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Kanwal et al. v. Zaman et al, 2025 ONSC 5274

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CITATION: Kanwal et al. v. Zaman et al, 2025 ONSC 5274
COURT FILE NO.: FS-22-0032759
DATE: 20251009

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
	)	
Kirandeep Kanwal Sundeep Kanwal Kanwaljit Kanwal	)	*Dani Z. Frodis and Samantha Dineno*, for the Applicants
	)	
– and –	)	
	)	*Paul Portman*, for the Respondent
Shane Zaman and Scott Zaman	)	
	)	
	)	
	)	
	)	**HEARD:** January 13, 14,15,16,17, 20, 21, 22, 23, February 28 and, March 19, 2025 (in writing)

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REASONS FOR JUDGMENT

A.P. RAMSAY, J

I. Introduction

[1] The applicants are all siblings. The respondents are brothers. Both sides had treated each other like family. They had supported each other, lived together, celebrated together.

[2] I have referred to the parties by their first name for clarity because the applicants have the same last name as do the respondents. I have used the abbreviated name used by the applicant Kirandeep (Kiran).

[3] The applicant, Kiran, and the respondent, Shane Zaman, had been in a relationship for almost fifteen years. The two were never married. They have no children together. They disagree on the length of their cohabitation. They agree on the date of separation.

[4] The applicants collectively say that they and the respondents had a verbal agreement to invest in a townhouse property located in Mississauga, ("Haig property"). The applicants do not dispute that the respondents had been the registered owner of the property. They contend however,

that the parties agreed that all five of them would have a one-fifth interest in the property. The applicants assert that each of them contributed to the purchase of the property by paying towards loans secured by the respondents from their father for the deposits and downpayment, as well as paying the mortgage, taxes, and other expenses related to the property. The applicants say they trusted Shane, who was like family.

[5] The applicants contend that after the Haig property was sold, the respondents resiled from the agreement.

[6] The applicants are seeking compensation for their interest in the Haig property. They have advanced a claim for unjust enrichment and seek a remedy of constructive trust.

[7] The applicant, Kiran, is also seeking spousal support. Shane does not dispute that the parties were common law spouse. He disputes the period of cohabitation. The parties agree that they separated in September 2021.

[8] The applicants assert that there was an oral agreement between the parties that each of the five parties would be equal owners, although only Shane and Scott were registered on title. Each of them offered reasons why they were not on title. The applicants all agree that it was Shane who approached his brother Scott to go on title to help with the mortgage financing. They say Scott was brought in after the fact. It was Shane who had a discussion with Scott.

[9] The respondents assert that there was never any agreement between the parties about a joint investment, nor was it contemplated that the applicants would have any ownership or investment interest into this property. The respondents say that the applicants did not provide any funds towards the down payment or purchase of the Haig property and were not on title or on any document.

II. Issues to be determined in this case

[10] The following issues are to be determined in this case:

i. What was the nature of any agreement between the parties regarding the Haig property?

ii. Were the respondents unjustly enriched though the applicants' contribution to the Haig property?

iii. If the applicants have proven their claim based in unjust enrichment, are they entitled to a remedy based on the doctrines of constructive trust and/or proprietary estoppel?

iv. Are the respondents jointly and severally liable to pay each applicant from the proceeds of sale of the Haig property?

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v. Is Kiran entitled to spousal support? And if so, what is the quantum and duration of support.

vi. Is Shane required to obtain and/or maintain life insurance to secure any support obligations?

vii. Is Shane required to obtain and/or maintain insurance for Kiran for extended health and dental coverage?

viii. Entitlement to pre-judgment and post-judgment interest.

III. Analysis

A. Was there an agreement between the parties re: the Haig property?

[11] They testified that the idea to purchase property came about because their eldest sister and husband purchased a pre-construction townhouse and suggested that they do the same. The applicants' sister, Navneet, and her husband, Mandip, purchased a similar unit around the same time, next door.

[12] The applicants' evidence all say that the initial discussion involved Shane, and it was Shane who approached his brother Scott, to become involved. Kanwaljit stated Shane, and his sisters, Kiran and Sundeep were interested in "going forward with this plan as equal partners". He says that they discussed sharing the costs and that it would be an equal shared investment. He says that they did not have the money for a downpayment and to pay the builder deposits.

[13] Kanwaljit says Shane approached his brother to be a part of the investment to reduce monthly costs and so that he could benefit from the investment. He says Shane was able to secure a loan from his father for the down payment and deposits, and they agreed to repay the father's loan over time as part of the monthly costs to be divided between the parties. Sundeep testified Scott was brought into the discussion because Shane alone could not qualify for the mortgage loan. The fact that Shane's income was low, as was his brothers is confirmed by Shane himself. He stated:

> Because Scott and I had much lower income at the time, the intermediary wanted explanations for the funds even though we received them from our father almost 1 year prior (Sep 2015).

[14] Shane says he and his brother Scott purchased the Haig property pre-construction, which closed in August 2016 for $424,846.01. He and Scott took title as tenants in common. He says that the purchase was financed by a gift from his father to him and his brother in the amount of $85,000 for the downpayment, $20,000 of his own funds, and a mortgage from Computershare Trust Company of Canada in the amount of $344,547.08. He says that he provided a gift letter of $40,000

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at the suggestion of his mortgage broker to satisfy the enquiries of an intermediary about the source of the funds.

[15] Shane does not challenge how the discussion came about but has a different account as to what the agreement was between the parties.

[16] I accept on the evidence, the applicants and Shane's discussion about purchasing the Haig property was precipitated by Kiran's sibling, Navneet, and her then boyfriend, now husband, pursuing the purchase of a preconstruction townhome in Mississauga through Weldan Properties. Scott was not initially part of the discussions. He was brought in my Shane.

[17] There is evidence before the court that each of the applicants were involved in reviewing the Agreement of Purchase and Sale. The parties, except for Scott, reviewed and discussed and agreed upon the floorplan, upgrades, fixtures, relocating the laundry room, converting Kanwaljit's room from a den to a bedroom, among other things.

[18] Shane does not challenge or contest each of the applicants' evidence that he was like family, nor that they all trusted and supported one another. It is therefore not surprising that the applicants did not ask for a written agreement.

[19] Shane says that Sundeep and Kanwaljit were tenants. He says that they had a verbal agreement that each tenant would pay a portion of the carrying costs. He did not carry tenant insurance on the Haig property.

[20] All the applicants as well as Shane lived together in Haig property from the time of occupancy in October 2015. Scott never lived at the property.

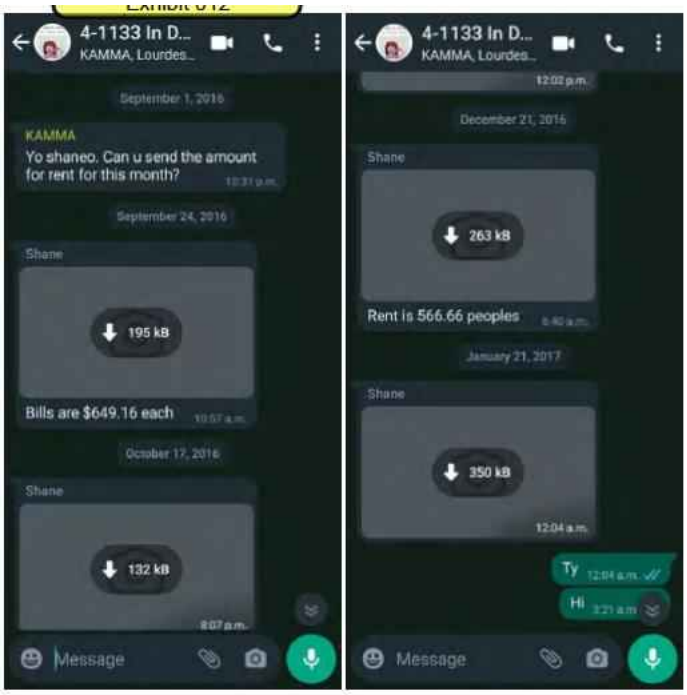
i. Amounts paid by the applicants were not rent

[21] Shane sought to rely on two apparent undated interact CIBC transaction receipt to prove that the Kanwaljit and Sundeep were paying rent. The phrase "November 2018 rent" is noted below the message line which bears Kanwaljit's name. On cross examination, she could not identify the document. She testified that it could have been during the period of paying rent to the builder.

[22] Kiran testified that during the occupancy period they characterized the payments as rent. Excerpts from a group chat relied upon by Shane between September 2016 and January 2017, support's this position. For example, in September 2016, in in response to an enquiry by one of the applicants request to "send the amount for rent for this month", the response which appears from Shane is: "Bills are $649.16 each", which buttresses the applicants' argument that the carrying costs were split between the parties.

[23] I prefer the evidence of the applicants. I find that during the occupancy period, the applicants contributed to the expenses. The respondents have not explained how rent could be paid to them during the occupancy closing when title had not yet been transferred from the developer.

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ii. Applicants' contribution to loans for downpayment and carrying costs

[24] The respondents assert that Shane tracked expenses "in relation to rent to ensure that the rent paid by Kanwaljit and Sundeep covered the utilities and household items fairly." They argue that there was no agreement to equally pay for the acquisition and maintenance of the Haig property.

[25] I must reject the respondents' position which is not supported by the overwhelming evidence, as I explain below. In fact, on the evidence, at times, the applicants were contributing to carrying costs which had been inflated by Shane.

[26] The spreadsheets extracted from the applicants' devices indicate that indeed, Shane tracked all the carrying costs including a loan to his father and interest on a loan to his father. The applicants' retained an expert, discussed below, to provide an opinion on the veracity of the WhatsApp text messages.

[27] The respondents say that the applicants did not provide any funds towards the down payment, purchase of, or carrying costs of the Haig property. I do not accept this argument. For reasons explained below, I find that the $85,000 advanced by the respondents' father to them for the deposits and downpayment was a loan and not a gift.

[28] Therefore, I am satisfied, on the evidence, that the applicants' contribution which went towards repaying loans for the downpayment for the property, the carrying costs, and furniture, conferred a "benefit" on the respondents. The applicants all testified that they saw no evidence of

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Scott's contribution. Similarly, there was absolutely no corroborating evidence before the court to indicate that Scott contributed anything towards the downpayment or carrying costs.

[29] The applicants and the respondent, Shane, all resided at the Haig property. The respondent Scott did not. The parties, except Scott, moved into the property during occupancy closing in 2015.

[30] Shane generated and kept detailed spreadsheets confirming the values and amounts owed by each party and shared these spreadsheets monthly to maintain accurate records of what was owing and paid. The spreadsheets were labelled "House Expense Tracker" and were shared by Shane on a WhatsApp group chat entitled "4-1133 In Da House" that was administered by Shane. I reject Shane's argument that he "believe(s) the applicants have manipulated the media and screenshots that they have provided of the chat to support their argument". He deposes that: "My beliefs were further confirmed by the Expert Report created by Thomas Musters."

[31] Shane says that all the furniture and fixtures in the Haig Property were paid for by him, and that the furniture was mostly obtained through "The Brick" with a credit card account under his name. I prefer the evidence of the applicants that they contributed towards purchasing the furniture. The spreadsheet prepared by Shane himself to track the expenses included the Brick as a line item, and allocated amounts to be paid by each of the parties. Scott was excluded from paying.

[32] Shane was required to produce the complete WhatsApp chat in accordance with paragraph 3 of the Order of Justice Schabas, dated February 16, 2024. Shane alleges he cannot access the chat because he obtained a new device in 2022 and no longer has his old device. The applicants say that the House Expense Tracker spreadsheets that Shane delivered on the WhatsApp chat are inconsistent with the copies of the Excel spreadsheets that he produced during the litigation. They submit that Shane attempted to recreate or manipulate his files to support his false narrative and position at trial.

[33] Excel spreadsheets produced by Kiran show the items being tracked by Shane and each person's share. Shane does not set out in his affidavit in what way he personally believes the WhatsApp group chats were manipulated. He merely says that it is his "position that he images and screenshots provided by the applicants are not consistent with the images that I originally sent to the WhatsApp group." Shane has not provided those WhatsApp conversation. He merely refers to his expert's findings and conclusions.

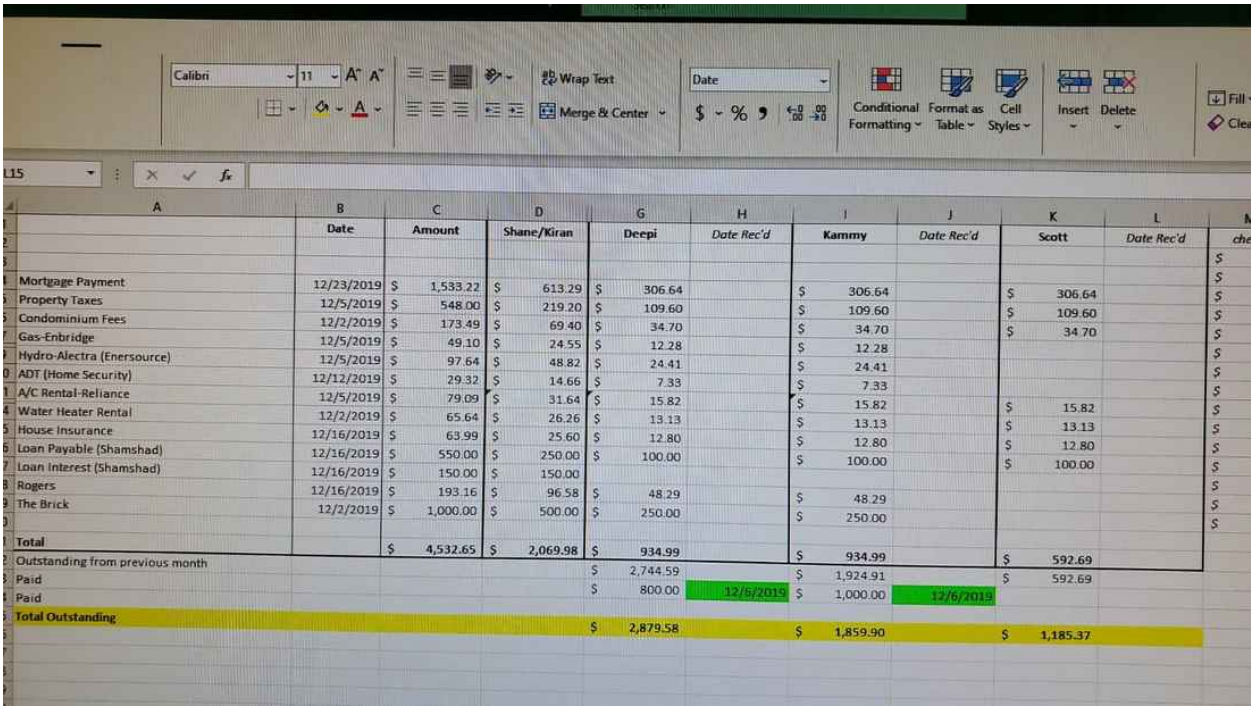
[34] The applicants' evidence that they did not see any of the backup documents to the spreadsheet is not challenged or contested by Shane. Sundeep testified that the only item she ever questioned was the payment for the Brick, which appeared significant. His own brother, the co-respondent, claimed he never received the spreadsheets. He was not on the group chat either.

