

CANADA / JUDGMENT

Bennett v. Bennett

2021 BCSC 1631

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Supreme Court of British Columbia

DECIDED

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2021 BCSC 1631 Bennett v. Bennett

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Bennett v. Bennett,

2021 BCSC 1631

Date: 20210819

Docket: E52078

Registry: Vernon

Between:

Rhonda-Lynne Bennett

Claimant

And

Stephen John Bennett

Respondent

Before: The Honourable Madam Justice MacNaughton

Reasons for Judgment

The Claimant, appearing in person:

R. Bennett

Counsel for the Respondent:

C. L. Walker

Place and Date of Trial/Hearing:

Vernon, B.C.

June 21-25 & 28, 2021

Place and Date of Judgment:

Vernon, B.C.

August 19, 2021

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Introduction

- [1] Rhonda-Lynne Bennett and Stephen Bennett met in March 1996. They had both been married before. They began living together in June 1996, according to Ms. Bennett's evidence; or in September 1996, according to Mr. Bennett's evidence and the admissions. Because of the length of their relationship, and the fact that neither party brought substantial assets into the relationship, the cohabitation commencement date is really only relevant to the division of their respective Canada Pension Plan credits.
- [2] As Ms. Bennett agreed to a September 1996 cohabitation date in the admissions, I fix the date of cohabitation as September 1, 1996.
- [3] The parties separated on July 31, 2018. They have not lived together since separation, and, based on their evidence and the admissions, there is no possibility of reconciliation. Also, according to the admissions, there was no collusion, as defined in s. 11(4) of the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.) [DA], in relation to their claim for divorce. As a result, on June 25, 2021, I granted a divorce to take effect 31 days afterwards.
- [4] Ms. Bennett was born on April 26, 1966, and is 55 years of age. Mr. Bennett was born on May 13, 1960, and is 61 years of age.
- [5] The parties have no children together. Ms. Bennett had a three-year-old son when the parties met. The parties agree that Mr. Bennett raised him as if he were his own son and his surname was changed to Bennett. Mr. Bennett had a nine-year-old son from his previous marriage, who lived with Mr. Bennett's ex-wife but spent every second or third weekend with the parties.
- [6] Ms. Bennett continues to reside at the family home on an acreage at 134 Coell Jones Road, Mara, BC (the "Farm Property"). For one or two days following their separation, Mr. Bennett stayed on the Farm Property in the parties' fifth wheel trailer. He then moved the trailer to their son's property.

- [7] In October 2018, Mr. Bennett moved to Antigonish, Nova Scotia where he continues to reside. Mr. Bennett is in committed romantic relationship with a lifelong friend in Antigonish. He rents in a suite in her home for \$500 a month, including utilities.

The Issues to Be Decided

- [8] On the pleadings, in addition to the divorce, the following property and debt issues are to be decided:

Property

- (a) the amount of the parties' excluded property claims;
- (b) the value of the Farm Property, including the date of valuation and its division, and the value of other family assets;
- (c) whether the family assets are to be divided equally;
- (d) whether the Farm Property is to be sold or whether Ms. Bennett is entitled to buy out Mr. Bennett's interest in it and, if so, what compensation she will have to pay.

Debt

- (a) the extent of the family debt and its division.

Spousal Support

- (a) Ms. Bennett's entitlement to spousal support, and, if entitled, the basis for entitlement;
- (b) Mr. Bennett's income, and whether he is under-employed as alleged by Ms. Bennett;
- (c) Ms. Bennett's income;
- (d) whether Ms. Bennett should be designated as the beneficiary on Mr. Bennett's life insurance policy;
- (e) the quantum and duration of any spousal support; and
- (f) whether there should be a review of spousal support and when.

History of the Parties' Employment, Education and Training, and Incomes

Ms. Bennett

- [9] At the time the parties met, Ms. Bennett had just left an abusive relationship with her son's biological father. She moved into a shelter and then to a furnished rental accommodation. She was unemployed and receiving social assistance benefits. Ms. Bennett's social assistance benefits terminated when the parties began living together.

- [10] Ms. Bennett did not complete Grade 10. She has a learning disability, dyslexia. She trained, and was licensed, as a hair stylist. At her former husband's insistence, she had not worked since before their son was born.
- [11] Ms. Bennett has no other formal training. She testified that, during the parties' marriage, there was never a need for her to train as she was not required to work. She has been "grandfathered" into her various positions due to her strong people skills. Mr. Bennett earned enough to support the family. When Ms. Bennett began working, her income was always secondary.
- [12] Ms. Bennett testified that she and Mr. Bennett agreed that, in the short term, she would continue to remain at home to raise their son to accommodate Mr. Bennett's work schedule. Mr. Bennett testified that he did not believe that there was any discussion about Ms. Bennett staying at home, but he acknowledged that for nine years of their relationship, he worked away from home. On the evidence, it is clear that he acceded to Ms. Bennett staying at home.
- [13] On a date that was not clear in the evidence, Ms. Bennett began to volunteer at Vernon Women's Transition House Society (the "Society"). In 1998, she was hired by the Society as a crisis intervention worker, supporting young parents. She worked as a casual employee to accommodate Mr. Bennett's work schedule and to accommodate their son's needs.
- [14] Ms. Bennett has never worked full time.
- [15] The parties moved to the Farm Property in 2005. At that time, their son was in Grade 7, and Ms. Bennett testified that he was unhappy about the move. To allow him to finish his school year in Armstrong, BC, Ms. Bennett drove him to Enderby to catch a school bus. She stopped working as it was too far for her to travel and her afternoon shifts, working 3:00 p.m. to 11:00 p.m., did not accommodate the family's needs.
- [16] Ms. Bennett remained out of the workforce for two years. Mr. Bennett testified that he did not agree to her doing so. Nevertheless, he acceded to it. He acknowledged that, at the time, he was working out of town in Tumbler Ridge. Ms. Bennett was responsible for managing the home, the farm and the farm animals, and their son.
- [17] In 2006, Ms. Bennett returned to work at the SAFE Society ("SAFE"), starting as a casual employee. She described that there was not much room for advancement within SAFE as employees tended to stay. She worked up to a permanent part-time shift, working 29 hours a week.
- [18] On a date that was not clear in the evidence, Ms. Bennett left SAFE as she said the parties agreed to breed Great Danes to earn a second income from home. Ms. Bennett said that, at the time, Mr. Bennett was working "up north" and making a considerable income. Whether Mr. Bennett agreed to the venture is in dispute. Nonetheless, it went ahead. It was unsuccessful. They whelped two litters of puppies but, according to Mr. Bennett, kept five of them. Ms. Bennett eventually returned to SAFE as a crisis intervention worker. She worked

there when the parties separated in 2018. She worked 29 hours a week, earning \$21.14 an hour. During COVID-19, as a frontline worker, she received a temporary wage supplement of \$2 an hour. It is no longer available.

- [19] Following separation, and after Mr. Bennett stopped paying the household expenses in March 2019, Ms. Bennett picked up any available additional shifts. For example, in the pay period of June 29 to July 4, 2019, she worked overtime as a facility coordinator, at a higher hourly rate. She later filled a temporary maternity leave position at a higher hourly rate.
- [20] Ms. Bennett has recently been appointed as a sexual assault victim coordinator with SAFE, earning \$28 an hour. She began training in January 2021. Her position is funded by a grant that expires in March 2023. She has taken a leave of absence from her crisis intervention worker job but expects to return to it when the funding for her current position expires. It is uncertain whether the funding will be renewed. The position is high stress. She is on call 24 hours a day, 7 days a week, on short notice to respond to call outs to the hospital or the police station to support sexual assault complainants.
- [21] Ms. Bennett testified that, due to her age and lack of formal education or training, she is working to her capacity. Mr. Bennett does not argue otherwise.
- [22] According to Ms. Bennett's evidence, her financial statements, and her income tax returns, her line 150 employment income, rounded to the nearest dollar, was:
- (a) 2016: \$29,979;
 - (b) 2017: \$30,847;
 - (c) 2018: \$34,610;
 - (d) 2019: \$48,206; and
 - (e) 2020: \$48,546.

Mr. Bennett

- [23] Mr. Bennett is a red seal electrician. In addition, during the parties' relationship, he acquired skills in geothermal drilling and administrative skills. He completed a Facilities Management Certificate from the Building Owners Management Institute and has skills in managing projects and employees (both union and non-union). His training and skills allowed him to advance.
- [24] In 2009, Mr. Bennett was hired by School District 83 (North Okanagan-Shuswap) ("SD 83") as an electrician. In 2011, SD 83 promoted him to Manager of Facilities and, in 2015, to Director of Operations.

