FAMLNWS 2026-22

Family Law Newsletters
June 08, 2026

— Franks & Zalev - This Week in Family Law

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Parting is Such Sweet Sorrow . . . But the Court Must Decide When They Parted

***Janif v. Chander*, 2026 CarswellBC 897 (C.A.) — Fisher, Edelmann and Francis JJ.A**

The parties started dating in 2015. They married the same year. They ultimately separated, but they did not agree on the date of separation. According to Ms. Janif, they separated on February 28, 2017, after less than 15 months of marriage. But according to Mr. Chander, the relationship lasted three years longer — until April 11, 2020.

The parties' divorce order was dated September 10, 2020, some five months after Mr. Chander's alleged separation date. The divorce order was based on a separation date of February 28, 2017 — *in a joint application for divorce*. This is important for reasons to follow.

On the date of marriage, Ms. Janif owned a townhouse. She sold the townhouse on November 25, 2021, after the divorce. The *only* family property in issue was the increase in value of the townhouse, which Ms. Janif wanted to see divided unequally on the basis of significant unfairness, in part because of (what she said was) the very short marriage.

In the face of an imperfect record and the disagreement about the date of separation, the trial judge determined that she did not have to fix a specific separation date to determine whether an equal division of family property would be "significantly unfair." Instead, she considered the relationship between the parties more broadly, including dealings between them *after* February 28, 2017. The trial judge found that Ms. Janif did not establish that equal division of family property would be "significantly unfair," and ordered equal division of the townhouse proceeds as of the date of sale.

Ms. Janif appealed. She argued that the trial judge erred in not determining a date of separation which resulted in her being unable to consider the duration of the relationship pursuant to s. 95(2)(a) of the *Family Law Act*, S.B.C. 2011, c. 25 (the "*FLA*"). She argued the separation date was important in the consideration of "significant unfairness" such that the townhouse should have been valued at the date of separation rather than the date of sale. A definite date of separation, she argues, would also have shown the short marriage.

Mr. Chander argued that the trial judge found that the relationship between the parties continued into 2020 — and that was all that was necessary. The trial judge was not required to find an exact date of separation to know whether the relationship was short enough to make equal division of family property unfair.

Ultimately, the trial judge's only task was to determine whether it would be "significantly unfair" to equally divide the family property despite the strong presumption in favour of equal division.

At trial, the most current evidence of the value of the townhouse was the sale price from when it was sold in November 2021, 2 $^{1}/_{2}$ years before trial.

The trial judge considered Ms. Janif's claim for unequal division of family property based on: (1) the short duration of the relationship; (2) an alleged agreement between the spouses; and (3) the failure of Mr. Chander to make financial contribution to the family property.

Pursuant to *Banh v. Chrysler*, 2022 CarswellBC 432 (C.A.), the mere fact of a short relationship may not suffice to override the presumption in favour of equal division, absent significant unfairness.

The trial judge was of the view that the evidence suggested the parties separated *at some point* later than February 28, 2017.

The trial judge also considered the fact that *both* the parties represented to the court (and swore an affidavit) for the divorce order in which they swore that they had been living separate and apart since February 28, 2017. But she held that this was not determinative of the separation date, and that the relationship continued well past February 2017.

The trial judge also held that to properly apply s. 95(2), it was not necessary to determine an exact date of separation:

> [50] Moreover, the specific date of separation is not determinative of the s. 95 analysis. Unlike other provisions of the *FLA*, which are explicit about specific start and end dates upon which matters should be evaluated (e.g.: s. 3(3) which specifically defines the date upon which a "relationship between spouses" begins; or s. 84(1) which specifically sets the date upon which family property is determined), s. 95(2)(a) is not as strictly prescriptive. It says simply that the Court "may" consider "the duration of the relationship between the spouses" as a factor in determining whether it would be "significantly unfair" to order the presumptive equal division of property established by the *FLA*. As this is a discretionary factor, and based upon the statutory language, **in my view the legislation allows the Court to take the full context of the "relationship" into account**. [**emphasis** added]

Considering the broad relationship, including events that happened *after* the *sworn* separation date, the trial judge concluded that the duration of the relationship between the spouses did not render an equal division of family property significantly unfair.