[35] It is not surprising that Shane has not produced either the WhatsApp communications, despite court order, authorization to third parties, despite a court order, or his devices to determine whether the messages could be retrieved. The applicants' expert also testified that messages could

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live in the cloud, and even if he changed devices, there is no reason why messages may not have been available.

[36] I am persuaded by the applicants' position that the information would not have been favourable to Shane. In my view, he did not do so because the House Expense Tracker were in fact evidence of what the parties agreed to. I accept that the spreadsheet below is just one in a series of dozens of expense trackers sent by Shane over at least a five-year period, evidencing the parties' agreement.



	Date	Amount	Shane/Kiran	Deepi	Date Rec'd	Kammy	Date Rec'd	Scott	Date Rec'd
Mortgage Payment	12/23/2019	$ 1,533.22	$ 613.29	$ 306.64		$ 306.64		$ 306.64	
Property Taxes	12/5/2019	$ 548.00	$ 219.20	$ 109.60		$ 109.60		$ 109.60	
Condominium Fees	12/2/2019	$ 173.49	$ 69.40	$ 34.70		$ 34.70		$ 34.70	
Gas-Enbridge	12/5/2019	$ 49.10	$ 24.55	$ 12.28		$ 12.28			
Hydro-Alectra (Enersource)	12/5/2019	$ 97.64	$ 48.82	$ 24.41		$ 24.41			
ADT (Home Security)	12/12/2019	$ 29.32	$ 14.66	$ 7.33		$ 7.33			
A/C Rental-Reliance	12/5/2019	$ 79.09	$ 31.64	$ 15.82		$ 15.82		$ 15.82	
Water Heater Rental	12/2/2019	$ 65.64	$ 26.26	$ 13.13		$ 13.13		$ 13.13	
House Insurance	12/16/2019	$ 63.99	$ 25.60	$ 12.80		$ 12.80		$ 12.80	
Loan Payable (Shamshad)	12/16/2019	$ 550.00	$ 250.00	$ 100.00		$ 100.00		$ 100.00	
Loan Interest (Shamshad)	12/16/2019	$ 150.00	$ 150.00						
Rogers	12/16/2019	$ 193.16	$ 96.58	$ 48.29		$ 48.29			
The Brick	12/2/2019	$ 1,000.00	$ 500.00	$ 250.00		$ 250.00			
Total		$ 4,532.65	$ 2,069.98	$ 934.99		$ 934.99		$ 592.69	
Outstanding from previous month				$ 2,744.59		$ 1,924.91		$ 592.69	
Paid				$ 800.00	12/6/2019	$ 1,000.00	12/6/2019		
Total Outstanding				$ 2,879.58		$ 1,859.90		$ 1,185.37	

[37] Shane says that the amounts that Sundeep and Kanwaljit paid for rent fluctuated based on the utilities consumed and was set out on the Expense Tracker. The applicants reject any notion that the monies transferred to Shane was "rent". The applicants say that that the respondents have provided no evidence what market rent would have been.

[38] The respondents also submit that that the *Residential Tenancies Act*, 2006, S.O. 2006, c. 17 has no application in this case because the landlord, Shane, lived in the unit. That may well be, but the respondents have not provided any authority for tenants to be paying the municipal taxes and the interests on the mortgage, which are items identified on the Expense Tracker.

[39] Shane relies on a series of "Spreadsheet Summary Charts" in support of his argument that the applicants' claims should be dismissed. The charts, annexed to his affidavit, are entitled: "Chart Version 1: Carrying Costs Only, Inclusive of Downpayment: November 2015 -May 2022"; "Chart Version 2: Total Carrying Costs and Living Expenses, Inclusive of Downpayment: November

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2015 -May 2022"; and "Hypothetical -If there was an agreement (carrying costs, yes downpayment)." The charts were prepared by their lawyer to support their testimony that they have accounted for all funds received from the applicants.

[40] The charts are hearsay. It is certainly not clear what the underlying source of the information in all the charts were. The applicants' evidence that they never received any underlying documents from the respondents is uncontested. I note that the lawyer who prepared the charts was also counsel at the trial, and certainly could not be able to be both counsel and a witness.

[41] Exhibits annexed to an affidavit is not sworn evidence: see *Katz v. Katz*, 2014 ONCA 606, 377 D.L.R. (4th) 264; *Sears v. Coristine*, 2020 ONSC 7968. In *Katz*, Simmons J.A. speaking for the Court of Appeal commented, at paragraph 63: "Before making an order the efficacy of which will depend on the truth of the contents of a letter, a court should, at a minimum, require an affidavit from the author of the letter attesting to its contents."

[42] In *Sears*, at paragraph 32, Desormeau J., citing *Katz*, stated:

> Letters, text messages, and emails attached to affidavits are not sworn evidence. Before making an order, the efficacy of which will depend on the truth of the contents of a letter, a court should, at a minimum, require an affidavit from the author of the letter attesting to its contents.

[43] The applicants ask that the court draw an adverse inference from because of Shane's refusal to answer questions on questioning and breaches of court order. They say that at questioning, which occurred before his medical incident, Shane stated at least forty-two times that he could not answer or recall basic information, and stated, at least seventeen times, that he needed to "check his records."

[44] The applicants submit that the respondents have not complied with various court orders and has breached the order of Black J. dated March 31, 2023, by failing to provide an Affidavit of Documents, and the order of Schabas J. dated March 11, 2024, which required them to produce the entire record of WhatsApp communications between the parties within 30 days. The order of Black J. was a consent order, but neither side addressed the effect, if any, on the failure of the respondent Shane to comply with a consent order. A consent order is a species of contract. It is an agreement between the parties elevated to an order on consent: *Johnston v. McLean*, 2024 ONCA 791, 504 D.L.R. (4th) 643, at para. 14.

[45] In my view, the Expense spreadsheet produced by the applicants is a strong indication of the agreement between the parties to share in costs of having opened the property and the ongoing carrying costs of maintaining the property. It is not an indication of a landlord/tenant relationship. Neither respondent have provided any plausible explanation as to why tenants would need to know monthly what the carrying costs were, down to a penny.

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[46] In addition to the strong indication of an investment relationship because of the existence of the expense tracker and its content, I am inclined to draw an adverse inference against the respondents for the failure of the respondents to comply with the consent order of Schabas J., dated February 16, 2024. Justice Schabas ordered that the respondents were to "produce the entire record of WhatsApp communications between the parties within 30 days", and if they were unable to do so, they were to provide details of their efforts and respondents as well as "provide written authorization the applicant to seek to obtain that information from third parties."

[47] I am not satisfied that Shane complied with the order. He claimed that he no longer has the device. However, the order of Schabas J. expressly contemplated an alternative means for him to satisfy the ordered disclosure. There is no evidence before me to indicate that Shane attempted to obtain the information from third parties, perhaps his service provider. It is not entirely clear to the court why the spreadsheets, attached to the WhatsApp messages, would not be available for inspection, especially in light of the allegation, by both sides, that documents were manipulated.

[48] The jurisprudence establishes that court orders are not "suggestions" or "frameworks" or "guidelines." Court orders are mandatory and must be obeyed: *Taylor v. Taylor*, [2005] 21 R.F.L. (6th) 449, at para. 3; *Lima v. Ventura (Estate of)*, 2020 ONSC 3278, 58 E.T.R. (4th) 232, at para. 24. In *Gordon v. Starr*, [2007] 42 R.F.L. (6th) 366, J.W. Quinn J. stated: "an order is an order, not a suggestion. Non-compliance must have consequences": at para. 23. Court orders are mandatory and must be obeyed: see, *Taylor*, at para. 3; *Lima*, at para. 24; *Dickie v. Dickie* [2006], 262 D.L.R. (4th) 622, 78 O.R. (3d) 1, at para. 87, aff'd 2007 SCC 8, [2007] 1 S.C.R. 346, at paras. 6-7; *Clark v. Clark*, 2014 ONCA 175, 40 R.F.L. (7th) 14.

[49] The applicants retained William Benjamin Ellwood, to provide an opinion on Integrity and veracity of WhatsApp messages. Mr. Ellwood is a digital forensic examiner, Certified Information System Security Professional and Ontario-licensed Private Investigator. Mr. Ellwood is the Forensic Lead and Chief Information Security Officer for Ellwood Evidence Inc. He prepared a Digital Forensic Report, dated October 31, 2024, setting out my expert opinion with respect to the extraction of WhatsApp communications between the applicants, and the Respondent, Shane Zaman.

[50] Mr. Ellwood was qualified at the trial as an expert in digital forensics to provide opinion evidence on the integrity and veracity of the text messages he has reviewed.

[51] I found Mr. Ellwood to be an impartial and unbiased witness. The software program he used did not work on Sundeep's phone. He reviewed the WhatsApp communications between Kiran and Kamaljit's phone and he found agreement between the messages between Kiran's phone and Kanwaljit's phone.

[52] Mr. Ellwood concluded that there was no evidence in the data that the messages, and attached image of the spreadsheet, or the image in the spreadsheet itself, had been tampered with in any way.

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[53] The respondents attempted to challenge the veracity of the spreadsheets. They retained Thomas Musters of Computers Forensics Inc. Mr. Musters prepared a report dated September 30, 2024, to review the digital images depicting WhatsApp conversations appended to an affidavit sworn by Kiran, as well as other images and to comment on the veracity of the images. The respondents did not call Mr. Musters. Rather, Shane included paragraphs from the report in his affidavit and annexed, as an exhibit, Mr. Musters report to his affidavit.

[54] Mr. Musters' findings, conclusions and opinion, tendered, in this manner is inadmissible. There was no consent between the parties to permit the respondents to file the Musters Report. Apart from reports of healthcare practitioners governed by s. 52 of the *Evidence Act*, R.S.O. 1990, c. E.23, expert evidence at a trial court is usually the viva voce evidence of the expert, and not the report the expert provided before trial: *1162740 Ontario Limited v. Pingue*, 2017 ONCA 52, 135 O.R. (3d) 792, at para.19, citing Michelle Fuerst and Mary Anne Sanderson, *Ontario Courtroom Procedure*, 4th ed. (Markham: LexisNexis, 2016), at pp. 1004-1005; *Iannarella v. Corbett*, 2015 ONCA 110, 124 O.R. (3d) 523, at para. 131.

[55] The applicants have also asked the court to draw an adverse inference against Shane because he never provided his mobile phone device for analysis to confirm whether the WhatsApp communications could be retrieved, the communications relate to critical evidence concerning the parties' respective contributions to Haig Blvd., and bears on the question of the parties' ownership interest. I must agree with the applicants' position.

[56] I must draw an adverse inference from Shane's failure to call Mr. Musters to testify. The respondents did not provide any explanation for failing to call Mr. Musters, who was in the exclusive control of the respondents and in a position to provide key evidence.

[57] Shane points to the fact that the applicants were not aware of the outstanding amount on the mortgage, the amount for property taxes, or the line of credit. The same can be said for his brother. Scott guessed, wrongly, the balance of the mortgage, conceded he did not know how much the taxes had been, and repeatedly made it clear that he left everything up to his brother.

[58] The mortgage on the Haig property in September 2016, when the transaction closed was approximately $345,000. At trial, Scott did not know the amount of the mortgage outstanding when the property was sold in May 2022. He estimated that the amount was between $340,000 to $360,000. The outstanding mortgage to Computershare Trust Company at time the Haig property was sold in May 2022 was $299,796.36, approximately forty to sixty thousand dollars less than Scott's guesstimate.

[59] I find on the totality of the evidence, that the applicants collectively contributed loan advanced by the respondents' father for the deposit and the down payment and interest on the loan; the mortgage on the property with Computershare; the condominium fees; home insurance; municipal taxes; home security; utilities; home furnishings, among other things. The applicants also collectively paid the line of credit which. Only Scott, who did not reside in the house, was exempt from contributing to the purchase of the furniture and utilities.

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iii. The amount advanced by the respondents' father was a loan

[60] At trial his father, Jason testified that he gifted the respondents $85,000 in 2014.

[61] When asked if there were any other funds that he gave them at any time for the Haig property, he responded: "Yes, I did give them another loan" (emphasis added). He stated that most of it was to cover court costs, and he help his son financially who has medical issues. The only loan, other loan though he initially talked about was a loan for $11,600. In his affidavit sworn in December 2024, before the trial started, Jason stated that this loan was for furniture and other household items for the Haig property.

[62] Shane's evidence is that his father, Jason, gave the brothers a $11,600 loan to purchase furniture totaling approximately $11,600.00. Shane testified that the loan was repaid in October or November 2016. Jason says that he did not know if he received repayments of $550 or $150 and had no idea whether he received any part of the repayment as a lump sum. He says "the loan of $11,600.00 was fully repaid to me on or around October/November 2016."

[63] If both Shane and his father's evidence were to be accepted that the loan for the furniture had been repaid by November 2016, that would mean it had been paid off within a couple months of the Haig purchase transaction closing. Jason also testified that he did not charge interest on the loan. Shane collected a contribution from the applicants from the time of occupancy for what he indicated was a loan from his father and interest on that loan.

[64] Jason says that he never asked for the $85,000 back and it has never been repaid to him. He says that he was not involved in the deciding the figure on the gift letter but took his directions from Shane. At trial he referred to a subsequent loan as "another loan". The $85,000 is the only amount that he and the respondents now say was a gift, despite him asking for the repayment of a significantly less sum of $11,600. He and his sons created a false document to assist in facilitating the mortgage to the respondents.

[65] I did not find Jason to be a credible witness.

[66] From his evidence, Jason knew little about his son Shane's life. He says that he is close to his sons but testified that he found out in 2010 that Shane was dating Kiran. He did not know that Shane and Kiran had been planning to get married. The first time he found out that the two had been planning to get married was while he was on the stand. He only visited the Haig property right after it was purchased. He claims he did not know at the time that there were three other people living with Shane.