- [25] On July 12, 2018, SD 83 terminated Mr. Bennett's employment without cause. His termination letter did not explain SD 83's decision, and he was not told why during his termination meeting. SD 83 offered to continue his salary for eight months, until March 12, 2019, on condition that he sign a confidentiality agreement and a release. Mr. Bennett signed both. In a SD 83 circular to its employees, it said that Mr. Bennett left to pursue other opportunities.
- [26] Mr. Bennett testified that, following the termination, it was very difficult for him to continue to live in and around Salmon Arm. In his position at SD 83, he managed about 125 employees, many of whom he saw regularly in the community. People asked him why he left but, because of the confidentiality agreement, he was unable to answer. He said it was very awkward and he felt he had to leave the community.
- [27] As set out, the parties' relationship ended on July 31, 2018, shortly after Mr. Bennett lost his job. On the evidence, the parties were under financial pressure before the separation, and the loss of Mr. Bennett's job may have increased that pressure.
- [28] Mr. Bennett testified that, by October 2018, he evaluated where he was in his life, what his future would look like, and where he wanted to be. He decided to move east. He was from Quebec and said he wanted to be closer to his family. He believed he would have a more "laid back" lifestyle outside BC, and he wanted to retire in the east. At some point, he spoke to Liz Harrison, whom he had known all of his life, and learned that she had a rental suite in her home in Antigonish, Nova Scotia, and he moved there. He is now in a committed relationship with Ms. Harrison.
- [29] I think it probable that the move to Antigonish was, in no small part, because of Ms. Harrison. If Mr. Bennett wanted to be closer to his family in Quebec, and without French language skills, it would have made more sense to move to eastern Ontario or to New Brunswick. Apart from Ms. Harrison, Mr. Bennett did not have any connection with Nova Scotia.
- [30] Ms. Bennett focused on Mr. Bennett's relationship with Ms. Harrison in her evidence and in her cross-examination of Mr. Bennett. She was suspicious that their relationship started before the parties separated and was suspicious about Mr. Bennett's evidence that he paid Ms. Harrison rent.
- [31] When the relationship with Ms. Harrison started is irrelevant. Mr. Bennett's decision to move to Nova Scotia is only relevant in assessing whether doing so was reasonable in terms of his efforts to replace the income he earned from SD 83. I will return to this issue when assessing Mr. Bennett's income for spousal support.
- [32] After the parties' separation, from August 2018 until early March 2019, Mr. Bennett paid the mortgage (including the taxes) and the home insurance on the Farm Property. He also made payments on all the parties' debts. With respect to their credit card debts, he paid the monthly minimum amounts or slightly more. He paid the cost of the loan on a 2016 Dodge

Ram that the parties had purchased. All payments stopped in early March 2019, and Ms. Bennett was faced with covering the costs on her limited income. She did not want to sell the Farm Property which she loved and which housed the parties' animals.

- [33] Mr. Bennett applied for various jobs in and around Antigonish. On March 15, 2019, he was hired by the Strait School District ("Strait") in Antigonish as an electrician, earning about \$27 an hour. On March 2, 2020, he was temporarily assigned Strait's Acting Manager of Facilities with a remuneration of \$77,784. He was permanently assigned to that position in December 2020.
- [34] According to Mr. Bennett's evidence, his financial statements and income tax returns, his line 150 income from employment, rounded to the nearest dollar, was:
- (a) 2013: \$83,487
 - (b) 2014: \$85,497
 - (c) 2015: \$91,525
 - (d) 2016: \$100,955
 - (e) 2017: \$105,542
 - (f) 2018: \$119,186
 - (g) 2019: \$66,262
 - (h) 2020: \$77,058

The Interim Court Order

- [35] After Mr. Bennett stopped paying the household expenses, Ms. Bennett applied for interim spousal support. In a cross-application, Mr. Bennett applied for an appraisal of the Farm Property and to compel sale of the Dodge Ram and a Kioti tractor which the parties had financed.
- [36] The parties agreed to the appraisal and the sale of the Dodge Ram and Kioti, with joint conduct of sale although the May 27, 2019, order does refer to it being a consent order. Justice Wilson imputed an income of \$75,000 to Mr. Bennett and ordered him to pay Ms. Bennett spousal support of \$1,283 commencing on June 1, 2019, and continuing on the first day of each month until further court order (the "Wilson Order"). The Wilson Order did not specify Ms. Bennett's income.
- [37] Mr. Bennett paid some, but not all, of the spousal support. Ms. Bennett registered the order with the Family Maintenance Enforcement Program ("FMEP"), and Mr. Bennett's wages were garnished to pay the arrears and ongoing support. At trial, the parties disagreed on whether support is up to date, but, in any event, FMEP is still collecting the ongoing support amounts through a garnishment order.

- [38] After March 2019, Ms. Bennett paid the mortgage with the exception of a six- month period during which she deferred payments due to COVID-19. She also paid all of the expenses related to the Farm Property and the animals, and the Dodge Ram loan until it was disposed of, pursuant to the Wilson Order, on June 3, 2019. The Dodge Ram will be discussed later in these reasons when dealing with family property and debt.
- [39] Property division and spousal support in a case like this are closely intertwined. Generally, property division is dealt with before determining support: *Chutter v. Chutter*, 2008 BCCA 507 at para. 75. As Ms. Bennett's property position may affect her entitlement to non-compensatory support, I will deal with property division first.

The Family Property and Debt

The Legal Framework

- [40] The rules for division of family property and debt are contained in Part 5 of the Family Law Act, S.B.C. 2011, c. 25 [FLA]. Section 81 of the FLA provides that, subject to an agreement or order providing otherwise, spouses have a presumptive entitlement to an equal interest in all family property, and are equally responsible for family debt.
- [41] Section 84 of the FLA defines family property to include all real and personal property that is owned by at least one spouse on the date of separation, or in which at least one spouse has a beneficial interest, so long as it is not excluded property under s. 85. Family property includes the amount by which the value of excluded property increased since the later of when the property was acquired or the relationship began (s. 84(2)(g)).
- [42] Section 85 lists property that is excluded from the definition of family property. The only categories of excluded property in issue in this case are: s. 85(1)(a), property acquired by a spouse before the relationship between the spouses began; s. 85(1)(b), inheritances to a spouse; and s. 85(1)(b.1), gifts to a spouse from a third party.
- [43] The party seeking an order that property is excluded bears the burden of proving the exclusion on the balance of probabilities: s. 85(2) of the FLA and *Shih v. Shih*, 2017 BCCA 37.
- [44] Section 86 of the FLA defines family debt to include all financial obligations incurred by a spouse during the relationship, or after separation if incurred for the purpose of maintaining family property.
- [45] Pursuant to s. 87 of the FLA, the value of family property or family debt is its fair market value to be determined as of the date of an agreement dividing family property and debt or the date of trial. The court may choose a different valuation date if doing so avoids a significant unfairness: *Blair v. Johnson*, 2015 BCSC 761 at para. 69; *J.D.G. v. J.J.V.*, 2016 BCSC 2389 at para. 139.

- [46] One factor that might create significant unfairness is where one party alone has preserved and maintained family property following separation, and the property has increased in value since separation: *Slavenova v. Ranguelov*, 2015 BCSC 79 at paras. 51-54. However, there is no principle that unequal post-separation contributions should result in unequal division of family property: *Jean Louis v. Jean Louis*, 2020 BCCA 220 at paras. 35-36.
- [47] Practically, accounts used by the parties in their day-to-day lives are valued at the date of separation, while long-term investments are valued as of the date of trial, subject to accounting for contributions and withdrawals.

Unequal Division of Property

- [48] In this case, in Ms. Bennett's pleadings and submissions, she sought unequal division of family property and debt. Mr. Bennett seeks equal division.
- [49] The court may order an unequal division of family property and/or debt if it would be significantly unfair to divide property equally. Section 95(2) sets out the factors the court may consider in making an unequal division. The use of the term "significantly unfair" demonstrates the legislative intention to raise the bar for a finding of unfairness justifying an unequal division. The unfairness must be compelling or meaningful, having regard to the factors set out in s. 95(2): *Remmem v. Remmem*, 2014 BCSC 1552 at para. 44. As the Court of Appeal said in *Jaszczewska v. Kostanski*, 2016 BCCA 286 at paras. 41-42, an unequal division requires "something objectively unjust, unreasonable or unfair in some important or substantial sense."
- [50] Section 95(2) of the FLA sets out a non-exhaustive list of the factors that are to be considered in determining "significant unfairness". As they may apply in this cases, they include:
- (a) the duration of the relationship between the spouses;
 - (c) a spouse's contribution to the career or career potential of the other spouse;
 - (d) whether family debt was incurred in the normal course of the relationship between the spouses;
 - (e) if the amount of family debt exceeds the value of family property, the ability of each spouse to pay a share of the family debt;
 - (f) whether a spouse, after the date of separation, caused a significant decrease or increase in the value of family property or family debt beyond market trends;
 - (g) the fact that a spouse, other than a spouse acting in good faith,
 - i. substantially reduced the value of family property, or

ii. disposed of, transferred or converted property that is or would have been family property, or exchanged property that is or would have been family property into another form, causing the other spouse's interest in the property or family property to be defeated or adversely affected;

- (h) a tax liability that may be incurred by a spouse as a result of a transfer or sale of property or as a result of an order;
- (i) any other factor, other than the consideration referred to in subsection (3), that may lead to significant unfairness.

[51] In Jaszczewska, the Court of Appeal confirmed that because family property is generally valued on the date of the hearing, the parties will presumptively share in any post-separation increases in property values, and because of s. 81 of the FLA, this presumptive entitlement continues regardless of the post-separation contributions of the parties, subject to significant unfairness under s. 95: at para. 39.