The trial judge was ultimately not persuaded that an equal division would be significantly unfair. As a result, she ordered equal division of the increase in value of Ms. Janif's equity in the townhouse from the date of marriage to November 25, 2021, the date of sale.

Using the nomenclature of the *FLA* (which uses different definitions for similar concepts in other provincial property division statutes), the townhouse was "excluded property," because it was owned by Ms. Janif before the relationship between the parties began: s. 85(1)(a). However, the amount by which the value of excluded property increases since the relationship between the spouses began is *included* in the definition of "family property": *FLA* s. 84(2)(g)(i). On separation, each spouse has a right to an undivided half interest in all family property: s. 81. Family property is generally valued on the basis of its fair market value at the date of the hearing before the court at which family property is addressed: *FLA* s. 87.

The court may order *unequal* division of family property if equal division would be "significantly unfair": *FLA* s. 95(1)(a). Included in the "significant unfairness" consideration is the duration of the relationship between the spouses: s. 95(2)(a).

Where a court determines that equal division of family property would be significantly unfair, the court can reapportion family property, or can choose a different valuation date: *Banh* at para. 26. However — and this is key — it is not open to the court to choose a valuation date earlier than the hearing date absent a finding of significant unfairness: *Kumagai v. Campbell Estate* (2018), 3 R.F.L. (8th) 278 (B.C. C.A.) at para. 76.

Ms. Janif argued that the trial judge erred in her application of s. 95(2) by considering the duration of the relationship between the spouses pursuant to s. 95(2)(a) without determining a separation date. That led to the trial judge misinterpreting the meaning of the phrase "duration of the relationship between the spouses" as it is used in s. 95(2)(a) and in the context of the *FLA* as a whole. She argued that, properly interpreted, "duration of the relationship between the spouses" could only refer to the period between the date of marriage or commencement of a marriage-like relationship and the date of separation. And, therefore, to consider this factor, the trial judge had to determine a date of separation.

The question before the B.C. Court of Appeal, therefore, was whether "duration of the relationship between the spouses", as used in s. 95(2)(a), refers only to the period of time two people are spouses under the *FLA* — or to a broader timeframe.

Mr. Chander argued that the trial judge did not err and that it was implicit in the reasons that the trial judge found the separation date to be March 20, 2020, when Ms. Janif refused to let Mr. Chander enter the townhouse thereby signalling the end of their relationship.

The Court of Appeal agreed with Ms. Janif, the appellant:

> The trial judge had interpreted s. 95(2)(a) in such a way that it was not necessary for her to decide the separation date. Had she been required to do so, she would presumably have had to grapple more fully with the fact that both parties gave sworn evidence in their desk order divorce application, attesting to a separation date of February 28, 2017. A finding that the parties separated on March 20, 2020, would call into question the validity of the divorce order granted in September 2020, as the parties jointly sought a divorce in April 2020, on the basis that they had lived separate and apart for at least one year: *Divorce Act*, R.S.C. 1985, c. 3 (2nd Supp.), s. 8(2)(a). In my view, the judge's interpretation of s. 95(2)(a) allowed her to avoid determining a separation date by taking the whole context of the relationship into account, irrespective of separation date.

So what is the meaning of "duration of the relationship between the spouses"?

The words used in legislation must be considered "in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the *Act*, the object of the *Act*, and the intention of Parliament": *Rizzo v. Rizzo Shoes Ltd., Re*, 1998 CarswellOnt 1 (S.C.C.) at para. 21.

The *FLA* governs the legal consequences that arise when relationships between spouses break down; the overriding framework is about the rights and obligations that arise out of a spousal relationship.

When does a spousal relationship start? That is clearly defined in s. 3(3) of the *FLA*: the date of marriage or the date the parties start living together in a marriage-like relationship.

But the *FLA* does not similarly set out when a spousal relationship ends. However, according to the Court of Appeal, "the critical point in time for the vesting of most family law rights and responsibilities under the *FLA* is the date of separation." The date of separation is the only date that matters. Therefore, with limited exception, the *FLA* relies on the concept of "separation" to denote the end of a spousal relationship.