[67] On the totality of the evidence, it is not plausible that all other funds advanced to Shane were loans, except for the loan that Jason advanced for the downpayment on the Haig property. In my view, the respondents have demonstrated that they are flexible, depending on their audience, as to how they characterize the $85,000. It is a loan to the respondents and conveyed to the

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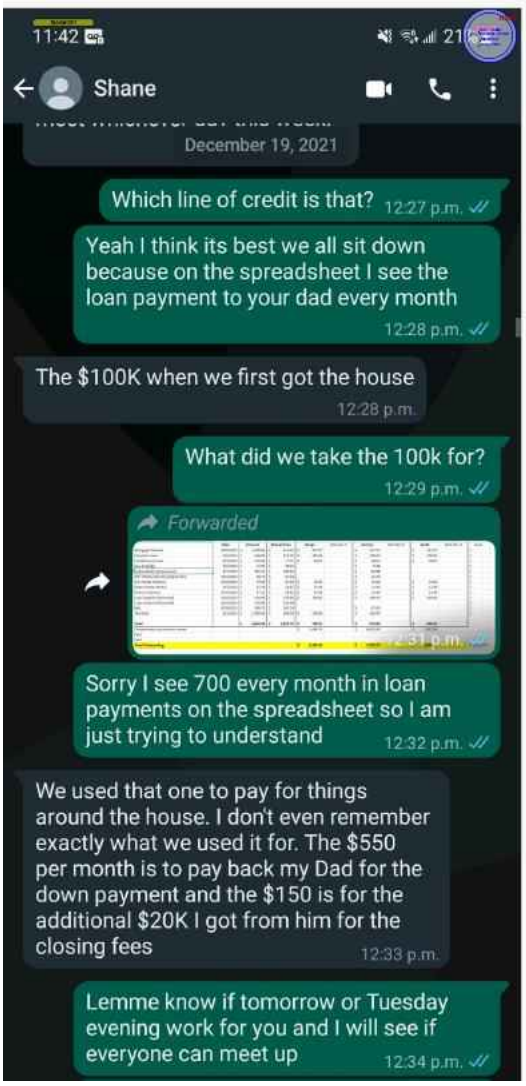
applicants as such; for the purposes of the respondents obtaining financing, only $40,000 is a gift; and, for the purpose of this litigation, the entire amount is a gift.

[68] Indeed, Scott may have inadvertently disclosed the true reason the gift letter was written, when he explained how he and Shane used this same ploy for him to obtain financing on his own property in the face of what he and Shane say was a loan from his stepfather, discussed below.

[69] I therefore reject the respondents' argument that the applicants did not contribute towards the downpayment, the closing fees, the land transfer taxes, the insurance, the mortgage, property taxes, or any maintenance fees. This is contradicted by the applicants' evidence – the spreadsheets – and Shane's own communications with the applicants.

[70] Whether the funds were loans, or a gift is relevant to Shane's credibility. While the respondents father says the $85,000 was a gift and the $11,600 was loan with no interest, the applicants contributed towards a $85,000 loan and a second loan from his father, plus interest.

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[71] Despite the content of the messages to Kiran, Shane stated in his affidavit that he and Scott secured the $100,000 home equity line of credit against the Haig Property in October or November 2016 to consolidate their personal debts and investments. However, the applicants believed that the home equity line of credit was to pay the loans to his father.

[72] In his affidavit Shane stated: "The funds did not go to repay our father for the downpayment, as alleged by the Applicants. The funds from our father for the downpayment were gifted to us, to be used as part of the down payment ($85,000)." It is not surprising that the applicants were under the impression that the home equity line of credit was to repay the loan. That was the information that Shane himself provided to them.

[73] Given the serious credibility issues on these key issues with the respondents and their father, and to the other evidence, I find that the $85,000 was a loan.

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iv. Kiran's contribution

[74] Shane has repeatedly stated that Kiran paid "zero" dollars towards the carrying costs. He says that she "made no actual financial contributions towards the Haig Property in any way." Yet, Kiran has provided bank records and e-transfer acknowledgements of receipts from Shane.

[75] Kiran says that she would e-transfer her share of the home expenses, as set out in the excel spreadsheet that he sent to the WhatsApp chat, and usually, the amount would be automatically deposited into Shane's account, and that the expenses would change slightly from month to month, depending on the cost of the utilities as well as at times when the mortgage interest rates changed. Kiran's evidence is that she e-transferred $75,370 to Shane.

[76] Kiran's evidence is that the monthly car payments towards the lease was $550. The car was in Shane's name and she e-transferred him the funds. There is evidence before the court of Kiran's e-transfers to Shane in various amounts including significant sums, for a person of her income, in amounts of $500, $700 and $1,000. There are multiple transfers some months. Shane's explanation that she was paying towards the lease on the car is not plausible.

[77] Kiran's evidence that she was the one who was mainly responsible for purchasing all the groceries for the house is not challenged by Shane. I therefore reject Shane's evidence that Kiran paid "zero" or lived at the Haig property "for free," and that he paid the bills while Kiran's brother and sister both paid rent below market rate. There is ample evidence from credit card statements and other bank records to show that Kiran transferred sums of monthly to Shane, in varying amounts, some significant. I do not accept his explanation that the transfers related to car payments. He has not provided any evidence as to what the care payments were, nor any explanation as to why the amounts would vary.

[78] As for Scott, he had no personal knowledge of what Kiran paid. He only knows what his brother Shane told him, and based on his ignorance around details of what he claimed was a joint investment with his brother, was very little.

[79] Shane's claim that he and Scott paid for 50% of all major household expenses is not supported by the evidence and is inconsistent with Scott's own evidence. There is no actual supporting evidence that Scott paid any of the household expenses and this statement is inconsistent with Scott's evidence.

v. Applicants had no knowledge of mortgage balance

[80] Shane argues that the fact that the applicants were unaware of the balance of the mortgage support the respondents' version of events.

[81] I do not accept this argument. In fact, his brother Scott was in a similar position as the applicants and ironically, buttresses the applicants' version of events.

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[82] The applicants say that Shane was family, they trusted him, and they did not ask for documents.

[83] Scott's evidence is consistent with the applicants' narrative from which I infer that Shane controlled the flow of information to them. The evidence support that the applicants were in the same state as disinformation as Shane's brother Scott, whom Shane argues was the only person involved in the investment.

[84] Just like the applicants, similarly, Scott could not provide details about the mortgage on the property. He did not know the amount of the mortgage was when the property was purchased; he did not know the occupancy amount that was paid; he had no knowledge of what the mortgage payments were; he did not know how much the annual taxes were on the property. He gave contradictory evidence at discovery and at trial about how much the mortgage was at the time the property was sold; at the former he claimed it was $380,000 to $390,000, and at trial he testified it was $320,000 to $330,000, both figures, coincidentally were inaccurate.

[85] Scott's lack of knowledge about key details of his investment extended to not know how much the property sold for, despite him acknowledging that the lawyer's letter had been addressed both to him and to Shane.

[86] In fact, as a registered owner on the property, Scott received less information about his investment than the applicants did. The applicants all testified that Shane tracked the monthly costs and expenses and shared the information with them. Scott did not receive a copy of the spreadsheet that his brother prepared and provided to the applicants, that is, until after the litigation had started.

vi. *Sundeep continued to contribute towards the carrying charges*

[87] Sundeep got married and moved out in August 2020. She continued to contribute to the carrying costs even after moving out.

[88] Shane has given contradictory evidence as to why Sundeep continued to contribute towards the mortgage and other carrying charges. Shane claims that she was paying "a reduced amount of rent" because she left some of her belongings at the Haig property.

[89] At trial he claimed she had been paying a "reduced rent" for "storage" "until December 2020 when she finally moved all her clothing and other personal effects out of the house". He has also given evidence that she had been paying "rent arrears", though he provided no evidence to indicate that was the case. This evidence is irreconcilable with his affidavit evidence wherein he stated: "she would come and stay there a few days until she moved all of her things out in December, and that's when the rent stopped." Nowhere in his affidavit does Shane mention that after she got married and moved out, Sundeep would return and stay a few days up until December 2020, a notion that is not credible. I note this was never put to Sundeep on cross examination either.

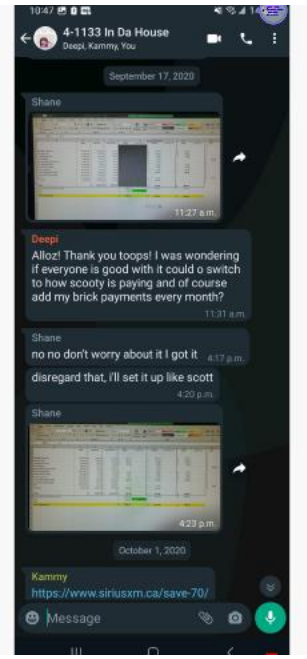
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[90] Shane's evidence at trial as to when Sundeep stopped paying rent is also inconsistent with his evidence in his affidavit. At trial he claimed she stopped paying in December 2020, but in his affidavit, in addition to giving a different reason for why Sundeep continued to contribute to the carrying costs after she moved out, he also provided a different date when she stopped contributing, some seven months later. He deposed that: "Although Sundeep had rental arrears, therefore she continued to make payments to me for her arrear until her last payment on July 13, 2021."

[91] He does not prove any plausible explanation for the exchange of WhatsApp text messages between himself and Sundeep in which she asked him to set up her payment like Scott's but indicated that he should add her Brick payment. Scott was not paying towards the Brick because he had never lived at the home. On cross, Shane admitted that he set up just like Scott, who was an owner, except for the amount for the Brick. Shane claimed, "because it was easier." It strains credulity that Sundeep would continue to pay the carrying costs, except for the utilities, and continued to pay for the furnishings, just for to pay for "storage" of her belongings.

[92] I find that Sundeep had moved out but still wanted to maintain her ongoing payments toward the group investment in Haig property even though she was no longer living there.

[93] Based on the exchange, Shane agreed to do so. I find Sundeep's testimony about this new agreement with Scott to be credible. I did not rely on the text messages from Sundeep herself to prove that she was telling the truth. Prior consistent statements to prove that the maker of the statement is telling the truth are presumptively inadmissible, because they tend to be self-serving statements: *R. v. Morin*, 2024 ONCA 562, at para. 20; *R. v. Khan*, 2017 ONCA 114, 136 O.R. (3d) 520, leave to appeal refused, [2017] S.C.C.A. No. 139.



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[94] However, the exchange included Shane's responses, which are consistent with Sundeep's evidence at trial. The communications indicate that he agreed to this arrangement. Shane did not provide the WhatsApp communications, authorizations to third parties (as contemplated by the order of Schabas J.), nor his devices to the experts, which provides ample reason for the court to conclude that there was a new arrangement with Sundeep, based on the exchange above.

[95] This new arrangement is consistent with the parties' original intention to contribute to the carrying costs of their investments, which was modified for Scott who did not live in the house, and now Sundeep, who had moved out of the house. The parties were family. The applicants trusted Shane.

vii. Other indicators of a joint investment

[96] There is other evidence which points to joint investment between the parties as opposed to a landlord/tenant relationship. After his separation from Kiran, Shane's initial plan was to obtain financing so that he and Scott could buy out the applicants. Shane could not get financing and proposed selling the property. Shane entertained questions from the applicants about the timing of the sale, potential sale price, and ultimately, the sale price.

[97] The respondents sold the Haig property in May 2022 for $1,234,000, the net proceeds of sale were $775,218.55. Shane transferred $150,000 to Scott, which is approximately one-fifth of the net sales proceeds.

[98] Shane prepared the applicants' tax returns. They say that he only declared a $5,000 rental income on his taxes in 2019 to offset taxes. They say that he did not declare rental income in 2020, 2021, nor report rental payments on Kiran's, Sundeep's and Kanwaljit's tax returns.

[99] The respondents argue that the payment of taxes is irrelevant. I disagree. It is relevant both to the issue of credibility and to nature of the agreement between the parties. Shane is a Chartered Accountant. He has held many financial roles in corporation. He controls his own company. In my view, his failure to report significant rental income over the years is again indicative of the agreement between the parties.

[100] Communications in December 2021, between Shane and Kiran show Shane's response into Kiran's enquiry to the "100K" on the spreadsheet. Shane indicated that got the $100,000 when they first got the house, and that $550 was to pay his father for the downpayment and $150 was for the additional $20,000 obtained from his father for the closing fees.

[101] I accept Sundeep's evidence that she met with Shane in December 2021, to discuss him buying out her interest as credible. At the time, her own marriage was falling apart. They exchanged numerous texts thereafter. It is not plausible that Sundeep, who had married and had moved out, would be involved in discussions with Shane about her expenses related to the property, about him buying out her interest, and showing such an interest about what the property

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sold for, if she had had only been a tenant. Shane's explanation about her needing to borrow money is not credible.

[102] There is evidence before the court that after Shane's relationship ended with Kiran, and the parties went their separate ways, each of the applicants offered to meet with Shane to discuss how to address the property issue. Some suggested that he includes Scott in the discussion; others offered to assist him with sale process. He went silent after a while. When Sundeep expressed concerns about the sale of Haig Blvd. Shane assured her that she had nothing to worry about. He persuaded her not to pursue a legal course of action stating doing so would jeopardize the sale of the property.

[103] Shane admitted that he asked Sundeep not to take any steps or put any lien on the property. He admitted that was his response to Sundeep. His explanation as to why he did not correct her misconceptions made no sense. On cross examination, he says that he did not correct her misconception about her share because Sundeep was threatening to put a lien on his house, which would have caused the buyer to back out.

[104] During his cross examination, Shane testified that there was in fact a meeting between him, Kiran, Kanwaljit, and Sundeep, by phone, in February 2022. He claimed that at that meeting he told them that they would not be receiving any of the sale proceeds of the property. He did not mention this meeting at the time of his questioning or in his own affidavit. In reply, the applicants all deny that such a meeting took place. In my view, if the meeting did take place, it gives credence to applicants' position. However, I do not accept Shane's evidence that such a meeting occurred as credible.

B. Can the applicants advance a claim based on proprietary estoppel?

[105] During the trial and in their closing the applicants relied on the doctrine of proprietary estoppel. The respondents argue that the applicants have not pleaded proprietary estoppel, and relying on of *Frick v. Frick*, 2016 ONCA 799, 408 D.L.R. (4th) 622 submit that the applicants cannot raise new legal issues beyond their pleadings. The applicants did not seek to amend their pleadings at any time.

