

Chandra v. Chandra

Shakti Chandra (Plaintiff) and Ranjit Chandra (Defendant); Shakti Chandra
(Petitioner) and Ranjit Chandra (Respondent)

Newfoundland Unified Family Court

Wells J.

Judgment: December 11, 2000
Docket: 0680/94, 1002, Divorce Registry 94/07335

Counsel: **David C. Day**, Q.C., for Plaintiff / Petitioner

Ms Glenda Best, for Defendant / Respondent

Cases considered by Wells J.:

[Bracklow v. Bracklow, 169 D.L.R. \(4th\) 577, 236 N.R. 79, 44 R.F.L. \(4th\) 1, 120 B.C.A.C. 211, 196 W.A.C. 211, \[1999\] 1 S.C.R. 420, 63 B.C.L.R. \(3d\) 77, \[1999\] 8 W.W.R. 740 \(S.C.C.\)](#) -- considered

[Burnett v. Burnett \(1999\), 50 R.F.L. \(4th\) 223 \(Ont. S.C.J.\)](#) -- applied

[Cunha v. Cunha \(1994\), 99 B.C.L.R. \(2d\) 93 \(B.C. S.C.\)](#) -- applied

[Moge v. Moge \(1992\), \[1993\] 1 W.W.R. 481, 99 D.L.R. \(4th\) 456, \[1992\] 3 S.C.R. 813, 81 Man. R. \(2d\) 161, 30 W.A.C. 161, 43 R.F.L. \(3d\) 345, 145 N.R. 1, \[1993\] R.D.F. 168 \(S.C.C.\)](#) -- considered

Statutes considered:

Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.)

s. 17 -- referred to

s. 17(7)(b) -- considered

Family Law Act, R.S.N. 1990, c. F-2

Generally -- referred to

s. 18(1)(c) "matrimonial assets -- considered

s. 18(3) -- considered

Rules considered:

Rules of the Supreme Court, 1986, S.N. 1986, c. 42, Sched. D

R. 35 -- referred to

R. 35.01(1) -- referred to

RULING on division of matrimonial property, spousal support, and child support.

Wells J.:

BACKGROUND

1 The parties are medical doctors who met in September 1972 at the AIIMS medical school in New Delhi, India. At that time the defendant Ranjit Chandra had

completed his medical studies and was teaching at the school. Shakti Chandra was a medical resident and was in fact a student in one of the classes taught by Ranjit Chandra. They married on October 14th of that year.

2 Ranjit Chandra had been previously married to a lady who died prematurely, leaving him and two small daughters. Immediately upon her marriage Shakti Chandra assumed the role of wife and de facto mother of her husband's two daughters from the previous marriage. Although Shakti Chandra had household help, she was principally responsible for the overall upbringing and care of the children and the running of the house.

3 Although able to cope with her medical studies prior to marriage, it appears that she had difficulty in doing so afterwards. She changed her course of study from an obstetrical to a radiology residency, but these studies did not go well and for a variety of reasons she ceased to be a medical resident in the summer of 1973. In January 1974 she gave birth to her first child and in February of the same year the couple and their three daughters moved to St. John's, Newfoundland, where Ranjit Chandra had obtained a teaching position at the Memorial University Medical School.

4 Dr. Ranjit Chandra quickly passed all requisite Canadian examinations including his fellowship. He conducted research, practised in the field of pediatrics and immunology and became prominent in the field of nutrition. During the 1980's he began to travel extensively and ultimately worldwide, conducting and participating in research and consulting and speaking at various medical venues. It is fair to say that during the 1980's he achieved a worldwide

reputation in his field and was in great demand as a speaker and consultant. The evidence shows that in the early '90's he was away from Newfoundland as much as 120 days per year.

5 In the 1970's and 80's Shakti Chandra was the primary caregiver to the three children and manager of the household and in due course also took paid employment. A fourth child was born in 1981.

6 In 1974 and again in 1976 Shakti Chandra wrote the exams to qualify as a medical doctor in Canada, but was unsuccessful. She entered a Master of Science program but in July 1976, difficulties over her thesis prevented her from obtaining that degree. She obtained full-time temporary employment at Memorial University Medical School, taught at Tufts University in the United States when the family moved there temporarily, and ultimately obtained full-time permanent employment as an assistant professor of anatomy at the medical school in St. John's where she continues to teach, having now achieved the rank of associate professor and become well regarded in her field.

7 I am of the opinion, based on the many weeks of evidence spread over some six years of trial, that the marriage came under serious stress in the 1980's, which stress ultimately led to Shakti Chandra's terminating the marital relationship and leaving the matrimonial home on November 23rd, 1993.

8 Earlier in 1993 after their marital difficulties had become acute, the couple sought the assistance of a mediator, but their differences were not resolved.

9 Ranjit Chandra was away in India when Shakti Chandra left the matrimonial home. I am satisfied that a number of factors were involved in her decision. Included factors may have been Ranjit Chandra's frequent travels outside of the country, the strains of caring for the home and family together with the demands of her own work over the years. Shakti Chandra herself chose to be absent from the home for the academic year 1991/1992 and taught in the United States while on a sabbatical from Memorial. Later she involved herself in a number of hobbies and other interests which took her out of the home in addition to her work-related absences.

10 In his evidence Ranjit Chandra detailed considerable dissatisfaction with his wife during the marriage. His criticism involved what he saw as her failure to achieve sufficient professional success and a commensurate income, criticism of her parenting skills, criticism of her attitudes and at times her spending.

11 Though the word "control" was not used in her evidence, I am of the opinion from the evidence as a whole that Shakti Chandra was unhappy with the degree of financial control which her husband exercised within the marriage. The evidence shows that his financial control was virtually total. In the final years of the marriage she made numerous requests for financial information as to their assets and net worth. These requests were answered to some degree, but not in detail.

12 The principal issues at trial involve the matrimonial home, occupational rent, the division

of specific property, financial assets, child support and compensatory spousal support. Many of these issues have been subsumed in the larger issue of how much money

was accumulated over the years, how it had been accumulated, where it had been accumulated, where it was located, where it is now and how much of it is liable to division as matrimonial assets.

13 Because Ranjit Chandra was in full control of all financial matters, Shakti Chandra believed prior to separation, that in order for her to ascertain how much money there was and where it was, it was necessary to take extraordinary measures.

14 She decided therefore while Ranjit Chandra was in India in the fall of 1993, to copy as many as she could of the papers which he had in his possession in the matrimonial home. She took numerous boxes of documents, copied them and returned the originals to the home. The process took many days and provided her with hundreds of banking and other documents which were at that stage, raw data only, in respect of family and particularly of her husband's, finances.

15 After separation, when she was able to examine the data, she found that it referred to numerous accounts and financial holdings of which she had some knowledge and a large number of others which had been unknown to her.

16 The total face value of the referenced bank accounts appears to have exceeded two and one-half million dollars but the actual value was not as high, by reason of the fact that some of the entries for different accounts referred in fact to the same monies. The reason for the duplication is that Ranjit Chandra, who controlled and managed all of the accounts, transferred money from one account to another, from one bank to another, from one country to another, and from one currency to another, largely into and out of Canadian dollars, U.S. dollars and pounds sterling. It follows that the multiplicity of transactions, the incompleteness of the bank records, the failure of Ranjit Chandra so far as we know to keep or disclose accounting records and the absence of ledgers or other statements of account, caused the principal focus of the trial to become financial. The process became an effort to determine how much was or had been in the various accounts or other investment vehicles and whether or not they were matrimonial assets.

