
CANADA / JUDGMENT

Betz v. Betz

2019 BCSC 2198

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Supreme Court of British Columbia

DECIDED

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2019 BCSC 2198 Betz v. Betz

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Betz v. Betz,

2019 BCSC 2198

Date: 20191224

Docket: E39771

Registry: Penticton

Between:

Bruce Anthony Betz

Claimant

And

Brenda Gail Betz

Respondent

Before: The Honourable Mr. Justice Hori

Reasons for Judgment

Counsel for the Claimant:

M. Welsh

The Respondent, appearing in person:

B.G. Betz

Place and Date of Trial/Hearing:

Penticton, B.C.

October 17 and 18, 2019

Place and Date of Judgment:

Penticton, B.C.

December 24, 2019

Introduction

- [1] The claimant, Bruce Anthony Betz, seeks to set aside or vary the pension provisions of a marriage agreement dated June 9, 2006 (the "Agreement"). The variation is sought pursuant to Part 6 of the Family Relations Act, R.S.B.C. 1996, c. 128 or, alternatively, Part 6 of the Family Law Act, S.B.C. 2011, c. 25.
- [2] The parties lived together, off and on, from the spring or summer of 1989 to February 28, 2010. During this period of time the parties experienced numerous periods of separation. The parties made the Agreement in 2005 after a period of separation and subsequent reconciliation.
- [3] The Agreement provides for, among other things, the division of the parties' pension benefits. The Agreement provides that Brenda Betz will be entitled to 50% of Bruce Betz's ICBC pension based on benefits accrued "from the date of his contributions to the pension plan to the date of Bruce's retirement".
- [4] Brenda Betz contributed to a pension through her employment with Telus. The Agreement provides that Bruce Betz is entitled to 50% of Brenda Betz's Telus pension "based on benefits accrued under the pension plan from 1986 to 2002".
- [5] Bruce Betz claims that the pension provisions in the Agreement are unfair and should be set aside or varied.
- [6] Brenda Betz claims that the Agreement is a legally binding contract that should be applied and enforced as agreed upon by the parties.

Background

- [7] Bruce Betz is 61 years of age. He resides in Penticton. He worked for the Insurance Corporation of British Columbia for a total of 32.5 years. He retired in August 2019.

- [8] Brenda Betz is 62 years of age and also resides in Penticton. She is currently employed by the Ministry of Children and Family Development. She has been employed with the Ministry for ten years. Before working for the Ministry, her most significant employment was with Telus. Ms. Betz worked for Telus for approximately 14 years before she left that job on March 28, 2003.

History of the relationship

- [9] The parties began living together in the spring or summer of 1989. Their period of cohabitation ended with a separation in the spring of 1990. However in the fall of 1991, the parties recommenced their relationship resulting in Ms. Betz becoming pregnant with their first child. Accordingly, the parties began living together again in the fall of 1991. The parties were married on March 21, 1992. Their first child, Michael, was born in July, 1992. Their second child, Chelsea, was born in September, 1993.
- [10] In December 1991, the parties purchased a home together in Pitt Meadows, BC. They lived in that home until it was sold in August 1998.
- [11] After the house was sold, the parties lived in a rental apartment until March 1999. By that time, their relationship had been deteriorating so the parties decided to separate. Mr. Betz moved to Maple Ridge and Ms. Betz lived in Pitt Meadows.
- [12] In June or July 2000, Brenda Betz advised her husband that she was moving to Penticton, BC, because she had accepted an opportunity to transfer to a Telus Phone Mart in that city. Ms. Betz suggested to Mr. Betz that he could come up to Penticton on the weekends to be with the children and to work on re-establishing their relationship. Mr. Betz testified that he was quite happy to do so because his main focus was to be together with his family.
- [13] Ms. Betz started at the Penticton Telus store in July 2000. She arranged accommodation in the community of Trout Creek near Summerland, BC. Mr. Betz travelled to Trout Creek on most weekends to be with the children and Ms. Betz. While Mr. Betz may have missed some weekends, he made this commute for over two years.
- [14] In August 2002, Ms. Betz purchased a townhouse in Summerland on Hespeler Street (the "Hespeler Townhouse"). The Hespeler Townhouse was purchased by Ms. Betz in her name only.
- [15] During the period of time that Mr. Betz was traveling from the Lower Mainland to Trout Creek, he sought opportunities within ICBC for a transfer to the Okanagan. In early February 2003, a position with the ICBC Claims Centre in Kelowna came available. Mr. Betz applied for the position and received a transfer to the Kelowna Claims Centre. The parties agreed that Mr. Betz would return to live with Ms. Betz in the Hespeler Townhouse. Mr. Betz moved to Summerland in March 2003, and started work at the Kelowna Claims Centre on March 17, 2003.