The Property in Dispute

[52] At the date of separation, and based on the admissions, the parties had the following family property:

- a. the Farm Property;
- b. 2016 Dodge Ram;
- c. 2009 Chevrolet Silverado;
- d. 2000 Sand Piper 5th Wheel;
- e. 2001 CM Horse Trailer;
- f. 1979 Campion Boat and Trailer;
- g. Aluminum boat with 5/hp motor;
- h. 2003 Snowmobile trailer;
- i. 2016 Kioti Tractor, Trailer, and Implements;
- j. 2013 Rhino and Implements;
- k. Lawn Tractor;
- I. 2000 GMC 3500 Pickup (aka the Food Truck);
- m. 1995 GMC Yukon;
- n. Scotiabank Chequing Account ending in 4923;
- o. TD Unlimited Chequing Account ending in 438;
- p. TD Savings Account ending in 090;

- q. Salmon Arm Savings and Credit Union ("SASCU") Accounts;
- r. Mr. Bennett's Municipal Pension Plan;
- s. Mr. and Ms. Bennett's Canada Pension Plan ("CPP") credits;
- t. Various Chattels as follows:
 - i. Hunting equipment (including guns, decoys, huts, and reloading equipment);
 - ii. two electric down riggers;
 - iii. two generators;
 - iv. fishing gear (including rods, tackle boxes, boxes);
 - v. a welder and cutting torches;
 - vi. two boat motors;
 - vii. two chainsaws;
 - viii. camping gear (including coolers, cooker, solar panel);
 - ix. BMW 5th wheel hitch;
 - x. two electric guitars;
 - xi. electric acoustic guitar with case;
 - xii. large ½ stack set amp;
 - xiii. smaller amp;
 - xiv. saddle, bridle, chaps, spurs, reins, a saddle blanket previously used by Mr. Bennett;
 - xv. Janome sewing machine;
 - xvi. yard and shop tools;
 - xvii. other tools;
 - xviii. Bev Doolittle painting;
 - xix. cart for pony and harness;
 - xx. two western saddles, an English saddle, other saddles, and tack used by Ms. Bennett;
 - xxi. furniture and small appliances; and
 - xxii. five horses.

[53] I will deal with each item of family property and determine whether it is excluded and, if not, its value.

The Farm Property

- [54] The parties' only real property is the Farm Property which was purchased in 2005 and is registered in their joint names.
- [55] The Farm Property was appraised pursuant to the Wilson Order by a jointly retained appraiser, Amanda Corrie. She valued it at \$392,000 (the "First Appraisal") on June 12, 2019.
- [56] Ms. Corrie reappraised the Farm Property on May 7, 2021. It was valued at \$519,000 which Mr. Bennett says should be used for the purposes of assessing its value at the date of trial (the "Second Appraisal"). There is an outstanding mortgage against the Farm Property. As of the date of trial, the balance owing on the mortgage was \$171,421.07.

The Valuation Date

- [57] Ms. Bennett submits that, in the circumstances of this case, it would be significantly unfair to assess the value of the Farm Property as of the date of trial. She submits that the parties were prepared to rely on the First Appraisal for their first scheduled trial in June 2020. The trial did not proceed because of the shut-down in the court's operations due to COVID-19. She also submits that the parties were prepared to rely on the First Appraisal for their second scheduled trial in April 2021, which did not proceed because there was insufficient trial time during the assize.
- [58] After the second trial was adjourned, Mr. Bennett sought an updated appraisal of the Farm Property. Ms. Bennett objected, but, in the face of a planned application, Ms. Bennett did not oppose but did not share the cost of the Second Appraisal.
- [59] For the following reasons, I do not agree that the Farm Property should be valued as of the date of the First Appraisal.
- [60] In making her submission, Ms. Bennett appears to rely on the factors in s. 95 of the FLA which are to be considered when assessing significant unfairness in the context of an unequal division of property. It is not clear that the s. 95 factors apply to the analysis of significant unfairness under s. 87. In this case, the effect of valuing the Farm Property as of the date of the First Appraisal would be to reduce the overall value of the family property to both parties.
- [61] Neither party was responsible for the court's COVID-19 shut-down or for the unavailability of trial time.
- [62] A potential uncertainty always arises from valuing property as of the trial date. Trial dates are often adjourned or delayed and, in the meantime, property values can increase or decrease requiring new appraisals.

[63] Both parties have benefitted from the rise in property values in BC, and both took the risk that property values would fall. It would be unfair to Mr. Bennett if he were not to share in that rise.

Unequal Division

[64] Fairly considered, Ms. Bennett asks me to consider that because of improvements she made to the Farm Property between date of the First Appraisal and the Second Appraisal, it would be significantly unfair to divide the value of the Farm Property equally. She submits that part of the increase in value between the two appraisals is attributable to the renovations and improvements she made post separation. In her evidence, she provided a long list of maintenance issues that she addressed and of renovations that she made, and photographs both before and after.

[65] Based on her evidence and the photographs, I find that Ms. Bennet made the following repairs to the interior of the Farm Property:

- (a) In the kitchen, she completed the new sealed wood countertops, replaced the kitchen tap, filled gaps between the countertop and the wall and the stove, closed in a large countertop hole near the stove, installed kick plates at the base of the kitchen cabinets, and finished the back of the cabinetry which is visible from the living room.
- (b) In the living room, she removed residual drywall from an earlier renovation, clad the unfinished support beams in finished wood, removed the part of an archway which had been left (opening up the living room to the kitchen), installed cupboard doors, and rebuilt two sets of steps into the sunken living room.
- (c) In the dining room, she repaired damage to the ceiling that had been caused by bees some years before and re-drywalled and stuccoed the ceiling, and replaced damaged floor boards.
- (d) In the master bedroom, she painted the walls and trim and filled in holes in the drywall.
- (e) In the ensuite bathroom, she replaced corroded taps.
- (f) In the master bathroom, she sourced matching tile and replaced missing tile.
- (g) In the basement, she rebuilt the stairs and improved the safety of the sump pump wiring.
- (h) In the rear mudroom, she properly installed the overhead light.

[66] On the exterior of the Farm Property, Ms. Bennett:

- (a) installed cedar siding on the exterior mudroom walls which had been covered in tar paper that was exposed to weather and was deteriorating;
- (b) built a storage room for the wood that is the primary source of heat to the house;
- (c) built a weather proof hay shed;

- (d) removed and rebuilt a rotten wooden deck;
- (e) took down old fences and removed a broken gate;
- (f) removed debris and junk from around the Farm Property;
- (g) repaired the roof of the barn;
- (h) repaired the fascia and soffit of the house;
- (i) built doors for the workshop that had previously been tarped and created a wood quilt to cover a hole that had been cut into the loft from the outside; and
- (j) built a "she shed" with a wood burning fireplace.

[67] Mr. Bennett says that none of the renovations were done in consultation with him.

[68] In *R.L.H. v. A.A.H.*, 2018 BCSC 939, Justice Johnston considered a wife's submission that the valuation date for a family home should be the separation date instead of the trial date, in part because she spent an estimated \$10,000 on repairs and maintenance to the home. She presented receipts totalling about \$7,000. Justice Johnston estimated that approximately \$2,000 actually reflected repairs and maintenance. He set out the presumption under s. 87 that the trial date is the valuation date for family property and debt. He explained that the court has discretion to order a different valuation date but concluded that the increase in the value of the home was almost entirely due to a general rise in the real estate market and not, to a significant degree, to the wife's efforts: para. 89.

[69] In my view, *R.L.H.* is distinguishable from this case. It is apparent from Ms. Bennett's photographs that she has significantly increased the appeal of the Farm Property through her labour and skills. Although Mr. Bennett was critical of some of her work, I find, on a balance of probabilities, that the repairs to such obvious flaws in the Farm Property make it more saleable now than it was on the date of the First Appraisal. On a first impression basis, the Farm Property has more appeal as a result of Ms. Bennett's improvements.

[70] Ms. Bennett notes that the condition of the Farm Property in the First Appraisal is described:

Subject is an older home in below average condition overall. Sunken living room with interior wall framing exposed. Some gaps in flooring. Some new sealed wood countertops in kitchen. Master bedroom has no closet doors and small 2 piece ensuite with tile floors and no baseboards. 3 piece bathroom has jetted tub that is not operational and unfinished wall tile. Some vinyl flooring removed. Laundry area in hallway. Some marks on walls and trim.

[71] In the Second Appraisal, the condition of the Farm Property is described:

Subject is an older home in average condition overall. Sunken living room. New sealed wood countertops in kitchen. Master bedroom has no closet doors and small 2 piece ensuite with tile floors and no baseboards. 3 piece bathroom has jetted tub that is not operational and unfinished wall tile. Some tile missing in rear laundry/entrance. Some new storage shelving and interior doors. Den is cluttered. [Emphasis added.]

[72] Some of Ms. Bennett's work is reflected in the condition description in the Second Appraisal.

[73] In reviewing the comparators in the two appraisals, it is apparent that there is a value difference between below average and average condition properties. The adjustments range between \$5,000 and \$8,000.

[74] In this case, I do not have any receipts for the work Ms. Bennett did to improve the Farm Property. Nor did Ms. Bennett require the appraiser to attend trial for the purposes of cross-examination. As a result, I have no opinion evidence on which I can assess the value impact of Ms. Bennett's improvements in the Second Appraisal. Nonetheless, I have some information which suggests that the improvement in the overall condition, from below average in the First Appraisal, to above average in the Second, increased the value of the Farm Property.

[75] While I do not agree that the increase in value is such that it would be significantly unfair to use the First Appraisal as the valuation for trial, I will consider Ms. Bennett's efforts with respect to a reapportionment under s. 95 of the FLA.

Is a Reapportionment of Property Appropriate in this Case?

[76] The only subsection of s. 95(2) which suggests that there should be an unequal division is s. 95(2)(f). There is no evidence that either party caused a significant decrease in the value of family property beyond market trends. However, I accept that Ms. Bennett's efforts have increased the value of the Farm Property beyond market trends. In my view, the "significance" of the increase is not only measured in dollars. Ms. Bennett's efforts have significantly increased the appeal of the Farm Property such that it is probable that it would sell more quickly than if it had remained in below average condition.

[77] Doing the best I can with the evidence I have, I divide the Farm Property unequally by allocating \$10,000 of the increased value of the Farm Property, as reflected in the Second Appraisal, to Ms. Bennett's efforts.