17 Throughout the past six years, there have been requests by Shakti Chandra and her counsel for disclosure, some of which requests were reinforced by court orders, but neither requests nor court orders have been more than partially successful. In that sense, the trial has not enabled the court to arrive at definitive totals of personal funds and other funds which Ranjit Chandra alleges to be trust funds.

18 Aside from the matrimonial home and its contents, over which there is also a dispute, there was a condominium in Ontario, two "time-share" apartments in the United States and various items of jewellery allegedly belonging to Ranjit Chandra's former wife. Also in

dispute in the evidence as to about 120 bank accounts which were located at one time or another, in:

- (a) St. John's
- (b) Ireland
- (c) New Delhi, India
- (d) the United States
- (e) England
- (f) Jersey, Channel Islands
- (g) Switzerland
- (h) Isle of Man
- (i) Copenhagen, Denmark

19 In addition to bank accounts there were documents relating to

- (a) pensions
- (b) registered retirement savings plans
- (c) share certificates
- (d) Canada Savings Bonds
- (e) investment plans
- (f) equity, income, bond and realty funds
- (g) educational plans,

as well there appear to have been further investments in India, England, Luxembourg, the Channel Islands and Canada, as well as gold and silver certificates, Canada Savings Bonds, shares and a variety of other savings instruments.

20 I understand from the evidence that at no time did Ranjit Chandra ever employ accountants to keep ledgers or prepare accounts, or in any way to verify his dealings with financial assets. Shakti Chandra did not engage an accountant to organize the raw financial data in preparation for the litigation, neither did her former husband. There is no doubt that she spent hundreds of hours

organizing the financial data, as did her counsel, nevertheless, the failure by both parties to engage accounting expertise at any stage of the proceedings, or ever insofar as I know, has resulted in a difficult problem for the court.

21 I raised the foregoing problem with counsel at trial, but accountants were not engaged. I may yet have to make an order, as I am permitted to do under rule 35 of the Rules of Court, for the appointment of an expert to assist the court with the financial data. To do a precise accounting on a project of this magnitude may be impossible and Ranjit Chandra has said in his evidence that there is little if any money left, even for the purposes of division. In reply to questions on that point, he said that he spent it on educating the children. Nevertheless it may become necessary for me to order expert assistance to help me to arrive at factual determinations on what I would describe as a labyrinth of bank accounts and financial transactions.

22 It was Ranjit Chandra's practice to open and maintain most bank accounts in his own name and occasionally in his wife's name, jointly with one or another of his children. His expressed reason for doing so was that if one account holder were to die, the other would have access to the funds in the account without the formality of probate. That practice extended also to purchases of other property. His practice was therefore, to deposit significant amounts of money in such joint accounts with one or the other of his children for the child to declare and pay income tax on the interest earned. In other cases funds were deposited in the Chandra family trust, in family companies, or in the names of the children alone. It appears that about \$290,000 was or is being held in accounts of the children in their individual names and it is the parties wish that these sums not be divided as matrimonial assets, but remain in the children's hands. There is little doubt that these sums were, or would have been, matrimonial assets had they not been distributed to the children.

23 Other sums held in the bank accounts of family owned companies and a family foundation were wholly controlled and managed by Ranjit Chandra. Joint accounts in the names of the parties themselves, were few in number. All tax returns within the family including those of their companies, were prepared by Ranjit Chandra and signed upon request, by his wife and children.

24 The large sums of money held by Ranjit Chandra and other family members including Shakti Chandra, could not have been wholly obtained from the income which the parties earned from teaching or the practice of medicine in Newfoundland. Their combined incomes from teaching and practice in this province were less than \$200,000 per year before taxes, prior to and including 1993.

25 Shakti Chandra said in her evidence that a large proportion of the "family" monies were generated by Ranjit Chandra from honoraria, which were consulting or speaking fees, paid to him on his worldwide engagements. Ranjit Chandra denies that he received anything more than out-of-pocket expenses for these engagements.

26 Notes prepared by Ranjit Chandra in response to inquiries made by his wife prior to separation, indicate that the couples combined assets were over one million dollars. His evidence

in court is that funds held in offshore accounts, were in reality trust funds held by him for an organization named International Nutritional Immunology Foundation, (INIF) headquartered in Liechtenstein, for which foundation he acted as a disbursing agent of research funds which it had allocated to various research projects located in different countries. Shakti Chandra says that she had not heard of INIF, prior to separation.

27 The Family Law Act applies to all matrimonial assets. The difficulty, which arises here at every turn, is in deciding which monetary assets were matrimonial assets at the time of separation and which, if any, were held in trust by Ranjit Chandra for INIF and in addition, the value of other assets.

MATRIMONIAL ASSETS

28 Matrimonial assets are defined in section 18 of the Family Law Act:

"18 (c) "matrimonial assets" includes all real and personal property acquired by either or both spouses during the marriage, with the exception of,

(i) gifts, inheritances, trusts or settlements received by 1 spouse from a person other than the other spouse and an appreciation in value of them during the marriage,

(ii) personal injury awards, except the portions of the award that represents compensation for economic loss,

(iii) personal effects,

(iv) business assets,

(v) property exempted under a marriage contract or separation agreement,

(vi) family heirlooms, and

(vii) real and personal property acquired after separation."

29 The definition of matrimonial assets clearly encompasses all of the assets acquired during the marriage with specified exceptions. Here, all assets save certain personal effects and family items were acquired after marriage and in fact the evidence indicates without contradiction, that all significant financial assets were acquired not only after the marriage, but after the parties moved to Canada.

30 There has been no claim by Ranjit Chandra that any assets except the Mississauga property, are business assets, or that he was engaged in any businesses. In fact he denies receiving honoraria and has not referenced any entitlement to payment for his INIF activities.

31 Section 18(3) says:

"Where before or after July 1, 1980 property owned by a corporation would, if it were owned by a spouse, be a matrimonial asset, then shares in the corporation owned by the spouse having a market value equal to the value of the benefit the spouse has in respect of the property are matrimonial assets."

32 Shakti Chandra held shares in the Chandra companies, but Ranjit Chandra caused these to be taken out of her name by a series of unilateral decisions in which she played no part and which she learned about only after the event. Furthermore these companies generated little income and in fact were repositories for substantial sums which came from other sources.

33 The accounting difficulty which faces me is to determine how much money was being held in bank accounts at the time of separation and the sources and status of these funds. The difficulty arises because Ranjit Chandra has produced no accounting records nor has he complied fully with disclosure requirements and being the only person capable of fully explaining his financial dealings, he has failed to do so. Although all of the accounts were managed by him, he has produced little documentary evidence to assist in the evaluation of the raw data to which I have referred.

The Matrimonial Home

34 The matrimonial home has been occupied exclusively by the husband or other family members with his permission, since the separation of November 23rd, 1993. Since that time Shakti Chandra has lived in rented accommodation which she has provided for herself. She has received no financial help of any kind from Ranjit Chandra, but she did withdraw certain sums from family bank accounts to which she had access.

35 In the spring of 2000 the parties agreed that the home should be sold and it was sold by court order in November 2000. It was also ordered that the net proceeds of the sale, being \$193,117.22, would be held at interest pending further order.