[106] I agree with the respondents. Lawsuits must be decided within the boundaries of the pleadings to afford the opposing parties an opportunity to address the issues in evidence presented at trial: *460635 Ontario Ltd v. 1002953 Ontario Inc*, 1999 CanLII 789 (ON CA) 1999 CarswellOnt 3428 at para. 9; *Kalkinis (Litigation Guardian of) v. Allstate Insurance Co of Canada*, [1998] 41 O.R. (3d) 528, CanLII 6879 (ON CA), at para. 13; *Rodaro v. Royal Bank*, [2002] 59 O.R. (3d) 22 B.L.R. (3d) 274 at para. 60).

[107] An imperfect pleading does not preclude the court from granting certain relief as long as the party opposite is aware that such relief is being sought: *Frick v. Frick*, 2016 ONCA 799 at para. 39. The applicants rely on *Frick*. However, in *Frick* the wife had advanced a claim for an equalization payment. The question was whether the husband would be prejudiced if she was

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awarded an unequal division, which was not pleaded. Section 5(6) of the *Family Law Act*, R.S.O. 1990, c. F.3 governs an unequal division of net family property. The Court of Appeal concluded that a party is not required to plead s. 5(6) so long as the parties are aware that the court will be asked to vary the usual share of net family property.

[108] I am not satisfied that this is the case here, nor that the respondents would not be prejudiced. Proprietary estoppel is an equitable doctrine: *Clarke v. Johnson*, 2014 ONCA 237, 371 D.L.R. (4th) 618, at para. 41. It is an exception to the general rule that estoppel cannot give rise to a cause of action: *Rolston v. Rolston*, 2016 ONSC 2937, 19 E.T.R. (4th) 83, at para. 35.

[109] The constitutive element for proprietary estoppel includes a representation or assurance made by the owner of land to the claimant, which leads them to expect to enjoy a right or benefit over property; reasonable reliance on that expectation; and a detriment of the claimant, as a result of that reliance: *Cowper-Smith v. Morgan*, 2017 SCC 61, 2 SCR 754 at para. 23; *Eberts v. Carleton Condominium No. 396 et al*., 2000 CanLII 16889 (ON CA), 36 R.P.R. (3d) 104 at para. 23; *Schwark v. Cutting*, 2010 ONCA 61, 316 D.L.R. (4th) 105 at para. 16.

[110] In *Cowderoy v. Sorkos Estate*, 2012 ONSC 1921, rev'd on other grounds, 2014 ONCA 618, the court concluded that though the plaintiffs had not pleaded proprietary estoppel, all the necessary allegations to support a claim of proprietary estoppel were pleaded. However, in *Cowderoy*, the defendants did not object at trial to the evidence led by the plaintiffs in support of their position that the concept of proprietary estoppel might apply to the facts. Here, the respondents have objected.

[111] The applicants have sought the remedy of a constructive trust as a remedy for the claim of unjust enrichment. The applicants have not attempted to persuade me that a claim for unjust enrichment and based on proprietary estoppel are the same. The Court of Appeal has repeatedly stated that parties have a right to know the case they must meet and the right to a fair opportunity to meet that case: *Labatt Brewing Company Limited v. NHL Enterprises Canada, L.P*., 2011 ONCA 511, 106 O.R. (3d) 677, at paras. 5-9; *Rodaro*, at para. 61. In this case, the applicants should be held to their pleadings. In my view, there would be prejudice to the respondents who have already delivered the evidence of their witnesses in chief by way of affidavit. It would be unfair to expect them to answer any evidentiary gap at the trial.

[112] Since the court cannot grant judgment for a claim not pleaded, I will not consider the question of proprietary estoppel: *Rodaro*, at para. 60.

C. **Can the applicants maintain a claim for unjust enrichment?**

i. Have the applicants established an enrichment of or benefit to the respondents?

[113] The applicants assert that the respondents were unjustly enriched, and they assert that the respondents held their interest in the Haig property in trust or "each as to a 20% interest on the basis of constructive and/or resulting trust, prior to its sale on May 31, 2022."

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[114] The respondents say they were the registered owner of the property, and all documents related to the property were in their names. They say that the applicants were tenants. Shane says the applicants paid below market rent because he was in a relationship with Kiran.

[115] I must reject respondents' argument for the reasons below, but before doing so, will address a preliminary issue which arose during the trial related to the pleadings.

[116] To establish unjust enrichment, a claimant must prove an enrichment; a corresponding deprivation; and the absence of a juristic reason for the enrichment: *Peter v. Beblow*, [1993] 1 S.C.R. 980, 101 D.L.R. (4th) 621, at p. 987; *Kerr v. Baranow*, 2011 SCC 10, 1 S.C.R. 269, at para. 32; *Moore v. Sweet*, 2018 SCC 52, 3 S.C.R. 303, at para. 37; *Pettkus v. Becker*, [1980] 2 S.C.R. 834, 117 D.L.R. (3d) 257 at p. 835; *Espartel Investments Limited v. Metropolitan Toronto Condominium Corporation No. 993*, 2024 ONCA 18, 492 D.L.R. (4th) 659 at para 37.

[117] The Haig property was purchased pre-construction in January 2014 for $421,000 and sold in May 2022 for $1,234,000. the property had increased in value by $813,000.

[118] The net proceeds of the sale, after adjustment were $775,218.55. The respondents argue that the net procced belongs to them 'as the rightful owners" of the Haig property.

[119] The applicants all testified that Shane was like family. Each of the three applicants contributed to paying off the loans for the downpayment and carrying costs. Neither side addressed whether the court should consider the concept of joint family venture, if an unjust enrichment were established. The applicants have the onus to prove that there has been an unjust enrichment and a joint venture: see *Peters v. Swayze*, 2018 ONCA 189, at para. 9.

[120] Scott has not produced any evidence that he made any contribution to the downpayment, deposits, mortgage payments, or any other carrying costs. The statements in the names of Shane and Scott and addressed to a "256 Queens Drive Address", not the Haig property address, 4-1122 Haig Blvd., where the townhouse was located. Yet, Scott did not know the date the Haig property was purchased.

[121] At trial Scott professed to not being aware of the monthly taxes. In fact, he did not know the amount of the mortgage when the property was purchased, the remaining mortgage amount when it was sold, nor any other details about an investment which he claimed he stood to obtain a 50% interest.

[122] He says he put in about $20,000 for the upgrades but has not provide any evidence to support this. He says only $85,000 was received as a gift from his father and no further amount was received from his father at any time. This evidence of course is at odds with Scott's evidence and the father, Jason's evidence. Shane says that it was he put in the $20,000 of his own funds towards the downpayment and that they received an $85,000 gift to be split equally between the brothers.

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[123] The respondents' father, Jason, evidence is that in 2014, he advanced $20,000 of a $85,000 gift to the respondents. Aside from the contradictory testimony, neither of the respondents put forward any evidence that either of contributed $20,000 of their own money towards the downpayment or deposit of the Haig property. The applicants urge the court to draw an adverse from the failure of either Shane or Scott to show that they contributed any funds.

[124] I agree with the applicants that an adverse inference should be drawn by Shane's failure to provide documents evidencing his contribution because under the consent order of Black J., Shane agreed to provide "[d]ocuments confirming that the $20,000 deposit to purchase the property…. was paid by [him]". Both Shane and Scott were generally not credible. Neither provided any explanation as to why neither provided this key evidence, nor why their evidence was contradictory, why Shane breached his agreement.

[125] For example, the respondents' credibility problems were evidenced when both of them admitted to providing false gift letters to secure a mortgage on the Haig property. Certainly, neither the respondents nor their father have provided any credible evidence about the so called $85,000 advanced from their father. Their father Jason suggested the letter was suggested by the mortgage broker, and having heard Scott's own evidence as to how he used the same ploy when he was purchasing his home, in the face of what he said was a loan from his stepdad, none of them can be believed on this issue.

[126] On the other hand, there is ample evidence before the court to corroborate all three applicants' version of one of the terms of the agreement, that is, that each of them, including Shane and Scott, would contribute towards paying off a loan advanced by the respondents' father to them for the downpayment. Bank records and e-transfer receipts from Shane, support the applicant's position that they had been transferring monies towards the loan and interest. Beyond 2016 which is when Jason says the Brick loan was paid off. The respondents have not provided any plausible explanation as to why the applicants would be doing so.

[127] I find that the applicants Kiran, Sundeep, and Kanwaljit all contributed to the expenses and carrying costs of the property from the period of occupancy closing in October 2015 to the date of closing the purchase in August 2016.

[128] Scott says he e-transferred his contribution to his brother. He says that he contributed between $500 to $550 a month towards the mortgage, which would vary depending on the mortgage rate. The applicants each state that they have never seen any evidence of Scott's contribution. Indeed, there is no evidence before the court that Scott contributed towards the upgrades, as he professed, or towards the carrying cost of the mortgage. He admitted that, until the litigation started, he had never seen the spreadsheets prepared by Shane to track the expenses, including the downpayment and carrying costs. From the lack of any evidence showing any contribution of capital, labour or otherwise to the Haig property, I infer that no such evidence exists.

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[129] I find that, on the evidence, Scott made no contribution to the deposits, downpayment, or carrying costs. In my view, Scott received and retained a tangible benefit because of the respondents' contribution for no consideration. He received $150,000 directly from the net proceeds of sale, and, if he is to be believed, another $150,000 orchestrated through a loan from his stepfather to him and Shane. Neither of them of course called the stepfather to testify, though he has key evidence, would presumably of assistance to them, is family, and therefore presumably within their control to call him, and have not provided any explanation as to why he was not called. The existence of such a loan was challenged by the applicants. Therefore, I draw an adverse inference from their failure to call their stepfather.

[130] Aside from being on title, Scott has not provided any actual evidence that he paid for upgrades, contributed to the mortgage payments, contributed towards paying down the mortgage (and interest on loans from his father, despite the evidence that the applicants did so, nor any evidence of contribution towards the carrying costs of the property. Scott says that his payments to Shane were made by e-transfer. He explained that account in 2019 or 2020 and the statements are no longer available to him. He has not produced any statements to show he made payments toward the property 2020, 2021, or at any other time.

[131] Yet, at trial, with some assistance from counsel during his cross examination because he even appeared to be confused about the amount of the net proceeds remaining after receiving his advance, he claimed that he received $300,000 on account of this investment with approximately only $87,000 remaining to be given to him.

[132] Scott did not contribute to paying down the loan to his father; only the applicants did. I find that in doing so, they in fact contributed towards the down payment on the Haig property. I find that Scott did not contribute towards the downpayment or closing costs. His evidence on this point is even contradicted by Shane. Assuming neither he nor the applicants contributed towards the downpayment or the closing costs, at least initially, he is in the same position as the applicants, save for, his name is on title to the property. The applicants though have all produced extensive evidence of their contribution to paying off a loan to the respondents' father and contributing to the carrying costs, Scott has not done so.

[133] Regardless of whether Scott received $150,000, or, $300,000, he agreed with his brother to invest some of the proceeds of sale into stocks.

[134] I also find that the respondent, Shane, has been unjustly enriched. He has used the net proceeds of the sale of the Haig property to pay of the home equity line of credit, which was financing his own personal debts, and to invest in stocks. Even his brother Shane testified that the line of credit was to pay off his brother's debt. Additionally, Shane devoted a great deal of his evidence to the investments made with the net proceeds from the Haig property and what he says was a collapse of the investments. No documents have been produced to support these statements. On pre-trial questioning, he professed to not having any recollection about what happened to the money that he invested from the Haig property.

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[135] Shane says that "the sum that the Applicants are seeking no longer exists as the stock investments plummeted." He says: "This was of course not intentional, and in fact was financially devastating for myself and Scott." He has not explained what relevance this claim may have on the court's assessment as to whether an unjust enrichment claim is maintainable by the applicants.

[136] In his Opening Statement, the respondents acknowledged that the amounts contributed by the applicants amounted to "roughly" that of the carrying costs on the property.

[137] In their Opening Statement, the respondents took the position that they "paid entirely for the purchase, acquisition, and carrying costs from purchase to the date it was sold on May 31, 2022." They argue that the agreement was that the applicants Sundeep and Kanwaljit would also move in and pay "below market rent." The respondents conceded in their Opening that the amount collected from the applicants was roughly that of the carrying costs on the property but maintain nonetheless, it was rent. In their Closing, they asked the court to find that if the applicants paid towards the home equity loan, that those were rent payments which only went towards the interest and not the principle.

[138] I have already rejected the respondents' argument that the applicants were paying rent. As indicated above, I have concluded that the applicants were each paying towards the principal and interest of the loans advanced by the respondents' father and the home equity line of credit which replaced it.

[139] The respondents have not put any evidence as to what below market rent would be. But, having rejected the respondents position that the applicants were paying rent, or their position that Kiran paid "zero" towards the carrying charges, I find, on the evidence, that the respondent Shane also received and retained a tangible benefit from the applicants by virtue of the applicants contribution to repaying the loans from his father for the deposits; the interest on the loans from his father; contribution towards the mortgage (at times over contribution); contribution towards the municipal taxes (at times over contribution); contribution towards the carrying costs (condominium fees, insurance, utilities) and other expenses.

[140] From the proceeds of sale of the Haig property, Shane used over $100,000 to pay down the home equity loan, which he had been using for his own use, paid off another personal line of credit and other personal debts. He says that between August 2022 to January 2023, he deposited $435,100 to his CIBC investment account. He claims that he has suffered a significant loss on the investments, but no actual evidence was before the court. Because of Shane's serious credibility issues, I am not inclined to believe him. In any event, whether he suffered losses as a result of investment decisions he made does not impact whether a claim is maintainable.

[141] Shane has refused to comply with court orders regarding disclosure. At his pre-trial questioning in 2023, he was asked about his CIBC statement and whether he had a numbered company. Even though he is an accountant, he requested an explanation of what was meant by a "numbered company". He admitted the company was controlled by him and acknowledged that it had a name, but when asked for the name of the company, he responded: "I don't recall, I'd have

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to check." At the time of his questioning, he was living at 256 Queens Drive in Toronto, the address where the municipal tax statements were sent by the City for the Haig property.