[78] An unequal division of family property or debt may also be made pursuant to s. 95(3) of the FLA :

(3) The Supreme Court may consider also the extent to which the financial means and earning capacity of a spouse have been affected by the responsibilities and other circumstances of the relationship between the spouses if, on making a determination respecting spousal support, the objectives of spousal support under section 161 [objectives of spousal support] have not been met.

- [79] As discussed in *Delaurier v. Massicotte*, 2018 BCSC 1857, where an argument is made under s. 95(3) of the FLA, the court must again turn to the objectives of spousal support set out in s. 161 of the FLA. If those objectives cannot be met with regular spousal support, the court can then consider an unequal division of family property and debt. In *Delaurier*, the parties had young children, and a very large gap in incomes (\$15,000 to \$83,000). The wife had a strong compensatory claim for support as she was out of the work force for several years caring for the children. She had also depleted her savings and gone into debt after they separated to care for the children and maintain the family property. At the time of trial, she planned on pursuing a diploma that would increase her earning potential. The spousal support calculations based on her planned earning potential, taking into account the priority accorded to child support, amounted to very little. That made spousal support ineffective, and the compensatory goal of spousal support would not be met, taking into account the husband's higher earnings, greater assets, and greater income-earning potential. The court remedied this by ordering that the wife get 60 percent of the value of the home: paras. 172-179.
- [80] Ms. Bennett argues that Mr. Bennett's failure to voluntarily pay spousal support suggests that a reapportionment is appropriate to ensure that she receives support and he does not evade his responsibilities. However, his spousal support is currently up to date or nearly so, and there is a five-year garnishing order in place.
- [81] I am satisfied that the objectives of spousal support have been met in this case and no reapportionment is necessary under s. 95(3).

Conclusion on the Date of Valuation and Division of the Family Property

- [82] For the reasons given, I find that the value of the Family Property as of the date of trial, the appropriate valuation date, is \$519,000. I also find that Ms. Bennett is entitled to an unequal division of the Farm Property to the extent of \$10,000. The remaining value is to be divided equally.

The Parties' Exclusion Claims

- [83] When the parties purchased the Farm Property in 2005, they made a \$25,000 down payment, \$15,000 of which was given to Ms. Bennett, as an advance on an inheritance, by her mother, Linda Bridgeman. The balance was borrowed from a friend and has since been repaid. She claims \$15,000 as an exclusion from the value of the Farm Property.
- [84] Ms. Bridgeman testified at trial and was not cross-examined. She explained that she gave each of her children an inheritance advance.
- [85] I was satisfied, on Ms. Bridgeman's and Ms. Bennett's evidence, that Ms. Bennett has met her burden of establishing an entitlement to a \$15,000 exclusion from the value of the Farm Property. Mr. Bennett did not oppose the exclusion.

- [86] Mr. Bennett also claims an exclusion of \$5,000 from the equity in the Farm Property on the basis that his mother gave him the money and he used it to pay the closing costs.
- [87] Ms. Bennett denies that Mr. Bennett received a gift from his mother.
- [88] Even if a gift had been made, I was not satisfied on Mr. Bennett's evidence that he established his entitlement to an exclusion. He did not testify that the funds were a gift specifically to him, as opposed to a joint gift. He did not testify that the funds were for the purpose of purchasing the Farm Property. There was nothing in writing from his mother, and she did not give evidence. Further, there was no evidence as to how the funds were applied, whether they were comingled in the parties' accounts, or that the closing costs were \$5,000.

Conclusion on the Farm Property

- [89] During the trial, it was clear that Ms. Bennett wishes to keep the Farm Property. Without it, she faces a very difficult decision about the horses the parties own. She gave evidence about the prohibitive cost of boarding them.
- [90] As a result, I conclude that it is appropriate to give Ms. Bennett the opportunity to buy out Mr. Bennett's interest in the Farm Property based on a value of \$519,000 subject to Ms. Bennett's exclusion claim and the unequal division I have ordered.
- [91] Ms. Bennett is to have 90 days to discharge Mr. Bennett's obligation under the TD Canada Trust Mortgage (the "Mortgage") and to compensate Mr. Bennett for his share of the Farm Property and to equalize the division of the other family assets.
- [92] If Ms. Bennett is able to discharge Mr. Bennett's obligation under the Mortgage, and make the required compensation payment, Mr. Bennett will transfer his interest in the title to the Farm Property to Ms. Bennett.
- [93] If Ms. Bennett is unable to do so, the Farm Property is to be listed for sale, and the parties are to have joint conduct of sale. The proceeds of sale are to be used to pay: the Mortgage and any other encumbrances against title; the real estate commission; the usual closing adjustments; and the legal fees associated with the sale and transfer.
- [94] The remainder of the net sale proceeds are to be divided equally between Mr. and Ms. Bennet, subject to Ms. Bennett's \$15,000 exclusion and the \$10,000 reapportionment in her favour.

Vehicles

2016 Dodge Ram

- [95] The parties purchased the Dodge Ram in 2016 for over \$90,000, which they financed. Title to the Dodge Ram was in Mr. Bennett's name, but Ms. Bennett drove it and they were jointly liable for the debt.

- [96] After separation, and until March 2019, Mr. Bennett paid the monthly loan payments with respect to the Dodge Ram. Pursuant to the Wilson Order, the Dodge Ram was to be sold with the parties having joint conduct of sale. At the time, the parties owed \$55,800 on the Dodge Ram, which appears to have exceeded its value. According to an AutoTrader valuation relied on by Mr. Bennett, the range for a trade-in was \$51,660-\$60,453, with a good price being \$54,957.
- [97] Ms. Bennett testified that because she had the Dodge Ram, and Mr. Bennett was in Antigonish, the obligation to sell it fell on her and although she reached out to Mr. Bennett, she received no assistance. She visited five Dodge dealerships in Vernon and three in Salmon Arm, and she called one in Kelowna. She was unsuccessful in her efforts to sell it. If she turned the vehicle in to the dealership where they bought it, it would have negatively affected both parties' credit ratings, and they would have been charged a fee.
- [98] In July 2019, Ms. Bennett negotiated with Swan Lake Motors for a \$56,000 trade-in allowance for the Dodge Ram, from which the lien would be paid off. Swan Lake agreed to the arrangement conditional on Ms. Bennett buying a 2017 Nissan Titan. She did so, and financed the \$46,461 purchase price of the Titan. The trade-in allowance for the Dodge Ram is \$200 more than the lien amount, and Ms. Bennett applied the \$200 to the deposit on the Titan.
- [99] Mr. Bennett agreed that Ms. Bennett got a fair value on the trade-in of the Dodge Ram. He suggests that the value of the Dodge Ram was the \$200 credit to Ms. Bennett.
- [100] Ms. Bennett claims that a portion of the debt she took on for the Titan is a family debt because she had no choice but to take on the debt, to get the parties out of the debt on the Dodge Ram.
- [101] I have concluded that the Dodge Ram had no value and that the debt on the Titan is Ms. Bennett's alone. To accede to Ms. Bennett's submission that a portion of the debt is family debt, the Titan would also have to be considered a family asset as it was, in effect, purchased through a renegotiation of family debt. I was not provided evidence about the amount currently owing on the Titan, or its value, but, on the balance of probabilities, find that three years after the purchase, its value is likely equivalent to the outstanding debt. I make that inference based on the fact that three years after the purchase of the Dodge Ram, its value approximated the debt owed on it. In the circumstances, the value of the Titan and the debt associated with it are likely a wash.
- [102] As to the \$200, I think it fair that Ms. Bennett receive that amount due to her efforts to arrange for the trade-in.

2009 Chevrolet Silverado

- [103] Mr. Bennett drove a 2009 Chevrolet Silverado. It was financed and, as of the date of separation, the debt owing on it was approximately \$12,000. He continued to pay the Silverado debt until it was paid off in full.
- [104] Mr. Bennett then traded in the 2009 Silverado for a 2017 Silverado. He received a \$7,000 trade-in credit. The value of the Silverado is in dispute.
- [105] During her evidence, Ms. Bennett referred to a number of ads for 2009 Chevrolet Silverados, with price ranges of \$18,000-\$19,000. Mr. Bennett testified that the Silverado had much higher mileage, and a different trim package, than the trucks listed in those ads. He provided an automated AutoTrader electronic valuation for the 2009 Silverado showing values of \$8,602 to \$10,066 with a "good price" being \$9,151.
- [106] Mr. Bennett submits that the value of the Silverado should be set at \$7,000 which is the amount he received for it as a trade-in and which he invested in his new vehicle. He also submits that \$7,000 is the difference between the \$19,000 estimate provided by Ms. Bennett and the \$12,000 loan that was owing at the date of separation.
- [107] The evidence provided by Ms. Bennett is for asking prices for 2009 Silverados, not selling prices. I also accept that the mileage on Mr. Bennett's Silverado was higher than the mileage on the Silverados in Ms. Bennett's ads.
- [108] Based on all the evidence, I conclude that Mr. Bennett did not achieve as high a trade-in price as he might have and that \$9,000 is the value of the Silverado. That amount is slightly less than the "good price" reflected on the AutoTrader estimate of value. As Mr. Bennett was content to use the "good price" on the AutoTrader estimate to establish a value for the Dodge Ram, it is appropriate to use a similar approach for the Silverado.

Sand Piper 5th Wheel

- [109] The parties have agreed that the Sand Piper 5th Wheel has a value of \$7,000.