36 In accordance with the provisions of the Family Law Act, I propose to make an equal division of the proceeds of the sale, after expenses, with the proviso that should a balancing payment be found to be payable by one party to the other in the final division of assets and liabilities and if funds to meet a balancing payment are not otherwise available, then the share of the proceeds of the home belonging to the obligated party, will be applied to such balancing payment and/or to any order of costs, as the case may be.

Contents

37 The division of the contents of the matrimonial home have been disputed throughout the course of the trial and no resolution has been achieved. When Shakti Chandra left the matrimonial home she took with her a number of items of furniture, appliances and equipment for her apartment. Her evidence is that there were ample furnishings, appliances and equipment

left in the matrimonial home to enable Ranjit Chandra, his late father and any child who might be at home, to live there comfortably.

38 Ranjit Chandra's evidence is that Shakti Chandra took more than an equal share and by so doing adversely affected his ability to live in the home. That argument has not been resolved. On the evidence, both oral and documentary, including the lists of items which she says she took, I have concluded that Shakti Chandra on a balance of probabilities took approximately an equal share.

39 Shakti Chandra argues that the division was equitable and should be confirmed by the court. Ranjit Chandra argues that all contents should now be sold and the proceeds equally divided.

40 In my opinion the latter solution would be prejudicial to Shakti Chandra. The prices likely to be obtained for used household goods would represent only a fraction of the cost of purchasing new furniture and appliances. Shakti Chandra is committed to her permanent position of associate professor at the medical school. Ranjit Chandra informed the court in the spring of 2000, that he has no plans to live in Canada in the foreseeable future and according to counsel, has ceased to be a Canadian resident for income tax purposes.

41 It is obvious that his proposed solution vis-à-vis contents might benefit him marginally, while imposing considerable financial hardship on Shakti Chandra. It is impossible for me to resolve the dispute on the basis of the evidence, which largely consists of charges, countercharges and denials. It will therefore be ordered that the *de facto* division of household contents be confirmed as it presently is.

Personal Items, Jewellery belonging

to Ranjit Chandra's former wife

42 Ranjit Chandra says that Shakti Chandra took various personal items of his from the matrimonial home including items of clothing and \$70,000/\$80,000 worth of gold jewellery which belonged to his former wife. These allegations in respect of his former wife's property are vigorously denied. Shakti Chandra does admit to taking certain personal items which apparently belong to Ranjit Chandra such as briefcases. It has already been ordered that these be returned. I have considerable doubt that Shakti Chandra has retained Ranjit Chandra's former wife's jewellery and saris. The evidence is so imprecise that it does not permit me to make any order on that subject. I have seen no list of the jewellery, no insurance appraisals or supporting documentation of any kind. The evidence consists only of allegations and denials.

43 There was much argument over a piano, which both agree will become or is, the property of one of their daughters. Shakti Chandra took the piano from the matrimonial home and has not returned it. The daughter who is entitled to it was not living at home when the separation occurred. I have ordered that Shakti Chandra should deal with the piano as directed by the daughter to whom it belongs.

Other Homes

44 At the time of separation Ranjit Chandra owned a residential property in Mississauga, Ontario, which property was held in his name and the name of one of his daughters. In 1994 he sold the property for \$92,116.02 less the obligation under a demand loan which replaced an earlier mortgage. The demand loan was \$83,146.00 thus there was an apparent equity of \$8,970.02, or, on an equal division, \$4,485.01 each. Ranjit Chandra claims that there was a substantial loss when the property was sold and that in any event it was not matrimonial property, but a business venture on his part. There is no supporting evidence for that argument.

45 I am satisfied that the Mississauga property was a matrimonial property and therefore subject to division. The fact that a daughter was named as a joint owner was not in my opinion a factor of any significance, because there is no evidence that she could or did have any financial or other interest in the property and was simply named as a joint owner by her father. If the property was purchased using matrimonial funds as a down payment, which is probable, then Shakti Chandra has already borne the loss on the transaction equally with her former spouse.

United States Properties

46 These consist of two "time-share" properties, one in Massachusetts the other in Florida, and they entitle the holders to the right to occupy the properties for one week of each year. The Florida time share was bought at a cost of about \$5,000 more than was the Massachusetts property. Shakti Chandra argues that she should retain the Florida time share and that Ranjit Chandra should retain the other. I have no evidence as to the value of either of the time shares at the date of separation. Thus as a practical solution I propose to set off the probable greater value of the Florida time share (\$5,000) against any sum to which Shakti Chandra may have been entitled from the Mississauga property.

47 Shakti Chandra will thus retain the Florida time share and Ranjit Chandra the time share in Massachusetts.

Land in India

48 On the evidence it is impossible to come to a decision as to the values of these properties. One of them is agricultural property inherited by Ranjit Chandra. In my opinion

it is not subject to division, nor is a flat in an apartment complex in Bombay, inherited by Shakti Chandra.

49 Prior to moving to Canada and apparently before the marriage, Ranjit Chandra arranged to purchase an apartment in the medical school complex (AIIMS) in New Delhi and that apartment was paid off during the marriage, though never lived in by the parties. Later they either purchased, or contracted to purchase, a piece of vacant building land in a Delhi suburb. Ranjit Chandra caused the land, or the right to it, to vest in him and one of his daughters.

50 Shakti Chandra suggests that I order an appraisal and a division based on the values of the foregoing properties. I am not prepared to order an appraisal, but if an appraisal is not done and if the parties cannot agree on values, I will decide the matter on the basis of such evidence as I have.

Spousal Support/Divorce Act

51 The Divorce Act says at Section 17(7)(b):

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

52 The foregoing requirements were considered by the Supreme Court in *Moge v. Moge*, [\[1992\] 3 S.C.R. 813](#) (S.C.C.):

"Under the 1985 Divorce Act, the "means and needs" test is no longer the exclusive criterion for support. All four of the objectives defined in ss. 15(7) and 17(7) of the Act must be taken into account when spousal support is claimed or an order for spousal support is sought to be varied. No single objective is paramount. With these objectives, Parliament intended that support reflect the diverse dynamics of many unique marital relationships. The objective of self-sufficiency is only one of the objectives enumerated in the sections and there is no indication that it should be given priority in determining the right to, quantum and duration of spousal support. ...

The support provisions of the 1985 Divorce Act are intended to deal with the economic consequences, for both parties, of the marriage or its breakdown. What the Act requires is a fair and equitable distribution of resources to alleviate these consequences regardless of gender. Under this approach, the distinction between traditional and modern marriages may not be as useful as courts have indicated so far. The doctrine of equitable sharing of the economic consequences of the marriage or its breakdown, which the Act promotes, recognizes and accounts for the economic disadvantages or advantages flowing from the role adopted by the spouses in the marriage. ...

The exercise of judicial discretion in ordering support requires an examination of all four objectives set out in s. 17(7) of the Act in order to achieve equitable sharing of the economic consequences of marriage or its breakdown. In the proper exercise of their discretion, courts must be alert to a wide variety of factors and decisions made in the family interest during the marriage which have the effect of disadvantaging one spouse or benefiting the other upon its dissolution. While the most significant economic consequence of marriage or marriage breakdown usually arises from the birth of children, exacerbated by the need to accommodate and integrate those demands with the requirements of paid employment, the financial consequences of the end of a marriage

extend well beyond the simple loss of future earning power or losses directly related to the care of children. ...