[142] I infer from Shane's breaches of court order and failure to disclose that the information or evidence disclosed would not be favourable to him. There is ample evidence for the court to conclude, on a balance of probabilities, that Shane has been unjustly enriched by the applicants' contribution.

ii. The applicants have suffered a corresponding deprivation

[143] I find that because the applicants' legitimate expectation was to share in the profits of the joint investment, and the funds have been retained by the respondents, the applicants have demonstrated an enrichment or benefit by the respondents and a corresponding deprivation or expense on the part of the applicants. The respondents have each used the funds invest in other assets.

[144] At the same time, each of the applicants have repeatedly sought their share of the investment proceeds. In the case of Kiran, she has outstanding loans and credit card debts in arrears. In the case of Sundeep, she tried, without success, to secure the funds from Shane to help her because of her own family law proceedings.

iii. Is there a juristic reason for the enrichment?

[145] Central to the doctrine of unjust enrichment is the concept of restoring a benefit which justice does not permit one to retain: *Kerr*, at para. 31; *Peel (Regional Municipality) v. Canada*, [1992] 3 S.C.R. 762, S.C.J. No. 101, at p. 788.

[146] The third element of the test requires an absence of any juristic reason for the enrichment, or, put another way, "there is no reason in law or justice for the defendant's retention of the benefit conferred by the plaintiff, making its retention "unjust" in the circumstances of the case": see, *Pettkus* v. *Becker*, 1980 CanLII 22 (SCC), [1980] 2 SCR 834, at p. 848; and *Kerr*, at para. 40, citing *Pettkus*, at p. 848. At the juristic analysis stage, if the case falls outside the existing categories, the court may take into account the legitimate expectations of the parties: *Kerr*, at para. 44, citing *Pettkus*, at p. 849 and moral and policy-based arguments about whether particular enrichments are unjust: *Kerr*, at para. 44.

[147] I find that there is no juristic reason for the respondents' enrichment.

[148] An absence of juristic reason is tantamount to "no reason in law or justice": see, *Kerr*, at para. 40. The Supreme Court acknowledged that the case law has declined to limit juristic reasons to a closed list: see *Kerr*, at para. 41. Cromwell J. explains further in *Kerr*, at para. 41, the meaning of a "juristic reason", stating that "[t]his third stage of the unjust enrichment analysis provides for due consideration of the autonomy of the parties, including factors such as 'the legitimate expectation of the parties, the right of parties to order their affairs by contract.'"

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[149] There is a two-step approach to in the juristic reason analysis. The first step applies established categories of juristic reasons: *Kerr*, at para. 43, and if none exists, the second step permits the court to consider the reasonable expectations of the parties and public policy considerations to determine whether recovery should be denied. The established category includes a donative intent, common law, equitable or statutory obligations: *Kerr*, at para. 43.

[150] In this case, I did not find that the applicants and the respondents were in a landlord/tenant relationship. I found that the agreement between the parties was to invest in the Haig property. I therefore find that the applicants have established an absence of juristic reason including the lack of any contract, common law, equitable or statutory obligation on the part of the applicants to pay towards the downpayment (after the fact by paying off the loan), the mortgage payments, municipal taxes, and all other expenses related to the Haig property. A claimant establishes a *prima facie* case under the juristic reason component if there is no juristic reason from an established category: *Kerr*, at para. 43.

[151] The respondents have not rebutted the *prima facie* case for an absence of juristic reason, and to show why they should retain all the net proceeds of the sale.

[152] If I am wrong, the reasonable expectation of the of the applicants was to share in the profits. A reasonable expectation of benefit is part of the third pre-condition of unjust enrichment (the absence of a juristic reason for the enrichment): *Sorochan v. Sorochan*, [1986] 2 S.C.R. 38, 29 D.L.R. (4th) 1, at para. 31; *Kerr*, at para. 43. As noted by As McLachlin J.in *Peter v. Beblow*, [1993] 1 S.C.R. 980, 101 D.L.R. (4th) 621, at p. 994: “It is precisely where an injustice arises without a legal remedy that equity finds a role.”

[153] On the evidence, equity requires that the reasonable expectations of all parties, including the respondents, should be upheld. In the result, each party should have a one-fifth share in the net proceeds of the sale of the Haig property. The respondents are the only one who have reaped the benefits of having invested in the property and have had the benefit of the applicants’ share of the increase in the value of the investment, after adjustments.

[154] The respondents have asked for a set-off of any amounts owed to the applicant. Kerr directs that: “As part of the defendant’s attempt to rebut, courts should have regard to two factors: the reasonable expectations of the parties, and public policy considerations.”. The respondents’ claim for set off a dealt with below.

D. What is the appropriate remedy for the respondents’ enrichment?

[155] In this case, there is a clear link between the applicants’ contribution to repaying the downpayment and deposits and contributing to the maintenance and expenses of the property, which, as I have found, the parties agreed was a joint investment to be divided equally between the five of them. There are a number of equitable remedies available to a claimant where a person has legal title to property in which another has an interest. One such equitable remedy is the constructive trust. The applicant has sought this equitable remedy in their pleadings.

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[156] The applicants request an order for monetary payment to reflect each of their individual 20% interest in the Haig property.

[157] A claim for unjust enrichment may attract a monetary or a proprietary remedy. The Supreme Court has stated that in most cases, a monetary award will be sufficient to remedy the unjust enrichment: *Kerr,* at para. 47. The doctrine of unjust enrichment is a remedial one that applies to relationships other than spousal relationships: see *Kerr*, at paras. 71-72.

[158] A proprietary award may be appropriate in circumstances where a monetary award is inappropriate or insufficient: *Kerr*, at para. 50. "Where the plaintiff can demonstrate a link or causal connection between his or her contributions and the acquisition, preservation, maintenance or improvement of the disputed property, a share of the property proportionate to the unjust enrichment can be impressed with a constructive trust in his or her favour": *Kerr,* at para. 50.

[159] In this case, a monetary remedy is appropriate. The respondents sold the Haig property on May 31, 2022, for $1,234,000.

[160] Shane admitted to advancing $150,000 of the net proceeds of sale to his brother Scott. Equity demands that the balance of the net proceeds be divided amongst Shane and the applicants, which would result in each of them receiving the same amount as Shane, a figure which accords with the intent and expectation of the parties. This conclusion is further buttressed by the fact that, as the applicants noted, Shane subsequently manipulated documents and attempted to fabricate a scenario to show that Scott received 50 percent of the net proceeds of sale.

[161] The respondents are each responsible to pay each of the applicants $150,000 reflecting each of their individual 20 percent or one-fifth interest in Haig property.

IV. Are the respondents entitled to claim Set-off?

[162] The respondents say that if the court were to find that an agreement was formed regarding the Haig property, or that fairness/equity dictates that the applicants should receive some recovery, then any amounts received by them ought to be set off by rental arrears, occupation rent, loans and other adjustments set out in charts as Exhibit R to Shane's affidavit.

[163] The respondents are seeking "rental arrears" from Kanwaljit. They say that he stopped paying rent in January 2021 though he stayed until the property was sold in May 2022. There is no evidence before the court of the respondents, or either of them, requesting payment of "rent" from Kanwaljit.

[164] Kanwaljit's uncontested and unchallenged evidence is that it was only in this litigation and the financial statements that he learned that Shane was taking the position that he owed him $15,185.50 in "rental arrears". The respondents sought this relief in their Answer.

[165] I would deny the respondents claim for set-off for the reasons below.

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[166] The respondents are also seeking an order requiring the applicants to repay a $10,000 loan plus interest made by Shane in May 2010. Although this claim was also advanced in the Answer, there is no actual evidence at trial to existence of such a loan. The summary chart prepared by the lawyer affixed to Shane's affidavit listing loans is not admissible evidence nor is the information in the chart proof of the existence of the loan.

[167] The charts annexed to Shane's affidavit were prepared by the respondents' lawyer. Shane testified that the information was provided to his lawyer, and he was told by his lawyer, not to go any further because he did not want him to talk about anything they discussed.

[168] By finding that there was a verbal agreement between the applicants and respondents to invest in the Haig property, I have expressly rejected the respondent's argument of the existence of a landlord tenant relationship. Although it would be fair to set off any carrying costs owed by Kanwaljit after he moved out and before the Haig property was sold, that amount has not been established.

[169] The applicants have denied the existence of the loan. In their Reply, borrowing any money from Shane. They allege the funds were to repay a debt that Shane owed. They also rely on the limitation period.

[170] Aside from proving the existence of any loan, the respondents have failed to address the presumption of a two-year limitation period under the *Limitations Act, 2002*, S.O. 2002, c. 24, Sched B ("*Limitations Act*"). Under s. 4 of the *Limitations Act*, a proceeding must be commenced within two years of when the claim was discovered, unless the presumption is rebutted. Under s. 5(1)(a) of the *Limitations Act* enumerates when a claim is discovered. Under ss. 5(2), a person with a claim is presumed to have known the matters referred to in clause (1)(a) "on the day the act or omission on which the claim is based took place, unless the contrary is proved."

[171] The respondents also sought in their Closing, an order that Kiran repay an $8,000 loan from Shane made in 2012. In her Reply pleading, Kiran denied the existence of such a loan. No such loan was established at trial.

[172] The respondents' claim for set-off is based on equitable principles. Throughout the trial, the applicants have attempted to show that Shane does not come to the court with clean hands. There is ample evidence to support the applicants' assertions that he has repeatedly breached court orders, including disclosure orders, and has attempted to manufacture evidence. The court has discretion to disallow a defence of equitable set-off when the party invoking the defence does not have "clean hands" or is tainted by some other form of inequity: *Scott v. Golden Oaks Enterprises Inc.*, 2024 SCC 32, at para. 93; *Grand Financial Management Inc. v. Solemio Transportation Inc.*, 2016 ONCA 175, 395 D.L.R. (4th) 529, at para. 98; In my view, I need not decide whether the respondents, or any of them, lacked the "clean hands" required for the court to grant the equitable remedy of set-off.

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[173] In my view, even if the respondents were able to substantiate their claim for set-offs, which they have not on the evidence, in my view, the applicants may have equitable grounds for being protected against the respondents demands.

[174] In *Telford v. Holt*, [1987] 2 S.C.R. 193 at para. 34, the Supreme Court of Canada articulated five principles of equitable set-off outlined in *Coba Industries Ltd. v. Millie's Holdings (Can.) Ltd.*, 1985 CanLII 144 (BC CA), 65 B.C.L.R. 31 (C.A.) at p. 22 as follows:

> 1. The party relying on a set-off must show some equitable ground for being protected against his adversary's demands: *Rawson v. Samuel* (1841), Cr. & Ph. 161, (1841), 41 E.R. 451 (Eng. Ch. Div.).
>
> 2. The equitable ground must go to the very root of the plaintiff's claim before a set-off will be allowed: [*British Arzani (Felixstowe) Ltd. v. International Marine Management (U.K.) Ltd*., (1979), [1980] Q.B. 137, [1979] 3 W.L.R. 451, [1979] 2 All E.R. 1063 (Eng. Q.B.)]
>
> 3. A cross-claim must be so clearly connected with the demand of the plaintiff that it would be manifestly unjust to allow the plaintiff to enforce payment without taking into consideration the cross-claim: [*Federal Commerce & Navigation Co. v. Molena Alpha Inc.*, [1978] Q.B. 927, [1978] 3 W.L.R. 309, [1978] 3 All E.R. 1066 (Eng. Q.B.), reversed in part [1979] A.C. 757, [1978] 3 W.L.R. 991, [1979] 1 Lloyd's Rep. 201, [1979] 1 All E.R. 307 (U.K. H.L.)]
>
> 4. The plaintiff's claim and the crossclaim need not arise out of the same contract: *Bankes v. Jarvis*, [1903] 1 K.B. 549 (Eng. Div. Ct.); *British Anzani*.
>
> 5. Unliquidated claims are on the same footing as liquidated claims: [*Newfoundland v. Newfoundland Railway* (1888), 13 App. Cas. 199 (Newfoundland P.C.)].

[175] It is clear from the evidence that the applicants did intend to have any amounts that they owed for carrying costs taken out of their share of sale proceeds. But the respondents have not established a sum by which Kiran's share should be adjusted, because they took the position that she paid "zero". They failed to tender any evidence to support their claim that Kanwaljit "paid rent" until January 2021. Kanwaljit's uncontested evidence, supported by his bank statements, is that the last time he tried to e-transfer money to Shane was April of 2022, but Shane did not accept it, and the transaction was cancelled 28 days later. Similarly, the respondents have not established any arrears in contribution by Sundeep, to be set off.

[176] Even if the respondents had identified amounts that could justifiably be set off, I am satisfied, on the evidence, that there would be no injustice to the respondents if there were no

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adjustments. As the applicants argued, which is supported by the evidence, the respondents inflated some of the carrying costs, for example the municipal taxes were doubled for years), which invited the applicants to label such items "a profit centre". Shane, despite being an accountant, has been less than honest and transparent with the carrying costs.

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V. What is the duration of cohabitation?

[177] Once of the central disputes between Kiran and Shane is the length of cohabitation.

[178] The applicant siblings all testified that Shane had been living with them at various addresses since 2007. The applicants contend that they were all family, and Shane was part of that family; he was like a brother to them. Recognizing that there may be some bias, on the evidence, the applicants' evidence was supported, in part, by documentary evidence related to Shane himself.

[179] I found Kiran's evidence to be credible. Her evidence was corroborated by her siblings Kanwaljit and Sundeep, who testified, and whose evidence I found to be credible even considering the relationship to Kiran. The applicants' testimony was supported by documentary from Shane himself.

[180] In contrast Shane's evidence was not plausible, and contradicted documentary evidence. When confronted with what would amount to misrepresentations, or, more bluntly, "lies", as the applicants contend, in, various documents put to him on cross examination, Shane's explanations were not only implausible, and not supported by any evidence before the court, but also served to further undermine his credibility.

[181] Kiran and Shane agree that they started to date in December 2006, when she was eighteen years old, and he was nineteen. Kiran asserts that they cohabited together for nearly 15 years from 2007 to September 2021. She says that they had been planning to get married and had even made deposits in organizing the wedding. According to Kiran, their relationship ended abruptly when Shane "kicked" her out of the Haig property "with nothing but a few garbage bags filled with my clothing and belongings."

[182] Shane says that they lived together for seven years, from September 2014 to September 2021. In his Closing Submissions he stated that "[t]he date of separation…was already decided in their favour by J. Shore." Indeed, on the motion for interim spousal support, Shore J. stated in her endorsement dated July 6, 2023, that "[t]he parties disagree on the year they started cohabiting." She expressly noted that: They lived together, in a common law relationship, for somewhere between seven to 14 years."