Section 3(4) of the *FLA* then suggests when separation will be found: when one spouse communicates an intention to separate permanently; or where one spouse takes action that demonstrates an intention to separate permanently.

While finding a date of separation is sometimes dead easy; sometimes, not so much. That is when case law lends a hand. These factors include the intention to remain married; sexual involvement; carrying on activities in public; sharing financial resources; sharing significant family events; and statements of an intention to terminate the relationship: *Der Woon v. Zadorozny*, 2020 CarswellBC 659 (C.A.) at para. 9; and *Kassabian v. Marcarian* (2025), 16 R.F.L. (9th) 33 (Ont. C.A.). In *Kassabian*, the Ontario Court of Appeal offers a restated treatise on the date of separation, emphasizing the criteria of "change." *Kassabian* was discussed in the May 12, 2025 (2025-17) edition of *TWFL*.

Under the *FLA,* there are two points in time that are relevant for the purposes of determining family property under ss. 84 and 85 of the *FLA*: (1) the date the "relationship between the spouses" began and (2) the separation date.

Therefore, *FLA* property regime is concerned with the rights and obligations that arise *during* the period between the date the "relationship between the spouses" began and the date of separation. Therefore, when a court is given discretion under s. 95(2)(a) to consider the duration of the "relationship between the spouses", *the period being referred to must necessarily be the same period as that referred to in ss. 84 and 85*.

Therefore, the trial judge had erred:

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

That said,

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

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

As it was not possible to know how the trial judge would have exercised her discretion had she properly interpreted the *FLA* and confined her consideration of the duration of the relationship between the spouses to the period of time between date of marriage and date of separation, the Court of Appeal remitted the matter back to the trial court.

Appeal allowed.

The Continuing Dance of the Corporate Veils

***Chanderpaul v. Caesars Convention Centre Ltd.*, 2026 CarswellOnt 7433 (C.A.) — Huscroft, Coroza and Monahan JJ.A.**

This is not a family law case. But given how often family lawyers deal with professional corporations and small-family controlled corporations, we could not let *Chanderpaul* — a recent decision from the Ontario Court of Appeal go without comment. *Chanderpaul* is mostly about when a court will pierce the corporate veil to find corporate directors personally liable for the conduct or liabilities of the corporation. Now we see why it may be of interest to the family bar.

While the decision ultimately confirms the general importance of the separate corporate personality and the fact that the bar to pierce the corporate veil is a high one — the case does offer comments as to when a controlling shareholder may find themselves exposed to personal liability for the conduct of their corporation.

In April 2013, the Appellant ("Michelle") was one of several passengers in a car driven by Aaron. She suffered injures when Aaron got into an accident. Aaron had consumed alcohol that evening at a nightclub — "Throne" — which was operated by Caesars Convention Centre Ltd. ("Caesars"). RK and KK — spouses — were the directors and shareholders of Caesars.

Aaron ultimately pled guilty to driving under the influence. Aaron was underage at the time and had used a fake I.D. to buy alcohol at the nightclub.

Michelle sued the drivers involved in the car accident. She also sued Caesars on the basis that its employees had overserved Aaron. She also sued RK and KK personally.

For some technical insurance-related reasons, Caesars' insurers denied coverage and refused to defend or indemnify Caesars in the litigation. Caesars did not participate in the litigation. It was noted in default in 2015. The corporation was dissolved. And its assets were sold.

Michelle claimed the usual relief against Caesars — damages, etc. She further claimed damages against RK and KK personally, alleging that they had abused the corporate structure; rendered Caesars incapable of satisfying any judgment; negligently operated Throne; encouraged overservice and underage drinking; failed to maintain proper insurance; and improperly dissolved Caesars in order to render it judgment-proof.

The Respondents brought a motion for summary judgment. The motion judge dismissed the claims against RK and KK because Michelle had not established a basis to pierce the corporate veil. Michelle appealed.

While the appeal involved several issues, the one that is of particular interest to us is whether the lower court erred in not piercing the corporate veil so as to hold RK and KK liable for Caesars' alleged wrongdoing?