... 17(7) are met: (1) the wife has sustained a substantial economic disadvantage "from the marriage or its breakdown" (s. 17(7)(a)); (2) the wife's long-term responsibility for the upbringing of the children of the marriage after the spousal separation in 1973 has had an impact on her ability to earn an income (s. 17(7)(b)); (3) the wife continues to suffer economic hardship as a result of the "breakdown of her marriage" ... These findings are irrefutable even in the absence of expert evidence relating to the appropriate quantification of spousal support."

Per Gonthier and McLachlin JJ.:

"In the context of s. 17(7), what is required is a common-sense, non-technical view of causation. The legal or ultimate burden remains with the plaintiff, but in the absence of evidence to the contrary adduced by the defendant, an inference of causation

may be drawn although positive or scientific proof of causation has not been adduced.

Although evidence of the spouses' respective contributions and gains from the marriage is necessary under s. 17(7)(a) of the Act, the evidence need not be detailed, in the sense of a year-by-year chronology of sacrifices and gains. In most cases it will suffice if the parties tell the judge in a general way what each did. That will allow the judge to get very quickly an accurate picture of the sacrifices, contributions and advantages relevant to determining compensation under s. 17(7)(a), making detailed quantification and expert evidence unnecessary."

53 The Supreme Court again considered these matters in *Bracklow v. Bracklow*, [\[1999\] 1 S.C.R. 420](#) (S.C.C.):

"In analysing the respective obligations of husbands and wives, it is critical to distinguish between the roles of the spouses during marriage and the different roles that are assumed upon marriage breakdown. Absent indications to the contrary, when two spouses are married, they owe each other a mutual duty to support. Marriage is a joint endeavour. When a marriage breaks down, however, the presumption of mutual support no longer applies. This is reflected in the Divorce Act and the provincial support statutes, which require a court to determine issues of support by reference to a variety of objectives and factors. A general presumption of post-marital support would be inappropriate because of the presence of two "competing" theories of marriage and post-marital obligation. The independent, clean-break model of marriage provides the theoretical basis for compensatory spousal support. The basic social obligation model undergirds "non-

compensatory" support. Both models of marriage and their corresponding theories of spousal support permit individual variation by contract, and hence provide a third basis for a legal entitlement to support. Parliament and the provincial legislatures, through their respective statutes, have acknowledged both models.

... In determining a support dispute, the starting point is the objective which the Divorce Act, in s. 15.2(6), stipulates the support order should serve. No single objective is paramount; all must be borne in mind. ... the court must consider the factors set out in s. 15.2(4) of the Divorce Act, which include non-compensatory factors, like need and means. There is no hard and fast rule. The judge must look at all the factors in the light of the stipulated objectives of support, and exercise his or her discretion in a manner that equitably alleviates the adverse consequences of the marriage breakdown and strikes the balance that best achieves justice in the particular case. The Divorce Act is not confined to one type of marriage or one type of support."

54 The parties were married in 1972 and separated in 1993. At the time of the marriage Shakti Chandra was a medical resident. Upon marriage she assumed the primary care of two small children and within two years the care of a third child. It may be that her financial circumstances improved upon marriage, but her medical residency and the work and studies connected with it were probably adversely affected by the adjustment to marriage and by the responsibility for children.

55 In a total time of about 16 months, she had married, acquired two stepchildren, had a child and the family had moved to another country where she did not have family support. The new baby was one month old at the time of the move and she did not have the amount of paid and family help that she had in India. Also, she was required to cope with the stresses of adapting to a new country with a very different climate and culture.

56 Ranjit Chandra is critical of her failure to pass the Canadian qualifying medical examinations and her failure to achieve specialist status and thus to generate the high income that could be expected to follow. However she did at the earliest opportunity obtain employment at the medical school, which she continued throughout and in which she has advanced, despite her continued home and family responsibilities. Furthermore, as Ranjit Chandra became more and more engaged in his very successful professional activities, Shakti Chandra was required to cope alone for as much as 120 days per year, while her husband travelled worldwide on speaking tours and research projects.

57 Shakti Chandra has, along with her other responsibilities, become an associate professor, taught abroad on occasion and accepted other duties involving examinations for admission to Canada by physicians who have qualified elsewhere.

58 On the evidence, I am satisfied that her abilities and her capacity for effort are high and that she is strongly motivated. Her progress has continued since separation and divorce and she now earns approximately \$60,000 per year.

59 It is impossible to know with certainty the extent to which the marriage impacted on her medical studies but I am of the opinion that it did. I find therefore that she is entitled to spousal support in an amount which will reflect the disadvantages contemplated by Section 17 of the Divorce Act. Nevertheless a monetary award should take into consideration some of the economic advantages attributable to the marriage and any other sums which she may receive as a result of these proceedings. She received no support from Ranjit Chandra following separation and her income of approximately \$45,000 at that time did not permit her to live in the same style and manner as she lived before separation. However, her situation was eased financially by her ability to access money from certain of the matrimonial bank accounts, which she did in the amount of at least \$126,095.

60 In all of the circumstances I believe that a lump sum award is the most appropriate way in which to address spousal support and accordingly I award the sum of \$50,000.

Occupational Rent

61 From the time of separation on November 23rd, 1993, until the closing date of the sale, which was ordered to be on October 31st, 2000, Ranjit Chandra has had full use and control of the matrimonial home which is located in a superior residential area of St. John's.

62 Shakti Chandra claims occupational rent for the period of Ranjit Chandra's exclusive occupancy and control of the matrimonial home. During that time she has housed herself in rented accommodation, first in an apartment and later in a rented home on a suburban residential street.

63 Occupational rent is a discretionary remedy which I find is appropriate to award to her and thus I find that she is properly entitled to occupational rent for a period from the time of separation to the end of October, 2000, a period which I calculate to be 83 months.

64 Ranjit Chandra has paid all municipal taxes and insurance costs since separation. Counsel for Ranjit Chandra suggests \$1,200 per month is a proper rental value and that sum appears to be reasonable. Shakti Chandra suggests an appraisal be conducted but it has not been done and at this stage I do not think it necessary.

65 The gross amount of the occupational rent will therefore be one-half of \$99,600, which is \$49,800, less \$8,300 being one-half of the insurance and municipal taxes, for a net figure of \$41,500 due to Shakti Chandra under this heading.

Child Support

66 At the time of separation, the children ranged in age from approximately 24 years to 12 years. The second youngest was aged 19 years. Both Shakti Chandra and Ranjit Chandra acknowledge an obligation to contribute to the children's support but Shakti Chandra would limit her obligations to reasonable support for the two younger children.

67 The problem of support is complicated by Ranjit Chandra's expenditures of very large sums on the children's maintenance and education, without reference to his former wife and without verification for the court. Ranjit Chandra's unsubstantiated evidence is that in the past seven years he has spent at least \$250,000 on the children's education alone and thousands more on maintenance and discretionary travel. The travel involved accompanying him on some of his worldwide engagements and included side excursions at considerable cost. In all, children's travel either with their father or by themselves, was expensive.

68 No estimate has been given as to the total cost of such travel, but I am satisfied that it took place and that it cost many thousands of dollars which Ranjit Chandra paid for at least in part from matrimonial assets which were under his control.

69 In addition, substantial sums of money which were, or would have become, matrimonial assets, have been deposited in accounts solely in the children's names, which accounts were augmented by significant payments of interest. In that regard the evidence is that there are or were in the children's accounts and not now claimed by either parent, at least \$290,000, and in addition, the older children have had earnings of their own.

70 Stated simply, the children have over the years have been provided with large amounts of money by Ranjit Chandra and there has been no stint on educational expenditures.