[183] I must reject Shane's assertation that Shore J. has already decided the question of the length of the parties' cohabitation. Indeed, Shane has not referred to any endorsement or order which show that this is the case. Indeed, ere this issue has been determined by Shore J. on an interim or final basis. In the Trial Scheduling Endorsement Form completed by Horkins J. on June 24, 2024,

reveal that Shane identified three issues for trial, one of which was, as he stated: "Period of Cohabitation being only 7 years and entitlement to spousal support."

[184] Kiran says that the two lived together with her siblings for approximately 8 years in three rental units before investing in the Haig property. According to her, they started living together in August 2007 with her siblings, Navneet Kanwal, Sundeep and Kanwaljit, in an apartment. They all moved to another rental unit in Burnhamthorpe, before moving to a rental unit in Mississauga. She says that Shane did not contribute to the rent or living expenses.

[185] Kanwaljit testified that they lived together since shortly after Shane and Kiran began dating in 2007. He says that Shane was like a brother to him.

[186] Kiran's brother-in-law, Mandip Maan, is married to Navneet. Mandip is a manager of financial planning and analysis at a company. He and Navneet purchased a townhouse next door to the parties' Haig property. He and Navneet have been dating since 2006. He says that Shane moved in with Navneet and her siblings shortly after he met him in 2007. He was often at the apartments, and Shane was living there.

[187] In his affidavit in chief, Shane says that he and Kiran only lived together, and her siblings lived together for variable periods. At trial, in his Opening, he took the position at trial that it was 2014 when they moved into a place at "the Webb address", before moving into the Haig property. During his warmup questioning, his lawyer initially had him read, or counsel himself read, passages paragraphs from his affidavit regarding where he was residing at the relevant time.

[188] Shane testified that he lived with his father between 2003 to 2007. He says after that he moved to Maple with his mother, stepfather, and brother in 2007. In 2012, they moved to Brampton in 2012, and his stepsister joined them. Shane's evidence is corroborated by his brother, the respondent Scott. However, I did not find Scott to be credible. He claimed that he received $300,000 from his brother from the sale of the Haig property. However, by his own admission only $150,000 came from Shane. He also testified that he obtained a loan from his stepfather for the other $150,000 for a downpayment for a house he was purchasing. He admitted that he lied to provide a false document to the broker indicating that it was a "gift" from his stepfather.

[189] I do not find either of the respondents' evidence to be credible about where Shane lived after leaving his father's house in 2007.

[190] Shane's testimony was contradicted by the documentary evidence. In 2010 he designated Kiran as a beneficiary under his employer group extended health and dental insurance with Sun Life. He admitted on his pre-trial questioning that for Kiran to qualify for coverage, she would have had to have been living with him for at least three years. He claimed that he lied to his insurer "[f]or that brief period, yes."

[191] Similarly, Shane's evidence is also contradicted by a rental application which he completed in September 2014. He identified the Burnhamthorpe address as his previous address and stated in that application that he had been living at the Burnhamthorpe address from January 2009 to

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present. That address is one of the three addresses where Kiran and her siblings, Sundeep, Kanwaljit and Navneet, say they had been living with Shane and Kiran. Kiran says that they were all living at this address before purchasing the Haig property. I reject, as implausible, Shane's evidence, that he had misrepresented the information on the rental application as a "favour" to the applicants because they were being evicted.

[192] I find that the period of cohabitation between Kiran and Shane is started their relationship in 2006 and began cohabitating in 2007.

[193] The court may draw an unfavourable against a party who fails to call a witness, without explanation, who may have knowledge of the facts and presumably would be willing to assist the party, or draw an adverse inference who, without explanation, does not call an material witness: See, Sydney N. Lederman, Alan W. Bryant & Michelle K. Fuerst, *The Law of Evidence in Canada*, 4th ed. (Markham: LexisNexis Canada, 2014) at p. 386. Such a failure to produce evidence or to call a material witness amounts to an implied admission that the evidence of the absent witness would be contrary to the party's case, or at least would not support it: *Law of Evidence*; *Lane v. Kock*, 2015 ONSC 1972 at para. 3.

[194] It is in the discretion of the court whether to draw an adverse inference. Each case is fact specific, and in in exercising its discretion, the court may consider:

i. whether there was a legitimate explanation for failing to call the witness

ii. whether the witness was within the exclusive control of the party against whom the adverse inference is sought to be drawn, or equally available to both parties; and

iii. whether the witness has key evidence to provide or is the best person to provide the evidence in issue.

[195] In this case, I would exercise my discretion in drawing an adverse inference against Shane for his failure to call his mother or stepfather as a witness. Shane asserts that he lived with his mother and stepfather between 2007 and 2014, a period of seven years. He has not provided any explanation, legitimate, or otherwise to explain why he did not call her as a witness. Presumably, as his mother, she is a witness within his exclusive control. And his mother's evidence was material to issue of the duration of the parties' cohabitation, which may have an impact on his spousal obligation. The same would apply to his stepfather.

VI. Is Kiran entitled to spousal support?

[196] Kiran is seeking spousal support on a compensatory and needs-based basis. Kiran asserts that Shane was able to live rent free with her and her siblings. She says that they supported him to enable him to complete his CPA designation and establish himself in his career. She argues that Shane has become very successful in his career, while struggles to make ends meet and has taken

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on significant debt. She points to the significant discrepancy in their incomes. In 2022, she earned $64,885 and Shane earned $199,000.

[197] She asserts that her serious medical condition has resulted in lengthy absence from employment and says that her future surgery and the outcome of the surgery are unknown.

[198] Shane asserts that Kiran has not suffered any economical consequence of the breakdown of the relationship either on a needs base or otherwise. He says that she was never dependent upon him. He argues that if the court finds that Kiran is entitled to support, then he ought to be for an order that there be no spousal support payable to Kiran or "nominal entitlement." He seeks a credit for all amounts paid to Kiran for support under the interim without prejudice support order of Shore J.

[199] Alternatively, Shane submits that if Kiran meets the entitlement threshold, the court should impute an unspecified amount to Kiran because she is underemployed. He submits that Kiran has not presented any evidence to prove her inability to work, provided any explanation for her intentional underemployment, or presented any evidence to support entitlement on a need or means basis.

[200] Every spouse is obliged to provide support for themselves and for the other spouse in accordance with need, to the extent they are capable of doing so: *Family Law Act*, s. 30.

[201] A court may, on application, order a person to provide support for his or her dependents and determine the amount of support: *Family Law Act*, s. 33(1).

[202] Section 33(8) of the *Family Law Act* sets out the objective of an order for support of a spouse. Under this provision, an order for support of a spouse should:

i. recognize the spouse's contribution to the relationship and the economic consequences of the relationship for the spouse;

ii. share the economic burden of child support equitably;

iii. make fair provision to assist the spouse to become able to contribute to his or her own support; and

iv. relieve financial hardship, if this has not been done by orders under Parts I (Family Property) and II (Matrimonial Home).

[203] Subsection 33(9) of the *Family Law Act* enumerates a number of factors should consider in determining the amount and duration of spousal support including the parties current assets and means; the assets and means that the parties are likely to have in the future; the capacity of the person claiming support to contribute to their own support and the respondent's capacity to provide support; the parties age and physical and mental health; the needs of the person claiming support, having regard to the accustomed standard of living while the parties resided together. Other factors

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the court may consider includes the length of cohabitation, and any legal obligation to provide support for another person.

[204] At the time of the trial, Kiran was 36 years old, and Shane 37 years old. They had cohabitated together for fourteen of those years.

[205] Spousal support is generally intended to address financial inequity following the end of a relationship. Support claims may fall under one of the three conceptual bases: compensatory, non-compensatory, or contractual support: *Bracklow v. Bracklow*, [1999] 1 S.C.R. 420, 169 D.L.R. (4th) 577 at para. 37; *Halliwell v. Halliwell*, 2017 ONCA 349, 138 O.R. (3d) 671, at para. 113; *Moge v. Moge*, [1992] 3 S.C.R. 813, 99 D.L.R. (4th) 456.

[206] There is contract between the parties and, therefore contractual support does not apply. Kiran seeks both compensatory and non-compensatory support.

[207] Shane denies that she is entitled to compensatory spousal support. He says that they were two working professionals with no children, who both supported each other in their profession. He says Kiran was never dependent upon him and never had to give up any career opportunities because of him.

i. Kiran is not entitled to compensatory support

[208] Compensatory support recognizes a spouse's contributions to the relationship and foregone careers or missed financial opportunities during the relationship or upon its breakdown: *Bracklow*, at paras. 1, 41 and 49.

[209] Both were students when they started dating. Shane was working full time when he was pursuing his CPA designation. Both agree they supported each other's professional advancement. They dispute, however, whether Kiran supported Shane financially.

[210] Kiran says she offered financial support as well as well as support in other ways when Shane had been student. She says she did his share of the cooking, cleaning and other household chores. Because of my finding on when the parties started to cohabit, I reject Shane's evidence that he lived with his parents to reduce costs while he studied. His father testified that Shane stopped living with him in 2007. In re-examination, he stated that that Shane went to live with his mother. I find the applicant siblings' evidence that they supported Shane, believing him to be family, and did not charge him rent credible.

[211] While I accept that Kiran and her siblings supported Shane, as noted above, which afforded him an opportunity to pursue his professional designation and establish his career, I am not satisfied, however, that Kiran contributed directly to the advancement of Shane's education or career, beyond the usual support of a loving and supportive partner. Indeed, her sisters and other family members bore the financial burden of housing them for many years to allow both the

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opportunity to complete university and pursue their respective professional training, which they both did. As Kiran herself testified, she was working part-time in 2007 and 2008.

[212] I find that Kiran did not sacrifice her education or career opportunities during the relationship. Much of the parties' time living together was with other family members. I am not satisfied that Kiran made significant household contributions worthy of compensation, nor do I find that she financially supported Shane so that he could advance in his education, professional training or career.

ii. Kiran is entitled to non-compensatory support

[213] I must reject Shane's argument that Kiran is not entitled to non-compensatory support on a need or means basis. I am satisfied that Kiran has suffered an economic disadvantage from the breakdown of the relationship. For the reasons below, I find that Kiran is entitled to non-compensatory.

[214] Even where compensation for the economic disadvantages of the marriage breakdown cannot be established, the breakup may cause economic hardship in a larger, non-compensatory sense: *Bracklow*, at para. 41. The Supreme Court of Canada, while considering the British Columbia provincial statute, *Family Relations Act*, R.S.B.C. 1996, c. 128 and the *Divorce Act*, R.S.C., 1985, c. 3 (2nd Supp.) stated: "Need alone may be enough" [Emphasis in original]: *Bracklow*, at para. 43.

[215] Non-compensatory support may be based on the "need" of a recipient spouse, which is not limited to their basic needs but may include a significant decline in their standard of living after the spousal relationship has dissolved, considering their income and reasonable expenses. The analysis must consider the recipient's ability to support herself, because of her income and reasonable expenses: *Bracklow*, at para. 32; *Gray v. Gray*, 2014 ONCA 659, 122 O.R. (3d) 337, at para. 27.

[216] In determining support based on need, the court must be guided, in part, by the principle that the spouse receiving support is entitled to maintain the standard of living to which they were accustomed at the time cohabitation ended: *Gray*, at para. 27; *Marinangeli v. Marinangeli* [2003] 228 D.L.R. (4th) 376, 66 O.R. (3d) 40, at para. 74.

[217] Kiran points to the fact that Shane was making at least four times as much as she was earning in 2023. The Court of Appeal has noted that mere disparity of income that would generate an amount under the Spousal Support Advisory Guidelines ("SSAG") formulas does not automatically lead to entitlement.

[218] Kiran contends that after Shane started to earn a significant income, he and Kiran travelled, regularly dined at expensive restaurants, and both drove luxury vehicles. Kiran says after Shane "kicked" her out of the home, she initially moved in with her sister. She has borrowed money from her siblings and friends. She and friend are subletting a townhouse. Her debts and liabilities exceed

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her annual income; her basic annual expenses exceed her gross income. Her credit cards are in arrears. She is in debt to friends and family.

[219] Shane asserts that she is living beyond her means, an assertion which is not substantiated on the evidence. Indeed, Kiran argues that her current annual expenses do not reflect her typical spending patterns during the relationship because she had to significantly limit her spending. He suggests that she is manipulating the evidence to support her position. He deposed that: "It is clear that Kiran was and has been artificially inflating and manipulating her expenses to further advance her narrative." I do not see any evidence that any of the applicants have attempted to manipulate the evidence.

[220] Shane says that Kiran has never been dependent on him, a statemen which is inconsistent with his claim that she contributed "zero" to the carrying costs of the Haig property. He says that she is ambitious and has worked at multiple pharmacies.

[221] Kiran is a registered pharmacy technician. Aside from absences from the workforce due to her medical condition, she has been continuously since 2021. In previous years, she has worked at two pharmacies to achieve equivalent to full time hours. She earns approximately $75,000 annually.

[222] The fact that a spouse has worked full-time and has made advancement in their career does not preclude a finding of economic disadvantage: *Allaire v. Allaire* [2003] 35 R.F.L. (5th) 256. A spouse may be awarded non-compensatory transitional support to soften the impact of the decrease in the standard of living caused by the marriage break-up: *Rioux v. Rioux*, 2009 ONCA 569, 66 RFL (6th) 256, at para. 43; *Fisher v. Fisher* (2008), 2008 ONCA 11, 88 O.R. (3d) 241.

[223] The court must consider, as party of the analysis, the recipient's ability to support themself considering their income and reasonable expenses: *Gray*, at para. 27. Kiran's Financial Statement reveals no assets other than the interest she claims in this litigation in the Haig property. The vehicle that she had been driving, before separation, had been registered in Shane's name. Because Shane took back the vehicle, she had to find other means of transportation, initially paying towards a vehicle leased by her father, before he passed away, and subsequently making the payments on a vehicle leased by her employer.

[224] I find that the loss of the two incomes have resulted in a significant reduction of Kiran's standard of living.

iii. Should income be imputed to Kiran?

[225] Shane also asserts that Kiran is intentionally underemployed and therefore not entitled to support. Contrary to Shane's argument, Kiran is not asserting that she is unable to work. She graduated from university in 2015 and has worked at multiple different pharmacies since then.

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Because of the nature of the work, she has worked at multiple different pharmacies to achieve full time hours.