2001 CM Horse Trailer

- [110] Ms. Bennett has the horse trailer at the Farm Property. The parties disagree on its fair market value. They purchased it for \$9,000 in 2013, and Mr. Bennett says that they got an excellent "deal" and that it is still worth \$9,000. Ms. Bennett says that, as a result of depreciation, it is only worth \$6,000.
- [111] I conclude that the value of the horse trailer is \$6,000. I accept that it has depreciated in the eight years since it was purchased, and as Ms. Bennett is more directly involved in the equestrian community, she is more likely to have a true sense of its value.

1979 Champion Boat with Trailer

- [112] The Champion is located at the Farm Property. The parties disagree on its fair market value.

- [113] Mr. Bennett testified that, in the summer of 2018, he listed the *Campion* for sale for \$10,000. He says that he received no offers and reduced it to \$7,500. He received and declined one offer of \$5,000. Accordingly, he values the *Campion* at \$4,000. Ms. Bennett values the *Campion* at \$10,000 based on Mr. Bennett's original ad and the \$9,000 of work put into it.
- [114] On the evidence, in 2018, Mr. Bennett thought that the *Campion* was worth more than the \$5,000 he turned down.
- [115] In submissions, Mr. Bennett's counsel agreed that I could take into account the fact that, during COVID-19, and because of travel restrictions, there has been increased interest in recreational boats and that prices have risen. The *Campion* is located in an area with lots of boating opportunities.
- [116] Taking those factors into account, and the fact that the *Campion* is three years older than it would have been in 2018, I conclude that, on a balance of probabilities, the *Campion* has a fair market value of \$9,000.

Aluminum Boat with 5 HP Motor

- [117] Mr. Bennett took the aluminum boat with him to Antigonish. The parties disagree as to its value. According to a bill of sale produced by Ms. Bennett, it was purchased in 2015 for \$1,693.
- [118] Ms. Bennett provided listings for new versions of similar boats, indicating a selling price of between \$2,299 and \$3,599 for a boat without motor. She submits that considering depreciation, the boat and motor are worth \$3,000.
- [119] Mr. Bennett believed that he paid about \$1,500 for the boat and motor, and he submits that is their current value.
- [120] In light of my comments about the appreciation of boats as a result of COVID-19, I find that it is probable that the aluminum boat and motor has increased in value and set its value as \$2,000.

2003 Snowmobile Trailer

- [121] Mr. Bennett has the snowmobile trailer in Antigonish. The parties agree it is worth \$900.

Kioti Tractor

- [122] At separation, the parties owned a Kioti tractor. The Kioti was in Mr. Bennett's name, and he was solely responsible for the financing of it. He paid the financing cost until the Kioti was sold pursuant to the Wilson Order.

- [123] Mr. Bennett arranged for the Kioti to be sold by a friend, Trevor Betcher (phonetic). Mr. Betcher sold it for \$18,000, which was more than Mr. Bennett thought it was worth. In accordance with the joint conduct order, Mr. Bennett and his counsel tried to contact Ms. Bennett about the proposed sale, but she did not see their email until after the sale completed.
- [124] Out of the proceeds of sale, Mr. Bennett paid off the outstanding loan against the Kioti in the amount of \$16,697.50. The remaining funds, \$1,302.41, are held in Mr. Bennett's counsel's firm trust account.
- [125] Ms. Bennett does not agree that \$18,000 was fair value for the Kioti but has not provided any evidence as to what she says was its value or the amount that it should have been sold for.
- [126] I accept that the value of the Kioti was \$18,000. The parties are entitled to share in the funds held in trust.

2013 Yamaha Rhino

- [127] Mr. Bennett has the Rhino in Antigonish. The parties disagree as to its value. Ms. Bennett submits that it is worth \$12,000. She testified that it has additional features like gun racks, heating, and a snow blade. During her evidence, she provided a listing from ATV.com, a buy and sell site for ATVs, showing the MSRP of a 2013 Yamaha Rhino is \$11,499US.
- [128] Mr. Bennett say that the Rhino has depreciated and is worth \$5,300. In his evidence, he provided a trade-in value estimate from a local dealer showing a price range of \$4,200 to \$6,500. He submits that the mid-point is \$5,300.
- [129] I conclude that Mr. Bennett's estimate of the fair market value is too low as it does not take into account the additional features. Doing the best I can on the evidence available to me, I set the value of the Rhino at \$7,500.

Lawn Tractor

- [130] Both parties agree that the lawn tractor has no value as it is not operational.

2000 GMC 3500 Pickup

- [131] The parties purchased the GMC Pickup for \$4,500. Apparently, the purchase was never registered. The parties disagree as to its value.
- [132] Ms. Bennett testified that the GMC has depreciated since the parties bought it and it does not run. She submits that it has a value of \$3,000.
- [133] Mr. Bennett testified that the only thing wrong with the GMC is that it has a broken fuel line and that its value is primarily based on its modification for use as a food truck. He submits that it has the same value as when the parties purchased it.

[134] The GMC is difficult to value. It has value as a mobile food truck but would require repairs to have it run. It would need to be registered before it is sold.

[135] In the circumstances, I have decided that it would be fair to average the parties' estimates of value and find that the fair market value of the GMC is \$3,750.

1995 GMC Yukon

[136] Ms. Bennett is in possession of the Yukon. Mr. Bennett bought it in 2001 for \$27,000, when it was fairly new and had low mileage. He described it as a "classic, two-door Yukon". The Yukon was in Ms. Bennett's name, but the loan was in Mr. Bennett's. The parties disagree as to its value.

[137] Ms. Bennett testified that the parties gifted the Yukon to their son for graduation but never did the paperwork transferring it to him. Mr. Bennett testified that, although they discussed giving the Yukon to their son, he was adamantly against it. Mr. Bennett said that it has a fuel line leak and requires an investment of \$4,000-\$5,000 in repairs to the motor and the brakes.

[138] Mr. Bennett testified that Ms. Bennett never wanted to sell it. Mr. Bennett testified that the parties had a garage sale and unsuccessfully tried to sell it for \$4,000. He estimates that it is worth \$4,000.

[139] The value of the Yukon is difficult to estimate. Even though it was marketed at a garage sale, not through a vehicle listing site, no one was interested at a price of \$4,000. That suggests a fair market value of less than \$4,000.

[140] In light of the work that the Yukon requires, it has a limited market. Doing the best I can with the evidence available, I find that the Yukon has a fair market value of \$2,000.

Trailer for the Tractor

[141] The trailer for the tractor is a flat bed trailer. It is currently with Mr. Betcher. Mr. Bennett assigns a value to it of \$300 but agreed that he might be able to get as much as \$500 for it.

[142] I conclude the trailer should be valued at \$500.

Bank Accounts

[143] At separation, the parties had a number of bank accounts. In particular, they had TD chequing and savings accounts, Scotiabank chequing and savings accounts, and a Salmon Arm Savings and Credit Union ("SASCU") chequing account. They both gave evidence about the balances, and available bank statements were entered into evidence.

[144] There is no dispute that the bank accounts should be divided. On the evidence, the only accounts with balances were the TD accounts. One had an overdraft of \$241.12, the other had a credit balance of \$826.08.

[145] After separation, Mr. Bennett kept and used the TD and Scotiabank accounts, and Ms. Bennett used her SASCU chequing account. Neither made transactions on the other's accounts.

Mr. Bennett's Municipal Pension Plan

[146] Pursuant to Part 6 of the FLA, Ms. Bennett is entitled to share in Mr. Bennett's Municipal Pension from SD 83. All of the contributions were made during the parties' relationship. Ms. Bennett is not entitled to share in Mr. Bennett's Municipal Pension from Strait as he commenced working there after the relationship had ended.

CPP Credits

[147] Both parties contributed to CPP and are entitled to equalize their credits for the period of the relationship: September 1, 1996, to March 31, 2018.

Chattels

[148] Mr. Bennett testified that he sold the BMW 5th Wheel hitch, through Mr. Betcher, who received \$1,250 for it, significantly more than anticipated. I set that as the fair market value for the hitch.

[149] The parties had a number of other chattels as set out earlier in this decision. They disagree on the value of most of them. There are also disputes about what the parties brought into the relationship and what was received by them as gifts.

[150] Some of the chattels were owned prior to the relationship. These include, for example, some of Mr. Bennett's hunting and fishing equipment, electric guitars, boat motors and tools; and Ms. Bennett's Bev Doolittle painting. Some were given as gifts during the relationship. These include, for example, Mr. Bennett's electric downriggers; some of Mr. Bennett's fishing and hunting equipment; and some of Ms. Bennett's woodworking tools. Some have very little resale value or are very difficult to sell. These include, for example, well-used furniture and appliances, the lawn tractor, and the horses.

[151] The parties led no reliable evidence as to the value of most of the chattels, and when they did, they disagreed. Presumably, they were not worth getting appraised.

[152] In her evidence and submission, Ms. Bennett tended to overvalue chattels which Mr. Bennett wished to keep and undervalue chattels which she wished to keep. Mr. Bennett did the same, but in reverse. For example, Mr. Bennett put a \$2,000US value on Ms. Bennett's Janome sewing machine. Ms. Bennett valued it at \$250. They disagreed as to how old it was, but it was at least ten, and possibly as much as 20, years old. I expect that Ms. Bennett's value is closer to the actual value as she is the person who uses the machine, and many high-end sewing machines are now computerized. It is not at all clear how Mr. Bennett obtained his value without knowing the model or age of the sewing machine.