71 While I have no criticism of any parents desire to obtain the best possible education for his or her children, if one parent who has access to large sums of money, elects to spend unusually large amounts on children's education, he or she should not thereby seek to impose

an unreasonable burden by way of contribution, upon the financial resources of the less wealthy parent.

72 Ranjit Chandra's oral evidence is that virtually all of the matrimonial funds held in cash in bank accounts were spent on the children's education and that there is now, little available money to meet any obligations which may be found to be due to Shakti Chandra. His oral evidence on that point is entirely undocumented. On the whole, with combined bank accounts of \$290,000, apparently from matrimonial funds and in addition a further \$250,000 already spent on education, the children have been well provided for by any standard. In addition, the formal education and professional training of the three eldest children appears to have been completed.

73 I find that Shakti Chandra has already contributed to the maintenance and education of the children and any further non-voluntary contribution is not justified in the circumstances. The circumstances are that she has in effect contributed sufficiently by reason of Ranjit Chandra's use of matrimonial assets for the children's maintenance and education. Furthermore, I am satisfied that she will contribute voluntarily to the youngest child's continuing education as may be necessary.

Bank Accounts

74 I will now attempt to provide some information on what I expressed earlier as "raw data" produced by Shakti Chandra's reproduction of documents held by Ranjit Chandra in the matrimonial home. At this stage I will make no effort at analysis nor deal with duplications but rather will address some of the arguments presented to me.

75 Most figures have been provided by Shakti Chandra. Ranjit Chandra has responded to the figures by general comment as to their inadequacy and the explanation that some of the funds are in fact trust funds. Unfortunately he has been unwilling or unable to present any detail, including any statements of account, ledgers, accounting summaries or indeed any material which could assist the court as to precisely where these monies came from, how they were used or to be used. Likewise, there is no real explanation of why sums of money were converted from one currency to another, why they were transferred from one bank to another or from one country to another. There is no explanation as to why funds which he says were held in trust for research purposes, were held not in trust accounts but in joint accounts in his own name with the name of one or other of his children and on occasion used by him for what appears to have been family purposes.

76 Ranjit Chandra's failure to disclose has not been adequately explained, nor has it been rectified. In fact he has added little to the information tendered by Shakti Chandra. This failure has led to an impossibly difficult task for the court when one considers that he was in control of all banking, bank accounts and other financial dealings and is thus the only person with full knowledge.

77 Ranjit Chandra managed all financial matters. His own accounting methods and documentation have neither been produced nor explained. I cannot conceive that the volume of funds managed by him, especially with the complexity of the transactions involved could have been managed without record keeping, but no records have been produced.

78 The most difficult aspect of this matter is attempting to determine with any accuracy the full extent of the monies in about 120 bank accounts operated under various combinations of family names by Ranjit Chandra, usually in his name and the names of one or another of the children.

79 A very rough compilation of amounts mentioned at one time or another in bank documents, excluding amounts solely in the names of the children, after rough conversions from U.S. dollars and sterling, to Canadian dollars, produces a figure of about \$2,750,000. That amount must be reduced because of the duplication of figures which occurred when monies were converted into different currencies and redeposited in new or different

accounts. Whatever the proper figure for the bank accounts may be, it is quite separate from a wide variety of other financial holdings.

80 I have not been told the total value of the matrimonial estate, but it appears to me that the bank accounts alone show cash in an amount of approximately two million dollars.

81 The parties agree that some of these monies are matrimonial assets and subject to equal division. The major issue involves the sources and ownership of other bank accounts.

82 Ranjit Chandra's evidence is that large sums of money belonged not to him, but to the organization called INIF. In his first evidence on that subject, he described INIF as a research foundation headquartered in Switzerland. He said that he did not know very much about the foundation. What he did know was that the foundation engaged researchers in various countries to conduct research for it. He gave no detail as to the subject matter of the research, the time frame in which it was conducted or its results and said that he was prohibited from doing so by the foundation's insistence upon total secrecy.

83 Ranjit Chandra said that his function was to receive funds from the foundation and to deposit these funds in a bank or banks and when directed by the foundation to do so, pay monies to researchers.

84 As I understood his evidence when given, the holding and dispersal of funds was his only role. He did not say whether he received any remuneration for that function.

85 He was prohibited by the foundation's secrecy requirements from disclosing either beforehand or at trial, to whom he paid the monies, how he accounted for the monies or indeed any information about either the foundation, or the funds which he held and paid out on its behalf.

86 What the banking documents show, is that he deposited funds in sterling, U.S. dollar and Canadian dollar accounts in London, England, St. Helier, Jersey, Channel Islands, and St. John's. He deposited these sums, not in accounts designated as "trust accounts" but in the names of himself and one or another of his children as joint owners of the accounts.

87 I have seen no transaction records which might indicate payments to researchers, but Ranjit Chandra transferred sums of money and the interest generated by them, from bank to bank, location to location and currency to currency, always held jointly with one or another of the children and without any indication that the monies were being held in trust.

88 When, much later in the trial, counsel for Shakti Chandra produced a copy of Swiss regulations which indicated that charitable foundations in that country are required to make public reports on their activities, Ranjit Chandra produced documentary evidence to show that INIF was not in fact headquartered in Switzerland but in Liechtenstein and thus, matters related to it and its activities were totally protected by a regimen of secrecy which could not be penetrated. He also produced letters of refusal of information from persons involved with INIF and in one instance lawyers in Ontario threatened legal action against Shakti Chandra for having in her possession materials, presumably bank documentation, which they said was foundation property.

89 A letter of April 3, 2000, from a Mr. Alexander Jeeves of Liechtenstein, requested by Ranjit Chandra and addressed to the Unified Family Court says:

"April 03, 2000

INTERNATIONAL NUTRITIONAL IMMUNOLOGY FOUNDATION

To whom it may concern

This is to certify and to clarify for this Court that the International Nutritional Immunology Foundation is a duly deposited and incorporated Foundation in which neither Dr. Ranjit Chandra nor any members of his family are beneficial owners of. We further confirm that neither Dr. Ranjit Chandra nor members of his family are beneficiaries of any trust administered by this Foundation.

To simplify the operations of the Foundation throughout the world Dr. Ranjit Chandra had been permitted to operate accounts on behalf of the Foundation. Dr. Ranjit Chandra was required to account for all transactions undertaken with the Foundation's funds. This authority does not permit Dr. Chandra to release financial information of the Foundation to third parties.

These funds are intended to further purposes of the Foundation and, in so doing, funds have only been provided to Dr. Chandra to administer and finance research of interest to the Foundation.

Yours sincerely

INTERNATIONAL NUTRITIONAL

IMMUNOLOGY FOUNDATION

(Signed) Alexander Jeeves

Alexander Jeeves"

90 The letter seems to indicate a greater role for Ranjit Chandra than that of merely paying out funds for INIF, especially because it uses the words to "administer and finance" research, etc.

91 A letter also dated April 3, 2000, from the INIF secretary in Geneva says as follows:

"Dear Dr. Chandra,

This will acknowledge receipt of your most recent letter in which you, once again

requested authority to release financial information of the International Nutritional Immunology Foundation to the Supreme Court of Newfoundland. We would reiterate that the Foundation cannot and will not authorize you to release any information of a financial nature to third parties.

We have reviewed the documents provided to us and the Court Order which directs you to execute these Authorisations. We prohibit you from executing these Authorisations and will direct these institutions to disregard any communications from you seeking release of financial information of the Foundation. We have previously provided you with a listing of the accounts of the Foundation but emphasize that this listing may not be inclusive.