[226] The test for imputing income for child support purposes applies equally for spousal support purposes: *Rilli v. Rilli*, 2006 CanLII 34451 (ON SC); *Perino v. Perino* [2007], 46 R.F.L. (6th) 448. Therefore, I would adopt the burden of proof in cases involving the imputation of income for child support purposes, including underemployment, under the *Ontario Child Support Guidelines*, O. Reg. 391/97.

[227] Shane has not suggested what amount of income is to be imputed to Kiran. He submits that the court ought to impute "a considerable figure reflecting her actual means and ability to earn income, as opposed to her obviously deflated earnings."

[228] Shane also asserts that Kiran "has failed to rebut her intentional underemployment given the absence of medical expert evidence or otherwise." The initial onus is on the party seeking an imputation of income to establish a *prima facie* case. The person requesting an imputation of income must establish an evidentiary basis upon which this finding can be made: *Homsi v. Zaya*, 2009 ONCA 322, 65 R.F.L. (6th) 17, at para. 28; *Drygala v. Pauli* [2002], 219 D.L.R. (4th) 319, 61 O.R. (3d) 711. It is only after the party has met its evidentiary burden, the onus then shifts to the payor to show that they acted reasonably, which must be justified in a compelling way: see *Riel v. Holland*, [2003], 232 D.L.R. (4th) 264, 67 O.R. (3d) 417, at para. 23.

[229] Shane has not presented any evidence to indicate that Kiran is not working at her earning capacity. He says that she has always been ambitious and has worked at multiple jobs in the past. Based on Kiran's evidence, she continues to work at multiple pharmacies and multiple franchise locations to obtain full time hours. At the time of the trial, she was working full time doing the very job she was educated and trained to do. Shane has not pointed to any period of time that she has not been working full time in a job suitable for her education, skills and experience.

[230] Kiran's pre-and post-separation income has remained relatively consistent.

Year	**Kiran's 150 Income**
2019	$64,380
2020	$69,611
2021	$75,133
2022	$64,855
2023	$53,105

[231] Therefore, Shane has not met the onus of showing a *prima facie* case that Kiran is intentionally underemployed. Intentional underemployment means a payor chooses to earn less than they are capable of earning. Where the court imputes income based on intentional underemployment or unemployment, a court must consider what is reasonable in the circumstances

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having regard to the person's age, education, experience, skills and health of the parent: *Drygala*, at para. 45; *Lavie v. Lavie*, 2018 ONCA 10, at para. 24; *Lawson v. Lawson*, [2006] 81 O.R. (3d) 321, 29 R.F.L. (6th) 8, at para. 36.

iv. Kiran's medical condition

[232] Because of her medical condition, Kiran underwent surgery in October 2023 and was off work for six months, returning in May 2024. She testified that she has not been "100% well" but was working full time at Kassel's Pharmacy.

[233] I accept, as credible, her evidence that she will require future surgeries, and she has been told that there is a risk of heart failure. McLachlin J. stated, on behalf of the Court, in *Bracklow*, at para. 48, that "in some circumstances the law may require that a healthy party continue to support a disabled party, absent contractual or compensatory entitlement. Justice and consideration of fairness may demand no less."

[234] Shane does not challenge the half dozen or more surgeries which Kiran testified that she has undergone. He does not challenge that she will require future surgeries. Rather, Shane argues that Kiran's pre-existing medical condition should not be considered by the court in determining support unless there is a causal connection between the illness or disability and the marriage or its breakdown. The respondent relies on *Ryan v. Ryan*, 2017 ONSC 1377; *Dale v. Lockley*, 2014 ONSC 1402; *Castedo v. Haldorsen*, 2016 ONSC 3870; *Gates v. Gates*, [2000] 7 R.F.L. (5th) 87. I must reject Shane's position.

[235] Entitlement to spousal support does not have to be causally connected to any disadvantage arising from the relationship. The court has expressly rejected the applicability of a causal connection between a spouse's medical condition and entitlement to support: *Bracklow*, paras. 47 and 48; *Kallaba v. Bylykbashi*, [2006] 265 D.L.R. (4th) 320, 23 R.F.L. (6th) 235, at paras. 81 and 83. McLachlin J. stated in *Bracklow*: "Moge was primarily concerned with a claim for compensatory support, L'Heureux-Dubé J. noted that in other cases, like those of sick or disabled spouses, a support obligation might well lie even in the absence of a compensatory underpinning." In *Kallaba*, at para. 83, the Court of Appeal commented:

> It would not matter that the appellant's physical and emotional scars and psychological instability arose from the dog bite incident, rather than from the marriage of the parties, if it was established that they rendered her medically incapable of maintaining herself. As we stated earlier, need unrelated to the marriage can provide a non-compensatory basis for spousal support. [Emphasis added].

[236] Aside from her testimony, which I find credible, and was not challenged by Shane, Kiran has provided hospital records which may fall under the category of business records of s. 35 of the *Evidence Act*, R.S.O. 1990, c. E.23. The records support her medical history, hospital admission, and recent surgery.

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[237] Kiran has put forward uncontested evidence explaining her extended periods off from work due to a medical condition, severe endometriosis. She has had six or seven surgeries, the first shortly after she and Shane starting to see each other. Her condition is chronic. Her lungs collapsed during her surgery in 2023.

[238] In contrast, Shane has not done the same, though he stated that he suffered "a traumatic medical incident on March 4, 2024." Shane says that because he mixed his medication for sciatica and attention deficit hyperactivity disorder, he was admitted to the Intensive Care Unit of Toronto Western Hospital. He relies on an affidavit, which he previously swore. He says had aspiration pneumonia after a seizure.

[239] Despite Shane's conclusion as to what the doctor's diagnosis was and the reason for it, there was no such medical evidence before the court. The admissible medical evidence at trial includes an Attending Physician Statement which indicates that Shane was diagnosed with Aspiration pneumonia with ICU admission. However, Shane attempted to rely on outdated information from his group disability insurer.

[240] The affidavit of Maggi Ho dated March 5, 2024, annexed to Shane's affidavit in chief is inadmissible. There is no consent between the parties to file the report at the trial. Apart from absence of consent, it is not clear to the court if Ms. Ho was a participant expert or litigation expert as defined under r. 20.2(1) of the *Family Law Rules*, O. Reg. 114/99. What is clear, however, is that the report, attached to Shane's affidavit, is inadmissible.

[241] According to Shane's affidavit, Ms. Ho is a social worker. The Ontario Court of Appeal has stated that non-party medical experts have special skill, knowledge, training, or experience. These experts may give opinion evidence if they have formed an opinion based on personal observations or examinations relating to the subject matter of the litigation for a purpose other than the litigation: *St. Marthe v. O'Connor*, 2021 ONCA 790, 159 O.R. (3d) 148, at para. 24; *Westerhof v. Gee Estate*, 2015 ONCA 206, 124 O.R. (3d) 721, at paras. 60-61, leave to appeal refused, [2015] S.C.C.A. No. 198.

[242] I am unsure whether Ms. Ho even possessed the requisite qualifications to provide the opinion that Shane sought to present to the court. Annexing the report to his affidavit is more than a technical breach of Rules. It shields Ms. Ho from cross-examination.

[243] I agree with the applicants that the outdated letter from Ms. Ho was not "proof of [Shane's] incapacitation." More may have also been required, that is an expert report, if the opinion related to a matter in the litigation. Shane argues though that the "applicants refused to accept the letter as proof of my incapacitation…" He indicated that he was "working on [his] health" and claimed that he was "unsure when [he] will obtain full time employment". Shane did not provide any updated medical evidence from any health care practitioner regarding his ability to work.

[244] Any expert who offers opinion evidence which extends beyond their own participation in the events at issue must comply with the rules of practice: see, *Westerhof*, at para. 63. In the case

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of *Westerhof*, the relevant rule is r. 53.03 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194; in the case of a family law proceeding, the rule is r. 20.2 of the *Family Law Rules*.

[245] At the trial Shane testified that because he was working only part time and was on disability, this had "drastically lowered his income." I note that counsel for the respondents also advised the court that Shane was not working. Shane himself testified that he was working but claimed he was working only haff day.

[246] Because of the changing of the Shane's significant credibility issues, I do not accept, at his word alone, that he was only working parttime at the time of the trial. I also find it surprising that his counsel would request accommodation for him and advise the court that he was not working. Indeed, even a letter from Canada Life in November 2024, just months before the trial started, clearly stated that Shane's gradual return to work had been approved. And, in his financial statement sworn December 2, 2024, shortly before the trial started, Shane stated that he had returned to part time duties on a gradual basis on June 12, 2024.

v. Shane has the means to pay support

[247] Shane has the means to pay. He is currently employed as head of business partnering and finance at Americas at Keywords Studios earning a salary of $210,000 and is eligible for a 20% performance bonus. He was previously employed at a software development company, EverCommerce, as a Chartered Professional Accountant and Director of Finance. He was earning approximately $195,000 annually.

[248] While Shane accuses Kiran of manipulating evidence, there is ample evidence to support the applicants' contention that he himself has done so.

[249] I also have grave concerns about his lack of disclosure about a corporation which he controls, and yet, has provided no financial disclosure. Kiran did not ask for the court to make any adverse inference because of non-disclosure on this issue.

[250] In his financial statement sworn on June 23, 2023, Shane stated that he had outstanding debts of $93,447.00. He stated in his sworn financial statement that he had been terminated from his employer "effective May 26, 2023." He did not show any amount for income, instead stating "No ROE yet." Nor did Shane identify in his June financial statement, about two weeks before the motion by Kiran for spousal support before Shore J., that his stepfather, Anthony Boland, had given him a loan of $150,000. The loan agreement tendered is dated May 8, 2023, which is three weeks before he swore the June financial statement, and two months before the motion for spousal support.

[251] Shane's stepfather did not testify. Mr. Boland's evidence about the loan was key evidence. Shane did not explain why his stepfather was not called to testify though presumably he was under Shane's control, and this is but one of two significant loans from him that Kiran has questioned.

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[252] In his updated financial statement sworn December 2, 2024, Shane showed income from several sources for the 2024 calendar year. This financial statement was in anticipation of the trial. Shane listed three significant debts: i) Anthony Boland (his stepfather) -$150,000; Ursula Gomes -$23,000; and Jason Zaman (his father) - $350,000, totaling $523,000 of loans from family members. However, in his affidavit sworn on November 28, 2024, less than a week before, Shane makes no mention of these significant loans. He does say that he has no means to may support because: "…I have now gone through a serious medical situation".

[253] Shane also deposed in that same affidavit, which provided his evidence in chief, for the trial: "I have sworn a Financial Statement which shows my yearly expenses will remain close to $100,000 per year." However, the financial statement sworn less than a week later shows his yearly expenses to be $212,782.80. There is no explanation by Shane as to why his yearly expenses doubled in a year. The applicants' assertion that Shane has manufactured evidence does find some support from Shane himself. For instance, in the very same affidavit he stated: "I will be forced to use capital or take loans to meet my expenses."

[254] Therefore, I do not find Shane's evidence of the three loans to be credible. The only person who testified about the loan in the financial statement was his father, Jason, and that evidence was elicited only through cross examination by counsel for the applicants.

[255] Although Jason says that he has loaned Shane $350,000 since the summer of 2024, he has difficulty recalling key details. He could not recall the date he prepared the loan documents and appeared confused about the timing of when it as prepared, and whether there were other advances made on the loan after the loan document was completed. He corrected his answers only after counsel for the applicants attempted to make sense of the answers. He initially testified that there was no more loan advance since that time, which contradicts his earlier evidence about the last advance.

[256] Just as Shane's affidavit does not mention the existence of a $350,000 loan from this father, similarly, Jason's affidavit sworn in December 2024, makes no mention of the loans to Shane. There is no documentary evidence from either Shane or Jason to corroborate the existence of the loans, though Jason testified it was by way cheques. There is no evidence of by way of cancelled cheque. This is surprising not only because of the significant sums involved but also because he testified that the first advance for $250,000 was "in the summertime last year somewhere" and the last advance of $100,000 was completed in October or November.

[257] At trial Scott testified that around the time he was getting married and wanted to buy a house, because Shane had the proceeds in stocks "we ended up taking a loan from my stepdad for $150,000." He claimed his brother has been paying the interest on that loan. He testified that "for mortgage purposes", there was a "gift letter" for the loan from his stepfather. Elsewhere, his evidence was that "loans were not allowed", so he obtained "a gift letter". Scott was not aware of what was remaining in the net proceeds because he went on to state: "and then the remaining bit - the Haig property, I think we got around $770,000, split 50/50 between my brother."

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[258] I note the alleged loan agreement is dated May 2023, between both respondents and Mr. Boland. Mr. Boland did not testify. The agreement is a shortly before the applicant Kiran's motion for supposal support. The applicants argue that this was an attempt by Shane to manufacture a scenario in which Scott received closer to 50% of the net sale proceeds, by claiming that he paid Scott an additional $150,000 as well as holding investments in his name for Scott's benefit. They argue that the "ruse was revealed when Shane's responses to undertakings were delivered and showed that the additional $150,000 paid to Scott did not come from Shane, but rather from their stepfather, Anthony Boland, by way of a loan as part of an unrelated transaction on May 18, 2023."

[259] I would therefore reject Shane's argument that he does not have the means to pay support.

VII. Quantum and duration of support

[260] Kiran is seeking retroactive and ongoing support. She argues that the interim support order is not commensurate with Shane's reported 2023 Line 15000 income of $228,867 and her reported 2023 Line 15000 income of $53,105.

[261] Kiran has provided ranges based on the SSAG formula mid-range monthly support based on the parties' Line 15000 income for the 2021 to 2024 tax years. Kiran is seeking spousal support, commencing January 1, 2025, in the amount of $3,588 based on the SSAG-mid range in light of their medium to long-term relationship, Kiran's need, her chronic endometriosis, and the illness exception. She argues that this would provide Shane with 63% of the net disposable income. She asks that no termination date should be fixed at this time. Kiran also seeks retroactive spousal support in the amount of $63,162 for the period from October 1, 2021, to December 31, 2024, based on her calculations set out in Appendix A.

[262] Neither party made submissions on whether Kiran was entitled to the benefit of any post separation increase in salary. At the time of the separation, Shane's Line 15000 income for 2021 was $155,746. The SSAG calculations used by Shane, assuming entitlement, all used his employment income of $228,867.

[263] Both the SSAGs and the jurisprudence caution against treating the mid-point as the default outcome: *Mason v. Mason*, 2016 ONCA 725, 403 D.L.R. (4th) 64, at para. 199.