- [153] Mr. Bennett also valued Ms. Bennett's saddle and tack at \$3,000, 12 times the \$250 value he placed on his saddle and tack but there was no evidence that she had 12 times as much saddle and tack as he did. In fact, Mr. Bennett testified that Ms. Bennett had saddle and tack for four horses. He also allocated her \$1,500 for the cart and harness for the miniature horse that they purchased for \$1,000 more than seven years before. Even if the parties got a bargain in the first instance, I accept that the cart and harness would be worth no more than what they paid for them and likely less.
- [154] With respect to the horses which are in Ms. Bennett's possession, Mr. Bennett originally valued them at what the parties paid for them. Ms. Bennett testified that they are old horses, one of them is blind, and that they are probably worthless except to her. During his evidence, Mr. Bennett conceded that they had no value.
- [155] Some of the chattels are located at the parties' son's home where they were left by Mr. Bennett, and Mr. Bennett has made no effort to move them to Antigonish. The parties' son has had the use of them.
- [156] Mr. Bennett submits that he should be allocated \$4,800 for his share of the chattels and Ms. Bennett should be allocated \$12,000 for her share, however, on the evidence that Mr. Bennett significantly overvalued the Janome sewing machine.
- [157] Further, the household furnishings and appliances which Mr. Bennett valued at \$5,000 are three years older than at the date of separation and are of limited use to Mr. Bennett. The cost of moving them to Antigonish is likely to be more than their value. They have a value to Ms. Bennett, but many of the appliances would be inclusions if the Farm Property were sold, and used household furnishings are of little resale value. There were no specific furnishings that Mr. Bennett was seeking.
- [158] In all the circumstances, and doing the best I can in the absence of an appraisal of the items in dispute, apart from the BMW 5th Wheel Hitch which was converted into cash, I conclude that all other family chattels in Ms. Bennett's possession should be considered her excluded property and not factored into the calculation of the divisible family assets. Similarly, all family assets in Mr. Bennett's possession should be considered his excluded property and not factored into the calculation of the divisible family assets.

Family Debt

Mortgage Debt

- [159] In addition to the mortgage on the property, which, at the date of trial, was in the amount of \$171,421, at the date of separation, the parties had debt with respect to the 2016 Dodge Ram, the Kioto tractor, and the Chevrolet Silverado. As set out above, all of that debt was paid or extinguished by the parties after separation.

Consumer Debt

[160] In addition, the parties had consumer debt, which, at the date of separation, totalled the amounts set out below. Mr. Bennett continued to pay the interest on these family debts after separation but is not seeking a contribution from Ms. Bennett for those payments. In particular, the parties had the following consumer debt:

- (a) a Scotiabank Value Visa Card in Mr. Bennett's name. On the statement dated July 10, 2018, the balance outstanding was \$7,397.71. On the statement dated August 8, 2018, there were two charges relating to July 2018 totalling \$179.00. The total owing on July 31, 2018 was \$7,576.71;
- (b) a Scotiabank Line of Credit with an outstanding balance of \$10,158.79;
- (c) a Scotiabank Gold American Express Card with a balance on July 10, 2018, of \$6,434.25. A payment was made on July 19, 2018, but interest charges were added. A fair estimate of the value of this debt is \$6,412.39;
- (d) a Costco Capital One Platinum MasterCard with a balance of \$5,981.14 on the July 14 to August 13, 2018 statement. It included an interest charge of \$98.98. I have attributed half of the interest to the month of July and determine that the outstanding balance was \$6,031.14.

[161] Ms. Bennett does not dispute that these are family debts.

MSP Debt

[162] Ms. Bennett did not have any additional family debt. However, after separation and on the parties' behalf, she paid \$1,400 related to a MSP outstanding balance. I agree that this is a family debt.

Overdraft

[163] Finally, according to Mr. Bennett, after separation, the parties had an approximately \$1,400 overdraft with respect a TD bank account that was closed by the bank. I had very little information about this overdraft, and it does not appear that the bank has taken any steps to collect the overdraft amount.

Tax Debt

[164] After the parties' separation, in the spring of 2019, Mr. Bennett filed his 2018 income tax return and was assessed a tax debt of \$5,695.50. The evidence as to how that tax debt accrued was unclear. Mr. Bennett testified that he had no idea why he had been reassessed.

- [165] Mr. Bennett speculated that the reassessment may have been because of the payout of his SD 83 accrued vacation pay on his termination. Ms. Bennett suggested that it may have arisen because Mr. Bennett was residing in Nova Scotia in December 2018 and all of his 2018 income was treated as if it were earned in Nova Scotia. As Ms. Bennett demonstrated, the Nova Scotia provincial tax on employment earnings is approximately 3 percent higher than the tax charged by British Columbia.
- [166] I am unable to resolve this issue on the evidence before me. I have decided not to treat the tax debt as a family debt on the basis that Mr. Bennett has not proven that it is properly treated as such. At most, the family debt would be \$2,847.45 for the approximately half of the 2018 year before the parties separated. However, Mr. Bennett testified that Ms. Harrison did not charge him rent while he was paying down his income tax debt thereby, in effect, gifting him \$500 a month to pay towards his income tax debt.
- [167] On all of the evidence, I conclude that the family debt to be shared between the parties is the \$30,179.03 paid by Mr. Bennett and the \$1,400 paid by Ms. Bennett, for a total of \$31,579.03. I have not factored in the \$1,400 overdraft as there was insufficient evidence to prove it and there are no current efforts to collect it. If collections are subsequently undertaken by the bank, Ms. Bennett is to pay her share of the debt.
- [168] Netting out the amounts, Ms. Bennett owes Mr. Bennett \$14,389.52 towards the debt currently in his name. Thereafter, Mr. Bennett will be solely responsible for all the debts in his name, with the exception of the mortgage which I discuss below.

Conclusion on Property Division

- [169] Attached to these reasons as Schedule A is a spreadsheet setting out all of the decisions I have made with respect to the division of the parties' property. It results in a property equalization payment being owed to Mr. Bennett in the amount of \$162,686.50.

Spousal Support

The Applicable Legislation

- [170] The court may make an order for spousal support under Division 4 of the FLA or as collateral relief under the DA, s. 15.2. In this case, because the parties are married and due to the paramountcy of the DA over the FLA, I will consider spousal support under the DA.
- [171] Section 15.2(4) of the DA and s. 162 of the FLA require that the amount and duration of spousal support be "determined on consideration of the conditions, means, needs and other circumstances of each spouse, including the following":
- (a) the length of time the spouses lived together;
 - (b) the functions performed by each spouse during the period they lived together;
 - (c) an agreement between the spouses, or an order, relating to the support of either spouse.

[172] The objectives on an order for spousal support are set out in s. 15.2(6) of the DA. Such an order should:

- (a) recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown;
- (b) apportion between the spouses any financial consequences arising from the care of any child of the marriage over and above any obligation for the support of any child of the marriage;
- (c) relieve any economic hardship of the spouses arising from the breakdown of the marriage; and
- (d) in so far as is practicable, promote the economic self sufficiency of each spouse within a reasonable periods of time.

Entitlement

[173] There are three bases for entitlement to spousal support: contractual, compensatory, and non-compensatory: *Bracklow v. Bracklow*, [1999] 1 S.C.R. 420, at para. 37. Often, entitlement will have both compensatory and non-compensatory aspects.

[174] In determining whether a spouse is entitled to spousal support, the court must consider whether a spouse has suffered economic disadvantage as a result of the marriage or its breakdown: *Moge v. Moge*, [1992] 3 S.C.R. 813 at 861, 865.

[175] In *Moge*, Justice L'Heureux-Dubé explained that the doctrine of spousal support, which focuses on the equitable sharing of the consequences of marriage breakdown, does not guarantee that either party will maintain the marital standard of living post-separation. However, the marital standard of living "is far from irrelevant to support entitlement. As marriage should be regarded as a joint endeavour, the longer the relationship endures, the closer the economic union, the greater will be the presumptive claim to equal standards of living upon its dissolution": *Moge* at 870. That said, spousal support is not to be used as "a general tool of redistribution which is activated by the mere fact of marriage": *Moge* at 864.

[176] Non-compensatory support is based on the social obligation model of marriage. The burden of meeting the needs of a disadvantaged spouse falls on the other spouse, not the public. Where non-compensatory principles apply, spousal support aims to narrow the gap between the needs and means of spouses. Need alone may establish entitlement to non-compensatory support. The concept of need goes beyond the necessities of life and varies with the circumstances of the parties, including the marital standard of living and the other spouse's post-separation standard of living: *Chutter* at para. 55; *H.C.F. v. D.T.F.*, 2017 BCSC 1226 at para. 212; *Loesch v. Walji*, 2008 BCCA 214 at paras. 39-41.

[177] In this case, Ms. Bennett submits that she is entitled to spousal support on both a compensatory and non-compensatory basis.

- [178] Mr. Bennett does not dispute that Ms. Bennett is entitled to spousal support, but he submits that the award should be primarily needs based. He submits that she has a weak compensatory claim.