We appreciate the working relationship that we have enjoyed over the past number of years. We find, however, that we are now required to put you on notice that any inquiries relating to the finances and property of the Foundation shall be deemed to be unauthorized and may result in legal proceedings being commenced against you by the Foundation. While we are aware of the personal circumstances in which you now find yourself we would request that you judge yourself accordingly in matters involving the Foundation.

Yours very truly,"

92 An earlier letter from INIF's executive secretary in Geneva, dated August 1, 1997, says:

"Dear Dr. Chandra;

With reference to your inquiry, we wish to state as follows:

We confirm that the Foundation had directed you to open and operate the accounts listed in the enclosure to this letter, to make investments in various financial vehicles as was deemed appropriate, and in the names of an organization or one or more individuals. We specify that transfers of moneys were authorized to be made at your discretion from one account to another in order to serve the general Objectives of the Foundation. Interest earned, if any, was put back into the related account. It was directed that payments may be made to various organizations, mostly charitable institutions, as well as individuals, engaged in research, publication, and education. You were allowed to debit the accounts for expenses, mostly travel and incidentals, incurred on behalf of the Foundation.

All information required by the Foundation for its purposes was supplied by you, as and when required, and all such information is confidential and the sole property of the Foundation.

The Foundation was set up in the 1960's and has offices/activities in several countries around the world. It is planned to set up an incorporated branch and office in the U.S.A.

and Canada.

We also state that neither you nor any other member of your family, are a trustee or a beneficiary of the Foundation.

Thanking you,

Yours truly,"

93 Apparently, unknown to the executive secretary, Ranjit Chandra had incorporated INIF in Newfoundland earlier in 1997.

94 On the one hand INIF refuses to supply any detail and on the other, Ranjit Chandra says that the funds were not his, that he had little knowledge of the foundation, that he accounted to it for the funds under his control, but cannot give any cogent reason as to why he held the funds jointly with one or another of his children. In addition, counsel for Shakti Chandra has been able to demonstrate that on occasion he used funds from an INIF account in St. John's for family purposes and that monies from a St. John's account were transferred to a Citibank account in New Delhi and subsequently converted to sterling and deposited into an INIF account in the Channel Islands.

95 In correspondence from INIF, a list of bank accounts was appended, naming in each case 22 accounts as belonging to INIF, though the accounts were held by Ranjit Chandra with one or another of his children. These 22 accounts include several in the Channel Islands, several in St. John's and the remainder in the Isle of Man, England, Ireland and Scotland. What Ranjit Chandra referred to as a World Health Organization (WHO) account which he held in Canada Trust in St. John's, was apparently also an INIF account. Though it might appear at first that these were WHO funds being administered for WHO by Ranjit Chandra, they were not provided by WHO. INIF in Switzerland apparently provided funds through Ranjit Chandra for WHO research, which he organized. Thus, the WHO account was fully under the control of Ranjit Chandra and was used in at least one documented occasion for Chandra family purposes, i.e. funds toward the purchase of a car for Shakti Chandra who was then in Lexington, Kentucky.

96 When Shakti Chandra took her sabbatical and worked in Kentucky for the year 1991/1992, a total of \$90,000 U.S. was transferred to her by Ranjit Chandra, from a number of accounts in St. John's, including as noted, the WHO/INIF account.

97 Some of these funds were used for the education of the youngest child, who was with her, some for living expenses and some for the purchase of a car for her use in the United States and later in St. John's. The cost of the car was \$36,000 U.S. Shakti Chandra and her counsel have been able to establish by reference to the accounts in St. John's from which the money was transferred, that part of the funds used to purchase the car came from the "WHO" account and that there is no evidence of its having been repaid. Counsel argued with reference to that and other examples, that the monies which purport to be INIF trust monies were in fact used by Ranjit Chandra for family, i.e. personal use. Ranjit Chandra has given no cogent explanation of

any of the foregoing.

98 On July 15th, 1991, Dr. Carlos H. Daza, Coordinator WHO Food and Nutrition Program, wrote two letters, one to INIF and one to Ranjit Chandra. The letters were as follows:

"Dear Dr. Chandra:

On the occasion of the formal opening of the World Health Organization Collaborating Centre for Research and Training in Nutritional Immunology for Health Promotion, I wish to bring greetings and best wishes on behalf of the World Health Organization and Pan American Health Organization. We wish you continued success in this new venture and hope that the goals and objectives of the Centre will be fulfilled in a most satisfactory manner.

We would be happy to see collaboration between various nutrition centres in the Americas and with other institutions in various regions of the world. In the next few years, more concrete plans for such collaboration and networking would be drawn up and implemented.

It would be desirable for any funds provided for the operation and activities of the Centre to be kept in an account designated for the purpose. It is desirable for such funds to be used for the purpose of fulfilling the aims and objectives of the Centre.

Once again, all good wishes for the success of the Centre.

Yours sincerely"

99 The letter to INIF in Geneva said:

"Sir/Madam,

Thank you for provided a generous seed money for the World Health Organization Centre for Nutritional Immunology and for your continuing efforts to procure more funds for this Centre and affiliated Centres associated with the Foundation. We have already asked Dr. R. K. Chandra, Director of WHO Centre, to open an account in Canada for depositing such funds to be used at his discretion for the main purpose of fulfilling the aims and objectives of the Centre(s). It is our understanding that such funds and any interest income accrued therefrom are exempt from taxation in Canada and every other member country of the United Nations.

Should the Centre cease operations at a future date, any remaining funds can be transferred to the account of another affiliated Centre linked to the International Nutritional Immunology Foundation in any other location. We understand that Dr. Chandra would be associated with a number of other Centre(s) and related activities in

the field of nutrition and immunology in several other locations.

Thanking you again for your help."

100 It is not clear from the foregoing letters how much money was involved, but the funds were placed in Ranjit Chandra's hands to be used at his discretion, at least as far as concerned WHO, which apparently did not require an accounting.

101 The WHO transaction also raises the matter of secrecy. While INIF insisted upon secrecy vis-à-vis the research done for it, there is no indication that it imposed a condition of secrecy upon WHO or Ranjit Chandra in the use of the WHO donation. There is no mention of secrecy as to the work of the WHO centres and no suggestion that INIF once it provided the "generous seed money" would or had imposed conditions of secrecy upon its use. It is also difficult to understand why, if INIF had made a gift of money in 1991, it would regard the funds in the WHO account as belonging to it, when it corresponded with Ranjit Chandra in April 2000.

102 Taking into consideration all of the evidence regarding these accounts, I have concluded on a balance of probabilities that there is an organization named INIF, comprised of persons and/or corporations unknown, which employed Ranjit Chandra to do or have done on its behalf in Europe and elsewhere, research in the field of nutrition/immunology.

103 From the evidence and making what I believe are reasonable inferences, I have concluded that substantial sums were placed at Ranjit Chandra's disposal to obtain, either through his own research or that of researchers whom he might engage, research useful to the principals of INIF and on at least one occasion he provided money for the WHO centre in St. John's.

104 It is impossible to say how closely Ranjit Chandra is or was connected to INIF, but again on a balance of probabilities, I find that he was closely connected to the extent that he obtained the research which they required and had exclusive discretion to hold and expend significant sums of money.