The leading case of *Transamerica Life v. Canada Life*, 1996 CarswellOnt 1699 (Gen. Div.), aff'd 1997 CarswellOnt 3496 (C.A.) is clear that courts will disregard the separate legal personality of a corporate entity where:

> (1) the corporation is "completely dominated and controlled"; and
>
> (2) the corporation is being used as a shield for fraudulent or improper conduct.

See also *Yaiguaje v. Chevron Corporation*, 2018 CarswellOnt 7942 (C.A.), leave to appeal refused, 2019 CarswellOnt 5162 (S.C.C.), at paras. 36, 65-71.

And for a specific (and important) family law slant on corporate veil-piercing, see *Wildman v. Wildman* (2006), 33 R.F.L. (6th) 237 (Ont. C.A.) and *Chapman v. Ing* (2025), 15 R.F.L. (9th) 362 (Ont. C.A.) (discussed in the August 25, 2025 (2025-30) edition of *TWFL*), both of which suggest that a statutory entitlement (separate corporate personality) may have to yield to equitable considerations (especially in the family law sphere); and that there is need for an even more flexible approach to corporate issues in the family law context.

Although the Court of Appeal dismissed the appeal, it also identified two errors in the motion judge's application of the test.

First, the motion judge suggested that the referenced "improper conduct" had to have existed at the time of incorporation. The Court of Appeal clarified that ain't the case. Post-incorporation conduct is relevant — and sufficient.

Second, the motion judge also imposed the requirement that the "improper conduct" must not be "related to the operation of the corporate defendant", and instead must be taken "outside" the role of directing mind. That is, that the conduct must have been outside the directing mind's role or for a purpose unrelated to the corporation's operation.

This was an error. We will let the Court of Appeal explain why [some citations omitted]:

> [66] This is an error. The corporate veil can be pierced if those in control expressly direct a wrongful act to be done by the corporation, **regardless of whether these acts are "related to the operation of the corporate defendant itself" or form "part of the role as a directing mind" of the corporation**. The question is simply whether the corporate entity is completely dominated and controlled and whether "those in control expressly direct a wrongful thing to be done". Any further requirements imposed by the motion judge were in error.
>
> [67] This point was made clear in *Shoppers Drug Mart Inc*. v. *6470360 Canada Inc. (Energyshop Consulting Inc./ Powerhouse Energy Management Inc.)*, 2014 ONCA 85, 372 D.L.R. (4th) 90. In *Shoppers*, the motion judge erred by refusing to pierce the corporate veil despite evidence that the corporation's directing mind had misappropriated funds within the corporation. **The motion judge refused to pierce the corporate veil because the corporation was not specifically**

> **used to avoid or conceal liability for the impropriety. As explained by Pepall J.A., this additional requirement that the corporation be specifically used to avoid or conceal liability was imposed in error. The corporate veil can be pierced if those in control expressly direct a wrongful act to be done, regardless of whether the company structure was used to evade liability**: at paras. 42-43. [emphasis added]

Therefore, a claimant need not show that the corporation was specifically used to evade liability or that the shareholder acted outside the scope of his or her role as directing mind. The claimant need only show that the shareholder exerted total domination and control over the corporation and used it as a shield for fraudulent or improper conduct.

The Court of Appeal was quick to remind all that corporate separateness is the default position and the threshold for piercing the corporate veil is a high one. Courts will disregard separate legal personality only where a corporation is ***completely dominated and controlled*** and is being used as a ***shield for fraudulent or improper conduct***.

Here, the evidence did not come close to supporting piercing the corporate veil. The Appellant's evidence comprised two advertisements; photographs of customers holding alcohol; and server sales records from a single night. This fell *way* short of establishing abuse of the corporate form.

In the family arena, where separations often involve closely held corporations, this case (along with *Wildman* and *Chapman*) offers a good reminder. The limited liability of a corporation is not absolute; it is the default, but it is not absolute. Personally directing wrongful conduct through the corporation — even conduct closely tied to the regular operation of the company, can lead to personal liability.