Entitlement to Compensatory Support

- [179] For a number of years, Ms. Bennett did not work. She was out of the workforce when the parties met and, after they started living together, with Mr. Bennett's verbal or tacit agreement, remained at home for at least two years to care for their son.
- [180] At some point, she started volunteering with the Society. In 1998, she obtained a part-time job with it. Because the parties did not need her to, she has never worked full time, and her attachment to the workforce was interrupted when the parties moved to the Farm Property and when they attempted dog breeding as a home-based business.
- [181] Ms. Bennett described the parties' marriage as a "traditional" marriage with her being responsible for most of the household duties and for raising their son. Mr. Bennett was the breadwinner, earning the majority of the family income, and often working out of town. When Mr. Bennett was at home, he performed most of the yard work, but almost none of the household duties.
- [182] Ms. Bennett said her income was secondary. She adjusted her work to suit Mr. Bennett's schedule. For example, when Mr. Bennett was out of town, she could not work overnight shifts. In his evidence, Mr. Bennett agreed that he worked out of town for nine years of the parties' marriage including in Vancouver, Tumbler Ridge, and Lethbridge.
- [183] Although Ms. Bennett did not move for Mr. Bennett's employment, I accept that she gave up work opportunities in the nine years during which Mr. Bennett worked out of town. She adjusted her shifts to be at home to care for their son while he was away. She was given a false sense of security. Because Mr. Bennett earned enough to support them and meet their expenses, it was not necessary for her to explore training or different work opportunities. She was 52 on the date of separation.
- [184] I am satisfied that Ms. Bennett is entitled to compensatory support considering: the length of the parties' relationship (almost 22 years); Ms. Bennett, who is now 55 years of age, did not pursue post secondary education or training during the marriage because her income was secondary, and she was, for at least nine years, responsible for the household and their son while Mr. Bennett pursued opportunities out of town; Mr. Bennett earned the majority of the household income which funded the parties' lifestyle; the parties' joint decisions about where and how they wanted to live; and the economic disadvantage Ms. Bennett has suffered as a result of the breakdown of the marriage.

Entitlement to Non-Compensatory Support

- [185] I am also satisfied that Ms. Bennett is entitled to non-compensatory support as on her income, she is unable to meet the marital standard of living the parties shared when they were together. Since separation, she has had responsibility for the parties' animals. She testified about her struggles with the cost of feed for the horses, the veterinary bills, and the upkeep of the Farm Property without Mr. Bennett's assistance.
- [186] Ms. Bennett has maximized her earning potential and, based on her financial statement and her evidence about how she scrounged materials to complete the renovations to the Farm Property, lives frugally. For a time, she was "paid" in hay for boarding her sisters' horses at the Farm Property.
- [187] Mr. Bennett has minimal living expenses, and although it is not clear on the evidence the extent to which Mr. Bennett and Ms. Harrison have become an economic unit, there is some evidence that they are financially supportive of each other. For some months, Ms. Harrison did not collect rent to allow Mr. Bennett to address his income tax debt.

Income Determination

- [188] The Spousal Support Advisory Guidelines [SSAG] state clearly that the starting point for determining income is the Federal Child Support Guidelines, S.O.R./97-175 [FCSG]. Sections 15-20 of the FCSG, along with Schedule III, provide the applicable framework.
- [189] Generally, the starting point is the parties' line 150 (now line 15000) incomes: FCSG, s. 16. The court may also impute income to a spouse who is intentionally under-employed: FCSG, s. 19(1)(a). In fact, the SSAG provide that the income imputing provisions in s. 19 of the FCSG are, if anything, even more important in spousal support cases than in child support cases. The SSAG are income-based guidelines and require careful attention not only to a spouse's income, but also to his/her income-earning capacity.
- [190] I will first determine Ms. Bennett's income for support purposes and then Mr. Bennett's, together with whether income should be imputed to him.

Ms. Bennett's Income

- [191] As I have said, Ms. Bennett's home position is as a crisis intervention worker. She has been in that job since 1998, mostly working nights. In 2018, the year of separation, Ms. Bennett earned \$34,610 as a crisis intervention worker. The year before, she earned \$29,979. The following year, she increased her income to \$48,206 by picking up extra shifts and filling a temporary maternity leave position, and she received a wage subsidy. Finally, in 2020, she began her current position, funded by a grant, and earned the most money she has ever earned: \$48,546.

- [192] She has clearly made an effort to become economically self-sufficient, and Mr. Bennett takes no issue in that regard.
- [193] She submits that her income should be set at \$38,611 which is \$4,000 a year more than she would earn if she returns to her home position.
- [194] I set Ms. Bennett's income at \$48,546.62. I do so on the basis that her income at that level is secure to the spring of 2023. If the funding for her current position ends, and her gross income declines by more than 10 percent, I have built in a review, discussed below.

Mr. Bennett's Income

- [195] Mr. Bennett's current income is \$77,784 as a Facilities Manager for Strait. With the exception of 2019, that is the lowest income he has earned since working for SD 83 in 2013.
- [196] Ms. Bennett submits that Mr. Bennett's decision to move to Antigonish was unreasonable in that he limited his job options and was only able to find work as an hourly paid electrician for Strait. She submits that even now, he is earning less than he could be. She provided evidence of one job opportunity in Salmon Arm that appears to fit Mr. Bennett's qualifications and which paid up to \$90,000. It was not entirely clear on the evidence when that job was posted.
- [197] Mr. Bennett said he did not apply for the Salmon Arm position as he no longer wished to live in BC. He made a lifestyle choice, in part, because of the embarrassment he experienced when he lost his job with SD 83 and his inability to speak about it. He is, of course, not required to continue to live in BC, but he takes the risk that an income is imputed to him because of the unreasonableness of his decisions.
- [198] In *M. (B.J.) v. B. (K.F.)*, 2003 BCSC 390, Justice Macaulay dealt with an application to vary child support on the basis that the payor father lost his employment with the provincial government, through no fault of his own. He began operating his own consulting business, earning significantly less than he had previously. Based on the father's failure to upgrade his computer skills to make him more marketable, and his decision to stop applying for work, Macaulay J. found the applicant to be underemployed and imputed an income to him but not close to the level he had earned before.
- [199] In this case, Mr. Bennett lost his lucrative position at SD 83 through no fault of his own. His efforts to find alternative work have been in and around Antigonish, where he moved without the certainty of a job. As I have said, it is probable that he did so primarily to pursue his relationship with Ms. Harrison. In the meantime, and until March 2019, when his severance ran out, he continued to pay the significant household expenses for the Farm Property.

[200] Mr. Bennett does not have many professional credentials to allow him to apply for senior jobs as a facilities manager. For example, he is not an engineer. He has primarily learned his skills on the job and through on-the-job training. By deciding to move to a relatively small community in Nova Scotia, Mr. Bennett limited his job opportunities. While moving was not unreasonable, Mr. Bennett still appears to be earning below his potential.

[201] In all the circumstances, I impute an income of \$90,000 a year to Mr. Bennett.

Quantum of Spousal Support

[202] Based on DivorceMate calculations on the incomes I have set out, spousal support is \$1,140 at the low end of the range, \$1,330 at the middle of the range, and \$1,431 at the high end of the range. The duration is indefinite.

[203] I am satisfied that spousal support should be set at the middle of the range and order that commencing August 1, 2021, and the first day of each month thereafter, Mr. Bennett is to pay to Ms. Bennett the sum of \$1,330 in spousal support.

Review

[204] In *Tedham v. Tedham*, 2005 BCCA 502, the Court of Appeal commented on spousal support reviews. The advantage of a review is that it allows the court to adjust a spousal support order to take into account the effect of significant changes in circumstances which are anticipated by one or both parties at the time of the original order, but about which there is no certainty. The disadvantage of a review is spousal support orders lack finality and give rise to a risk of further litigation.

[205] In *Leskun v. Leskun*, 2006 SCC 25, the Supreme Court of Canada said that review orders have a useful but limited role: at para. 36. Where justified by genuine and material uncertainty at the time of the original order, they permit parties to apply to vary a support order without having to show a material change in circumstances: para. 37. At para. 39, the Court said:

39 Insofar as possible, courts should resolve the controversies before them and make an order which is permanent subject only to change under s. 17 on proof of a change of circumstances. If the s. 15.2 court considers it essential (as here) to identify an issue for future review, the issue should be tightly delimited in the s. 15.2 order. This is because on a "review" nobody bears an onus to show changed circumstances. Failure to tightly circumscribe the issue will inevitably be seen by one or other of the parties as an invitation simply to reargue their case.

[206] In this case, I am satisfied that there is genuine uncertainty about Ms. Bennett's current employment. She is in a temporary position that pays her considerably more than her home position, but the funding for the temporary position may well expire in early 2023. Further, I am satisfied that Mr. Bennett should be entitled to review his spousal support obligation when he decides to retire. At trial, he said he intended to retire at age 65. That

may change however. At retirement, Mr. Bennett's income will consist of his pension income, CPP and, if entitled, an Old Age Pension. Because of the order dividing his SD 83 pension with Ms. Bennett, he will be sharing his pension income with her. He should be entitled to seek a review on retirement.

[207] As a result, this spousal support order is subject to a review on the occurrence of either or both of the following events. First, Ms. Bennett may seek a review if the funding for her current position comes to an end and her income is reduced by more than 10 percent from her current income of \$48,546. Second, Mr. Bennett may seek a review on his retirement from the workforce.

Arrears of Spousal Support

[208] Pursuant to the Wilson Order, spousal support was based on Mr. Bennett's imputed annual income of \$75,000, and interim spousal support was set at \$1,283 per month commencing on June 1, 2019, and continuing on the first day of each month thereafter until further order of this Court.

[209] The "rough justice" approach to interim orders is because they are made on limited, often disputed, evidence and on the understanding that they may be varied at trial.

[210] In this case, the parties separated on July 31, 2018, but agree that Mr. Bennett continued to pay all the family bills until March 2019, when his severance ran out. Although Ms. Bennett would have been entitled to spousal support from the date of separation, it appears that she received a benefit greater than she would have received from spousal support. She received the benefit on a tax free basis, and Mr. Bennett did not get the tax deduction he would have been entitled to if he had paid spousal support.

[211] In all the circumstances, spousal support ought to be ordered retroactive to April 1, 2019. As of May 1, 2019, it should be adjusted to \$1,330 to reflect the incomes I have set for the purpose of spousal support in this order.

[212] Based on the above, Mr. Bennett owes \$1,283 for April 2019 and \$1,330 for May 2019. He also owes \$47 for each month from June 2019 to August 2021, for a total of \$3,835.