105 I find that because the funds were held in joint accounts, which according to his own evidence he usually did to avoid probate, it follows that he must have intended that if he died prematurely, his children would take the funds in these accounts. It is therefore a reasonable inference that Ranjit Chandra had an interest in the INIF funds which were on deposit and was able to use a proportion of them for his own purposes, as payment for his role in obtaining research and administering a research program for INIF. His evidence was that the banks would have sent the money back to INIF if he had died prematurely. It is difficult

to accept that evidence, because if that was the case and arrangements of that kind had been made, it would have been unnecessary to place the INIF funds in joint accounts.

106 Shakti Chandra's argument as advanced by counsel, is that INIF if it exists at all, is an entity which belongs to Ranjit Chandra, established and maintained in secrecy to distribute funds belonging to Ranjit Chandra in a way that causes them to appear to be research funds provided

by someone else, while in fact they are his funds, obtained from other sources.

107 Her evidence documents the fact that Ranjit Chandra travelled extensively, attending worldwide meetings related to his fields of expertise. His evidence is that these meetings and his time and effort was gratuitous and that he received no payment for such engagements. He says he received reimbursement of expenses only and on occasion, small gifts.

108 Shakti Chandra has placed in evidence a travel summary which she prepared from copies which she made of her then husband's yearly diaries, from the years 1980 to 1995 which show the travels which he made up to and including 1993, as follows:

1980 16 trips days away 111 worldwide
1981 16 trips days away 100 worldwide
1982 21 trips days away 125 worldwide
1983 18 trips days away 128 worldwide
1984 16 trips days away 117 worldwide
1985 15 trips days away 97 United States & Europe
1986 11 trips days away 77 North America, Europe, India
1987 16 trips days away 142 worldwide

1988 15 trips days away 94 North America & Europe
1989 3 trips days away 19 Germany
1990 10 trips days away 71 Europe
1991 19 trips days away 126 worldwide
1992 14 trips days away 67 worldwide
1993 9 trips days away 48 worldwide

109 Shakti Chandra has given a more detailed summary of Ranjit Chandra's travels for the year 1991 and of the cash payments or honoraria which she believes that he received from the various institutions for which he spoke or otherwise performed services. The total which he received in that year, as calculated by her from his notes, was \$105,000 U.S. plus \$16,100 Cdn. She has listed the places visited and the fees or honoraria individually received, by month as

reconstructed from the material to which she had access. These totals are as follows:

1991 March 7,800 U.S. 43,000 Cdn.

1991 April 15,500 U.S.

1991 May 6,500 U.S.

1991 June 9,800 U.S.

1991 July 25,000 U.S.

1991 August 4,500 U.S.

1991 September 12,000 U.S.

1991 October 17,100 U.S. 3,800 Cdn.

1991 November 5,000 Cdn.

1991 December 6,800 U.S. 3,000 Cdn.

Total 105,000 U.S. 16,100 Cdn.

at 1.45 + 152,250 Cdn. + 16,100 Cdn. = \$168,350

110 It is therefore her position that the substantial sums of cash held in the bank accounts, including the INIF accounts, were the accumulated totals of funds received as honoraria over the years from his travel related activities.

111 In assessing this information one must consider why a successful physician would take 100 or more days per year away from his practice and thus diminish his professional income to a significant degree, without financial recompense. If Shakti Chandra is correct, the inference must be that over seven or eight years, substantial sums of money were accumulated. from honoraria. It is a matter of record that substantial sums were accumulated, from whatever sources.

112 Whether some of the INIF funds were paid to Ranjit Chandra for services rendered, or whether all or the money came by way of honoraria, it is obvious that Ranjit Chandra had acquired substantial sums from a source or sources other than teaching and medical practice in Newfoundland.

113 There is no evidence that the cash which was accumulated came from family sources or that it was acquired by successful business or financial investments.

114 Aside from the explanations advanced by Shakti Chandra and the INIF factor, the large sums of money in the various accounts have not been fully explained. On a balance of probabilities, which is the standard which I must apply, I am satisfied that the sums of money accumulated by Ranjit Chandra were accumulated both by way of honoraria and payments received from INIF.

Inferences

115 "To infer" is defined by the Oxford Encyclopedic Dictionary as being "deduce or conclude from facts" and "inference", as "the forming of a conclusion from premises". It has been found by Canadian courts that when considering the division of matrimonial assets there are occasions when the level of disclosure falls below the standard required in order to accomplish an equitable division according to law. In such cases when disclosure has been non-existent or incomplete, the courts have resorted to inferences drawn from known facts, to arrive at conclusions and findings with respect to non-disclosed or concealed facts. Failing to draw such inferences would be to permit failure to disclose, to accomplish its purposes.

116 Thus, in *Cunha v. Cunha* [\(1994\), 99 B.C.L.R. \(2d\) 93](#) (B.C. S.C.) the principle was expressed in the headnote as follows:

"Family property on marriage breakdown - Factors affecting equal or unequal division - Effect of conduct of spouses during marriage - Removal or concealment of assets - Husband failing to disclose assets throughout litigation - Court assuming undisclosed assets to have value equal to disclosed assets - Division of assets calculated accordingly. In proceedings for the division of family assets, husband persistently failed to make full disclosure of his assets. Held, judgment was made accordingly. Non-disclosure of assets was the "cancer" of matrimonial property litigation. It discourages settlement or promoted settlements which were inadequate and increased the time and expense of litigation. An award of costs did not adequately address this problem nor was it enough to deal only with the known assets. Therefore, where there had been non-disclosure of assets at any stage of the proceedings, it was ordinarily to be assumed that the concealment was ongoing and the division of assets affected accordingly. If the offending party was able to satisfy the Court by the conclusion of the trial that there had been full disclosure, an award of costs only might be the appropriate penalty. In this case, it was likely that husband's undisclosed assets were in the form of investments rather than land or bank accounts. The proper working inference to draw was that the value of undisclosed assets was at least equal to the value of those disclosed. Accordingly, the division of assets was calculated on that basis."

and in *Burnett v. Burnett* [\(1999\), 50 R.F.L. \(4th\) 223](#) (Ont. S.C.J.), as follows:

"Family law - Family property on marriage breakdown - Factors affecting equal or unequal division - Presumption in absence of other factors - Family had opulent and luxurious lifestyle and resided in Toronto, Geneva and Florida - Wife and husband

separated after eight years while ordinarily resident in Toronto - Wife successfully petitioned for divorce and other relief including equalization payment - Husband moved to set aside judgment and series of orders setting aside and reinstating judgment followed - Wife petitioned for determination of equalization payment - Husband did not make complete financial disclosure and did not seek to be heard at trial - Reconciliation of husband's disclosure with balance sheet of family company was not possible - Documentary record included envelope given to wife by husband prior to move to Geneva containing letters that were indicated as husband's will and setting out assets - Attribution of \$12 million to husband's business investments was reasonable and proper amount of available evidence - Equalization payment of \$6,659,067 was awarded with prejudgment interest of \$2,868,835.52 calculated from commencement of proceedings."

117 During the course of these reasons I have noted the absence of full disclosure and the absence of full explanation by Ranjit Chandra, who should have full knowledge of the financial matters under discussion.

118 The court is therefore entitled to infer from the facts which are known, findings in respect of matters that could have been clarified and explained but were not.

119 An examination of Shakti Chandra's material relating to the offshore accounts located mainly in Jersey and the Isle of Man shows approximately £ 212,151.95 sterling, \$81,391.02 U.S. and \$6,049.71 Cdn.