[264] The goal of spousal support is to "equitably alleviate the economic consequences of the breakdown of the relationship": *Rioux*. The objectives of needs-based spousal support are set out at paragraph 46 in *Bracklow*.

[265] However, I do not find that this is merely a non-compensatory claim based upon the loss of the standard of living and the disparity of income between the parties. I have taken into consideration Kiran's chronic medical condition, the certainty of future surgery, in determining quantum and duration. I have placed less emphasis on any amount she may realize on account of her one-fifth interest in the Haig property because Shane has gone to great lengths to convince the court that that money no longer exits. In his Closing Submissions he stated:

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[266] Kiran has proposed amounts for support based on the *Spousal Support Advisory Guidelines.* The SSAGs were created under the Divorce Act but apply under provincial family law statutes. While not binding, the SSAGs should not be lightly departed from: *Slongo v. Slongo*, 2017 ONCA 272, 137 O.R. (3d) 654, at para. 105.

[267] The SSAGs are the presumptive starting point for awarding support: *McKinnon v. McKinnon*, 2018 ONCA 596, at para. 24; *Politis v. Politis*, 2021 ONCA 541, 158 O.R. (3d) 230, at para. 48.

[268] The entitlement question then informs the approach to be taken in applying the SSAGs: *Halliwell v. Halliwell*, 2017 ONCA 349, 138 O.R. (3d) 671, at para. 108. Kiran has a demonstrated a need for support. In this case, Kiran is entitled to non-compensatory support. The SSAGs provides a range of $2,693 to $3,590, with a median of $3,141, for a duration of seven to fourteen years for spousal support for Shane (37), earning $228,867 and Kiran (36) earning $75,000, with no children.

[269] However, as noted by Tulloch C.J.O., on behalf of the Court of Appeal, in *Politis*, at para. 28, referring to the Court's earlier decision in *Gray*, at para. 45, while the SSAGs formula offers a valuable tool in assessing a reasonable amount of spousal support, there are complicating factors that must be considered.

[270] Under the SSAGs, for a relationship/marriage of fourteen years, the range for the duration of spousal support is between seven and fourteen years from the date of separation. There may be circumstances where the court must consider certain exceptions to applying the SSAG formula such as debt payment, other support obligations, illness and disability.

[271] Kiran is relying on the illness exception. The SSAG User Manual in Chapter 12(d) states that:

> The illness and disability 'exception' will generally be relevant where the marriage is short-to medium length and there are no children in the care of the recipient, but the disability is long-term. These will be cases that fall under the without child support formula. The formulas produce ranges for amount and duration that may seem "too low" or "too short"…Faced with a recipient with a long-term disability, Canadian courts have responded with one of three approaches, here stated in declining order of frequency:
>
> (i) Lower Amount, Extended Duration: most courts will extend duration, even to be "indefinite", while keeping the amount within the range, at or near the low end;

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(ii) No Exception: a slightly smaller number of courts will fix an amount in the range, often towards the upper end, and use the maximum duration, even though that means support will end while need continues;

(iii) Increase Amount, Extend Duration: a much smaller group of courts will respond to the greater need in disability cases by increasing amount and extending duration".

[272] Kiran has not presented any medical evidence to indicate that she is disabled from working because of her chronic medical condition. While she has a longstanding history of surgeries, and recent complications from her last surgery, and surgery contemplated in her future, there is no evidence before me that the risks which she described will come to fruition. Shane does not challenge that she had complications from her last surgery and was off work for six months. He does not challenge that more surgery lies ahead in her future. He does challenge entitlement as a threshold issue.

[273] One of the purposes of a spousal support order is to relieve financial hardship. Kiran is employed and working, sometimes at multiple pharmacies. She is 37 years old. She can generate income of approximately $75,000 annually. With the award from her interest in the Haig property, she will see some financial relief. But she owed around $80,000, a large sum to her brother who she says was helping her cover her legal fees. She was also spending $550 on prescribed medication. Kiran was a generally credible and I accept that she has significant debts.

[274] Even when taking the award of her 1/5 interest in the Haig property into account, because of her significant debts and current financial circumstances, Kiran cannot be self-sufficient based on her own income or assets. However, a dependent spouse is generally not required to deplete their capital to support themselves: see *Goeldner v. Goeldner*, [2005] 194 O.A.C. 129, 15 R.F.L. (6th) 272; *Berger v. Berger*, 2016 ONCA 884, 85 R.F.L. (7th) 259.

[275] Another goal of spousal support is that a former spouse should fulfil the basic social obligation to provide support where they are able to do so, and the recipient spouse is not.

[276] Kiran has had a continued health challenges before and since separation, which has taken her out of the workforce. She is expected to have future surgery. She experienced complications from the surgery post separation and had a long and painful recovery. The timing of her future surgery, and any future complications are unknown. She has been alerted to some potential significant complications. What is known is that she will require, in the not-too-distant future, time from work for her future surgery or surgeries, and to convalesce.

[277] On the record before me, it is not clear when Kiran will be self-sufficient.

[278] Shore J. found, on a without prejudice basis, that Kiran "demonstrated a prima facie entitlement to non-compensatory spousal support and that it is reasonable for the respondent to pay interim spousal support in the sum of $1,500 per month." The spousal support amount was

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without prejudice. I am satisfied that retroactive support should be adjusted to October 1, 2021. I have considered the proposed mid-ranges for the retroactive support, the fluctuation in Shane's income, and the fact that Shane has not objected to the calculations, or the adjustments made by Kiran. I would therefore award the retroactive spousal support based on the calculations in Appendix A.

VIII. Life insurance

[279] Kiran seeks an order that Shane designate her as irrevocable beneficiary of his life insurance policies in an amount adequate to secure his spousal support obligations, pursuant to s. 34(1)(i) and (k) of the *Family Law Act*.

[280] Under section 34(1)(i), a court may make an interim or final order in an application for support "requiring that a spouse who has a policy of life insurance as defined under the Insurance Act designate the other spouse or child as the beneficiary irrevocably". Section 34 does not permit a court to require a spouse to obtain or reinstate life insurance: *Feinstat v. Feinstat*, 2012 ONSC 5339, 27 R.F.L. (7th) 317, at para. 15*; Katz*, at para. 57. As noted by the Court of Appeal in *Katz*: "No specific provision (or subsection) of s. 34 allows that": at para. 57 and 67.

[281] However, because the court may make an interim or final order under s. 34(1)(k) of the Act, "requiring the securing of payment under the order, by a charge on property or otherwise", and a support order under the *Family Law Act* is binding on spouse's estate, unless the order provides otherwise, the Court of Appeal concluded that the words "or otherwise" in s. 34(1)(k) is broad enough to permit the court to order a spouse to obtain life insurance policy to secure payment of the order following the payor spouse's death: *Katz*, at para. 69.

[282] But, the Court of Appeal has cautioned in *Katz* that that where no life insurance policy is in place, the court must exercise caution in requiring the payor spouse to purchase insurance: at para. 74. In such a case, evidence would be required of Shane's insurability, the amount, and cost of the available insurance: *Katz*. In this case, there is no evidence before me that Shane has any life insurance policy, the face value of the policy, or any evidence that he would be able to obtain such a policy and, if so, in what amount.

[283] Therefore, the order sought is denied.

IX. Medical and Dental Coverage

[284] Kiran seeks an order requiring Shane to maintain her on his medical, dental, and extended health plan coverage.

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[285] Under s. 34(1)(j) of the *Family Law Act*, the court has discretion in making a support order "*requiring that a spouse who has an interest in a…. benefit plan designate the other spouse….as beneficiary under the plan and not change that designation*" (emphasis added).

[286] Shane points to the fact that after separation, Kiran advised him to take her coverage in 2021. That may well be. These orders are routinely granted. She has had to pay medical expenses in the amount of $550 a monthly. In Kiran's case, because of her longstanding medical issues and anticipated surgeries, such an order is warranted.

X. Are the either of the parties entitled to the miscellaneous relief?

[287] Trials are usually about determining the substantive issues framed by the pleadings.

[288] In their closing submissions, the applicants sought an order for the release of $100,000 held in trust by Epstein and Associates.

[289] I must decline to make such an order. Neither parties made any oral submissions on this issue nor provided the court with the authority to make the order sought nor did I hear submissions on the question.

[290] In turn the respondents also sought, in their Closing Submissions, an order requiring the applicants' "to remove the registered order against the title of the property municipally known as 52 Mac Campbell Way, Bradford, Ontario L3Z 4M7…."

[291] This question was not before me. No oral submissions were made to the court on this question. I received no authority to address my jurisdiction to make the order sought.

[292] I decline to make such an order, without prejudice to the applicants right to seek any appropriate relief in the future.

XI. Prejudgment Interest

[293] The applicants seek an award of prejudgment interest calculated from the date the cause of action arose to the date of the order pursuant to s. 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43. The respondents have not made any submissions with respect to the applicants' claim for prejudgment interest.

[294] The granting of or denial of prejudgment interest is discretionary: *Courts of Justice Act*, s. 128; *Muraven v. Muraven*, 2021 ONCA 657 at para. 16.

[295] The applicant Kirandeep Kandal is entitled to prejudgment interest on retroactive spousal support, calculated in accordance with ss. 128(1) and 128(3) of the *Courts of Justice Act.*

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[296] Each of the applicant is entitled to prejudgment interest on the monetary award for unjust enrichment in the amount of $155,000 from the date cause of action arose to the date of the judgment.

[297] If the parties are not able to resolve the quantum of prejudgment interest and wish to make further submissions on the date on the effective date when prejudgment interest starts to run on the monetary awards, the rate of interest, and the calculation, counsel may schedule a virtual Chambers Appointment before me to settle the quantum.

XII. Disposition

[298] For the reasons above, I make the following orders:

i. The respondent, Shane Zaman, shall pay retroactive spousal support to Kirandeep Kanwal, in the amount of $63,162 for the period October 1, 2021, to December 31, 2024, less any additional credits for support being paid by virtue of the order of Shore J.

ii. The respondent, Shane Zaman, shall pay retroactive spousal support to Kirandeep Kanwal, in the amount of $30,000 for the period January 1, 2025, to October 1, 2025, less any credit for support being paid by virtue of the order of Shore J.

iii. The respondent, Shane Zaman, shall pay monthly spousal support to the applicant, Kirandeep Kanwal, in the amount of $3,000 a month, and continuing the first day of each month until September 1, 2032, when spousal support may be reviewed at the instigation of either party.

iv. Unless the order is withdrawn from the office of the Director, Family Responsibility Office, it shall be enforced by the director, and amounts owing under the order, shall be paid to the director, who shall pay them to the person to whom they are owed.

v. The respondent, Shane Zaman, shall maintain the applicant, Kirandeep Kanwal, on his health care benefits though his employment until spousal support ends or as long as the group insurer allows coverage.

vi. The respondents, Shane Zaman and Scott Zaman, held in trust, the one-fifth beneficial interest of the applicants, Kirandeep Kanwal, Sundeep Kanwal and Kanwaljit Kanwal, in the property municipally known as 4-1133 Haig Blvd., Mississauga, Ontario.

vii. The respondents, Shane Zaman and Scott Zaman, are jointly and severally liable to pay the applicant, Kirandeep Kanwal, $155,000.

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viii. The respondents, Shane Zaman and Scott Zaman, are jointly and severally liable to pay the applicant, Sundeep Kanwal, $155,000.

ix. The respondents, Shane Zaman and Scott Zaman, are jointly and severally liable to pay the applicant, Kanwaljit Kanwal $155,000.

x. The respondents, Shane Zaman, shall pay the applicant Kirandeep Kandal prejudgment interest on retroactive spousal support in accordance with ss. 128(1) and 128(3) of the *Courts of Justice Act*.

xi. The respondents, Shane Zaman and Scott Zaman, are jointly and severally liable to pay the applicant, Kirandeep Kanwal, prejudgment interest on the award for unjust enrichment in the amount of $155,000 from the date cause of action arose to the date of judgment.

xii. The respondents, Shane Zaman and Scott Zaman, are jointly and severally liable to pay the applicant, Sundeep Kanwal, prejudgment interest on the award for unjust enrichment in the amount of $155,000 from the date cause of action arose to the date of judgment.

xiii. The respondents, Shane Zaman and Scott Zaman, are jointly and severally liable to pay the applicant, Kanwaljit Kanwal for prejudgment interest on the award for unjust enrichment in the amount of $155,000 from the date cause of action arose to the date of judgment.

xiv. The applicants are entitled to post judgment interest in accordance with s. 129 of the *Courts of Justice Act*.

XIII. **Costs**

[299] If the parties are not able to agree on the calculations and credits for retroactive support, or the calculation of prejudgment interest, counsel may contact my judicial assistant, to schedule a date and time to address these issues.

[300] If there is no dispute regarding prejudgment interest, I encourage the parties to attempt to resolve costs. If they are not able to do so, the following schedule will govern:

i. The applicants shall deliver costs submissions, including a Bill of Costs, Costs Outline, and dockets (or computer-generated dockets) no later than 30 days from the date of these Reasons.

ii. The respondents shall deliver their responding submissions and supporting materials within 30 days thereafter.

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iii. The costs submissions, excluding the Costs Outline, Bill of Costs, and offers to settle, must be no longer than 10 pages, double-spaced. Costs submissions should also be provided in Word format and emailed to my judicial assistant.

A.P. Ramsay, J

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Released: October 9, 2025

Appendix A

Year	**Shane's line 15000 income**	**Kiran's line 15000 income**	**Mid Range SSAG**	**Amount Paid**	**Total Amount Owed/Credit**
2021 Oct. to Dec.	$155,746	$75,133	$1,646 gross $1,022 net	$0	$3,066
2022 Jan. to Dec.	$199,431	$64,855	$2,748 gross $1,654.50 net	$0	$19,854
2023 Jan. to Dec.	$228,867	$53,105	$3,588 gross $2,177.50 net	$1,500 gross $912 net	$26,130net owing $10,944net paid $15,186 owing
2024 Jan. to Dec.	$228,867	$53,105	$3,588 gross	$1,500 gross	$43,056 gross owing $18,000 gross paid $25,056 owing (taxable/deductible)
TOTAL Retro					**$63,162**

Support Owing		

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CITATION: Kanwal et Al v. Zaman et Al, 2025 ONSC 5274
COURT FILE NO.: FS-22-0032759
DATE: 20250915

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ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

KANWAL ET AL

Applicant

– and –

ZAMAN ET AL

Respondent

REASONS FOR JUDGMENT

A.P. Ramsay, J

Released: October 9, 2025