The Life Insurance Policy

[213] Ms. Bennett was designated as the beneficiary under Mr. Bennett's life insurance policy prior to separation and the premiums for it were paid from family income. Ms. Harrison is now listed as the beneficiary. Ms. Bennett seeks an order that she be reinstated as the beneficiary.

[214] Section 170 of the FLA allows the court to order that a person who has a life insurance policy designate their spouse or child as the irrevocable beneficiary for a designated period. In *Lahdekorpi v. Lahdekorpi*, 2016 BCSC 2143, both parties were insured under a life insurance policy prior to separation. The claimant cancelled the policy after separation

as he thought it was too expensive. Justice Harris accepted that the policy provided a measure of security to the respondent and found the claimant had cancelled the policy without regard to the impact of doing so on his former spouse. She ordered the claimant to reinstate the policy, though at a lower value, for a period of six years with the respondent designated as the beneficiary: para. 115.

[215] In *H.P. v. C.T.P.*, 2014 BCSC 2024, Justice Fitch declined to order that the claimant maintain a life insurance policy naming the respondent as a beneficiary since there was little to no evidence suggesting the claimant had disobeyed previous orders for support: para. 190.

[216] An order that Mr. Bennett reinstate Ms. Bennett as the beneficiary on his life insurance policy for a period of six years is appropriate in this case. Mr. Bennett did not make all the spousal support payments required by the interim order. Ms. Bennett had to register with FMEP and there is currently a garnishment order in place. Additionally, the life insurance policy provided a measure of security to Ms. Bennett prior to separation and Mr. Bennett's decision to change the beneficiary was done without regard to the impact on Ms. Bennett.

Conclusion

[217] In addition to the divorce I granted during the trial, I make the following orders:

- (a) The following property is family property:
 - (i) The Farm Property at 134 Coell Jones Road, Mara, BC;
 - (ii) 2016 Dodge Ram;
 - (iii) 2009 Chevrolet Silverado;
 - (iv) 2000 Sand Piper 5th Wheel;
 - (v) 2001 CM Horse Trailer;
 - (vi) 1979 Campion Boat and trailer;
 - (vii) aluminum boat with 5/hp motor;
 - (viii) 2003 Snowmobile trailer;
 - (ix) 2016 Kioti tractor, trailer and implements;
 - (x) 2013 Rhino and implements;
 - (xi) lawn tractor;
 - (xii) 2000 GMC 3500 Pickup equipped as food truck;
 - (xiii) 1995 GMC Yukon;
 - (xiv) Scotiabank Chequing Account 4923;

- (xv) TD Unlimited Chequing Account 438;
- (xvi) TD Savings Account 090;
- (xvii) SASCUCU Accounts;
- (xviii) Mr. Bennett's municipal pension;
- (xix) Mr. and Ms. Bennett's CPP credits; and
- (xx) BMW Trailer Hitch.
- (b) Mr. and Ms. Bennett are entitled to keep the chattels they currently have in their possession.
- (c) Ms. Bennett has, as her excluded property, the sum of \$15,000 of equity in the Farm Property.
- (d) Ms. Bennett is entitled to an unequal division of the Farm Property in the amount of \$10,000.
- (e) Ms. Bennett is the owner of the following property:
 - (i) 2001 CM Horse Trailer;
 - (ii) the Lawn Tractor;
 - (iii) the 2000 GMC 3500 pickup;
 - (iv) the 1995 GMC Yukon;
 - (v) funds on deposit at Salmon Arm Savings and Credit Union in her name; and
 - (vi) any other property in her possession or control as of the date of this order, except as otherwise ordered.
- (f) Mr. Bennett is the owner of the following property:
 - (i) 2000 Sand Piper 5th Wheel;
 - (ii) 2003 Snowmobile Trailer;
 - (iii) 1979 Campion Boat and Trailer;
 - (iv) funds on deposit at TD Bank in his name;
 - (v) funds on deposit at Scotiabank in his name;
 - (vi) aluminum boat with 5/hp motor;
 - (vii) 2013 Rhino and implements;
 - (viii) any other property in his possession or control as of the date of this order.
- (g) The following debts are family debts, and Mr. Bennett is to be solely responsible for them:
 - (i) Scotiabank Line of Credit;

- (ii) Scotiabank Visa;
- (iii) Scotiabank Gold Amex;
- (iv) Costco Capital One MasterCard;
- (h) Mr. Bennett's CRA income tax debt is not a family debt. Mr. Bennett shall be solely responsible for his CRA income tax debt.
- (i) Ms. Bennett shall discharge Mr. Bennett's obligation under the TD Canada Trust Mortgage (the "Mortgage") within 90 days of this order and shall pay the further amount of \$162,686.50 to compensate him for his share of the Farm Property and to equalize division of the family property and debt. The calculation giving rise to this equalization payment is set out in the chart in Schedule A to these reasons.
- (j) Upon being satisfied that arrangements have been made to discharge his liability under the Mortgage and pay the sums above, Mr. Bennett shall transfer title to the Farm Property to Ms. Bennett.
- (k) If Ms. Bennett is unable to discharge Mr. Bennett's obligation under the Mortgage and to pay Mr. Bennett the equalization payment set out in para. i hereof, the Farm Property is to be listed for sale. Mr. and Ms. Bennett are to have joint conduct of sale.
- (l) The proceeds of sale of the Farm Property are to be used as follows:
 - (i) pay the Mortgage;
 - (ii) pay other encumbrances registered against the title;
 - (iii) pay real estate commission;
 - (iv) make the usual closing adjustments;
 - (v) pay the legal fees associated with sale and transfer of the home.
- (g) From the net sale proceeds:
 - (i) The sum of \$25,000 is to be paid to Ms. Bennett in recognition of her excluded property claim and of her unequal division due to her significant improvement in the value of the Farm Property.
 - (h) The remainder of the net sale proceeds are to be divided equally between Mr. and Ms. Bennett.
 - (i) Ms. Bennett shall pay compensation in the amount of \$1,397.04 to Mr. Bennett for dividing the family property and debt. Such amount to be paid from Ms. Bennett's share of the sale proceeds of the Farm Property.

- (j) Ms. Bennett is entitled to a 50 percent share or division of Mr. Bennett's municipal pension. Ms. Bennett will file the necessary application with the pension plan's administrator to give effect to the division, and Mr. Bennett will provide whatever information is required of him to give effect to the division. The parties will share equally in any administrative fee payable by the pension plan's administrator to give effect to the division.
- (k) For the purposes of spousal support under the SSAG, Mr. Bennett's income is set at \$90,000 a year, and Ms. Bennett's income is set at \$48,546 a year.
- (l) Pursuant to the DA, Mr. Bennett will pay to Ms. Bennett for spousal support the sum of \$1,330 per month, commencing on April 1, 2019, and continuing on the first day of each month thereafter until such time as Ms. Bennett returns to her home position and her income declines by 10 percent or Mr. Bennett retires. At either of which times, spousal support shall be reviewed for quantum, or until further agreement or order of the court.
- (m) Mr. Bennett is to pay Ms. Bennett \$3,835 for retroactive spousal support.
- (n) Mr. Bennett is to designate Ms. Bennett as the beneficiary under his life insurance policy within 90 days of this order.
- (o) Mr. Bennett is to provide a draft of this order to Ms. Bennett and, if she does not return it signed within two weeks of the date submitted, Mr. Bennett may obtain and enter a copy of the order without the need for Ms. Bennett's signature.

Costs

[218] Unless there are events about which I am unaware, the parties appear to have had mixed success on the issues at trial. That suggests that each should bear their own costs. If there is a need to speak to costs, the parties may appear by phone to do so.

"MacNaughton J."

Schedule A

Brackets are used to indicate debts.

Retained by Ms. Bennett

Retained by Mr. Bennett

Ms. Bennett owes Mr. Bennett

Mr. Bennett owes Ms. Bennett

Real Property

Farm Property (valued at \$519,000, deducting \$15,000 for Ms. Bennett's excluded property and \$10,000 for her improvements, and \$171,421.07 for the mortgage)

\$322,578.93

\$161,289.46

Vehicles

2009 Chevrolet Silverado

\$9,000

\$4,500

Sand Piper 5th Wheel

\$7,000

\$3,500

2001 CM Horse Trailer

\$6,000

\$3,000

1979 Campion Boat with Trailer

\$9,000

\$4,500

Aluminum boat with 5/hp motor

\$2,000

\$1,000

2003 Snowmobile Trailer

\$900

\$450

Kioti Tractor (\$1,302.41 held in trust)

\$651.21

\$651.20

2013 Yamaha Rhino

\$7,500

\$3,750

2000 GMC 3500 Pickup

\$3,750

\$1,875

1995 GMC Yukon

\$2,000

\$1,000

Trailer for the Tractor

\$500

\$250

TD Savings Account - balance of \$826.08

\$826.08

\$413.04

TD Chequing Account - overdraft of \$241.12

(\$241.12)

\$120.56

Chattels

BMW 5th Wheel Hitch

\$1,250

\$625

Debts (see para. 168 of these reasons)

(\$30,179.03)

\$14,389.52

Total

\$334,980.14

\$8,207.14

\$181,674.54

\$18,988.04

After adding up the family assets and debts that each party will retain, if Ms. Bennett wishes to keep the Farm Property, she would owe Mr. Bennett \$181,674.54 and he would owe her \$18,988.04. Netting these amounts results in Ms. Bennett owing Mr. Bennett an equalization payment of \$162,686.50. Subtracting the \$3,835 Mr. Bennett owes in retroactive spousal support, the total Ms. Bennett will owe to Mr. Bennett is \$158,851.15.

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