120 Using 2.50 as a rough conversion figure for sterling to Cdn dollars and 1.45 for U.S. dollars, the foregoing converts into roughly \$650,000 Cdn. In addition there were 2021 "units" in one account and 165.571 "shares" in another. The value of these I do not know, nor can be sure how much "INIF" money was in St. John's in various accounts at the time of separation. I am not satisfied that all of the monies in these accounts belonged to INIF. In my opinion a significant portion were monies which belonged to Ranjit Chandra and should be subject to equal division as matrimonial assets.

121 I have examined the mass of financial material and the calculations which have been done by the parties with hugely differing results and I have come to the conclusion, as I said to counsel during the trial, that a qualified accountant is necessary to assist the court in a determination of how much money really existed in the labyrinth of accounts, currencies and transactions leading up to November 23rd, 1993.

122 While I am prepared to make an inference as to how much money there was, such an inference should be based on premises which have been examined by a qualified accountant.

123 I am conscious of the fact that the calculations presented by Shakti Chandra and her counsel, are calculations prepared largely by her on her interpretation of the raw data in her possession. These calculations may be correct, but they cannot be accorded the same weight as would calculations made by a professional accountant bringing a professional competence and detachment to the task.

124 Shakti Chandra's claim also involves an equal division in specie of a substantial number of items which are capable of being so divided. As to bank accounts, her claim for division is based on an analysis resulting from 85 separate financial divisions culminating in a proposed balancing payment of \$1,248,590.

125 The positions of parties are so far apart on the matter of a balancing payment that they are for the court, irreconcilable.

126 Ranjit Chandra, who set up and managed all of the accounts, either will not or cannot clarify, explain or quantify the sums involved. In order to do justice between the parties I must have a factual basis upon which to make decisions as to the value of the accounts at the time of separation. The facts may be hidden in the financial labyrinth and therefore it is necessary for me to invoke Rule 35 of the Rules of Court before I can go further in respect of the 120 bank accounts, both domestic and foreign. It is possible that even an accountant will not be able to provide the assistance which I require, but I believe that there will be benefit from an accounting review. In any event after I have received expert assistance, I will make such inferences as I can and make such findings as I can, but I will not do so without first invoking Rule 35.

127 Rule 35.01(1) says:

"Where independent technical evidence would appear to be required, the Court may at any time appoint one or more independent experts to inquire and report on any question of fact or opinion not involving questions of law or construction of documents."

128 It is my intention to give the parties, with the assistance of counsel, 90 days from the filing of these reasons, in which to attempt a resolution of the financial issues based on the principle of equal division, subject to those findings which I have already made.

129 If at the end of 90 days there has been no resolution, or before the expiration of 90 days if I am informed by counsel that a resolution cannot be achieved, I will appoint a chartered accountant who has no connection with the parties, who will be an independent expert under Rule 35. I will submit the financial evidence to that expert so that he or she may "inquire and report" as envisaged by the rule.

130 Other provisions of Rule 35 will apply as may be appropriate.

131 To assist the parties I will now summarize some of those matters which I have discussed earlier in these reasons and on which I have decided.

Land and Houses

[132](a) Matrimonial home, St. John's. Proceeds to be equally divided unless

one party's share must be applied to a balancing payment or to an award of costs.

(b) applicable property in India, to be divided equally as the parties may agree or, failing agreement, by decision of the court as to a balancing payment.

(c) Mississauga property, payment due to wife to be set off against U.S. timeshare amount due to husband.

(d) Cape Cod timeshare to husband. Kissimmee, Florida, timeshare to wife.

Household Furniture and Appliances

133 Husband and wife to retain that which has been in their possession since separation.

Jewellery

134 No supporting evidence is available. The evidence consists only of accusation and denial. It is impossible to add anything to the previous order, that any personal property belonging to husband and held by wife, be returned and vice versa.

Automobiles

135 Balancing payment by wife to husband of \$17,500 in respect of the Acura automobile, and \$4,000 in respect of Subaru. No balancing payment to wife in respect of leased Mercedes. Total, wife to husband \$21,500.

Bank Accounts

136 All amounts of which have been agreed upon by the parties in their documentation are confirmed in the agreed division amounts, and will be factored into any balancing payment on final determination of bank account issues. All other bank accounts, if not agreed, will be calculated with the help of expert assistance under Rule 35.

Pensions

137 All pensions are to be divided equally between the husband and wife. Pensions will be divided in the most advantageous manner in order to minimize tax consequences.

138 All RRSP's will be divided equally between husband and wife in a way which will best minimize tax consequences with the proviso that any of the husband's RRSP's which are sheltered in a way that hampers division or renders it impossible, will be calculated as to value at time of separation and their value set off as against wife's obligation to divide her pension's and RRSP's, with any excess to be factored into a balancing payment.

139 The provisions applicable to pensions and RRSP's are also applicable to all retirement savings plans.

Stocks and Shares

140 All stocks and shares shall be equally divided between the parties, with the proviso that any such divisions shall be postponed until an order of a final balancing payment has been made. If necessary these assets will be available to be applied to any balancing payment. The same conditions shall apply to all GIC's, and "units" in any financial institutions or companies.

Chandra Companies

141 The wife's entitlement to any funds held in the various Chandra companies at the time of separation, shall be satisfied by payment to the wife of \$56,000 representing one-half approximately, of the amount in the bank account of Chandra Consultants Ltd. shortly before separation.

Canada Savings Bonds

142 The total of Canada Savings Bonds held in the names of either the husband or the wife at the time of separation, shall be divided equally for purposes of final calculation of any balancing payment.

Securities

143 All securities listed in the wife's outline of argument and which were in existence as of November 23rd, 1993, whether held in "funds", "shares" or other investment vehicles by either husband or wife, shall be subject to equal division, which divisions shall carry with them all increases or decreases in value applicable at the date of final division. The division shall not be acted upon until the determination of a final balancing payment at which time all or any part thereof may be applied if necessary, to the balancing payment and/or any order as to costs.

144 All life insurance policies which have or had a cash surrender value shall be divided equally in a manner that will minimize tax consequences and include increases in value to the date of final division. The same provisos with respect to any balancing payment, will apply.

Gold and Silver

145 Gold and silver held at the date of separation either in specie or by certificate, shall be divided equally in specie, or by value in the case of that which was sold by either party subsequent to separation. The monetary adjustment shall be one-half of the value at separation or one-half of the amount realized upon a sale, whichever is greater and be factored into a balancing payment.

146 All other property not specifically mentioned shall be subject to equal division with a proviso for non-distribution until the order of a final balancing payment has been made and it has been ascertained whether or not it can be met. If it cannot be met otherwise, then assets which would normally be divided equally, will be divided in a manner which will contribute to a balancing payment and/or any order as to costs as may be necessary.

Debts

147 Matrimonial debts, which are relatively minor, shall be born equally by the parties, calculated as of the date of separation and factored into final calculations.

148 Prior to the conclusion of the hearing I was informed by counsel for the plaintiff that he was on behalf of his client pursuing formal inquiries in Switzerland concerning INIF. In November 2000 he forwarded the results of these inquiries to the court.

149 I have not used that material in the preparation of these reasons nor will I take it into consideration until I rule on its admissibility, after receiving oral or written argument.

150 I therefore invite counsel, should they or either of them wish to do so, to apply within 90 days for a determination as to how that material should be dealt with.

151 The matter of costs will be dealt with at the final determination of all outstanding issues.

Order accordingly.

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