 1

Man Yee Shek

Respondent 2

Samuel Property Investment
(Canada) Inc.

Respondent 3

Chi Wo (Brian) Yip

Respondent 4

2780837 Ontario Inc.

Respondent 5

Diquan Liao

Respondent 6

Xueqing Zhang, Deceased

REASONS FOR DECISION

Jarvis J

Released: October 16, 2025