- [16] Shortly after Mr. Betz moved to Summerland, Telus announced that it was closing the Phone Mart stored in Penticton. Ms. Betz was given the option to transfer with Telus to Edmonton or to receive a buyout in the amount of \$80,000. Ms. Betz elected to accept the buyout rather than move to Edmonton.
- [17] Mr. Betz testified that he and Ms. Betz discussed which option would be in their best interests. His evidence is that they decided that it would be in the best interests of the family to accept the buyout and stay in Summerland. He recalls that they decided to stay in Summerland because the children were doing well in Summerland and they enjoyed the community.
- [18] Ms. Betz testified that she did not want to leave Summerland and that she wanted to stay in that community with the children. She also testified that she did not want to go to Edmonton but would have gone to Vancouver if that opportunity were available.
- [19] Ms. Betz also testified that she gave up the Telus job because Mr. Betz assured her that she would receive his pension. However, on cross-examination, Ms. Betz agreed that the reason she quit Telus was because they offered her a position in Edmonton and she did not want to disrupt the family.
- [20] The parties continued to reside together in Summerland until February 2005. At that time there was another period of separation. There is a disagreement about why Mr. Betz was required to leave the family home. Mr. Betz claims that it was because Ms. Betz had an unjustified jealousy of his relationship with the mother of a hockey teammate of their son. Ms. Betz claims that Mr. Betz was told to leave because he had been drinking at a junior hockey game that he attended with the children. The reason for the separation is of little consequence in deciding the issues before me.
- [21] The parties reconciled and began living together again in July 2005. They remained together until February 28, 2010, when they separated for the final time.

Marriage Agreement

- [22] After the parties reconciled in July 2005, they signed the Agreement. The Agreement is described as a "marriage agreement within the meaning of the Family Relations Act".
- [23] The Agreement was prepared by a lawyer retained and instructed by Ms. Betz. Ms. Betz testified that when she presented the Agreement to Mr. Betz she urged him to get advice about the Agreement. Mr. Betz testified that he signed the Agreement without legal advice because he could not afford to retain a lawyer or a notary public.
- [24] Ms. Betz gave evidence at her examination for discovery that the Agreement dealt with the terms on which the parties would continue to live together. She adopted this evidence at trial but she further testified that the purpose of the Agreement was to protect herself.

- [25] Mr. Betz testified that Ms. Betz required him to sign the Agreement so that she would have protection after they got back together. He testified as well that Ms. Betz told him that if he did not sign the Agreement he would have to leave.
- [26] When asked on cross-examination whether the signing of the Agreement was a term of Mr. Betz staying in the home, Ms. Betz responded "no". However, when asked whether Mr. Betz would have been allowed to stay in the home if he had refused to sign, Ms. Betz answered "I am not sure but he was in agreement to working it out together".
- [27] The pension provisions of the Agreement are contained in paragraphs 25 to 27 of the Agreement. Those paragraphs read as follows:
25. (a) Brenda will maintain Bruce as the beneficiary of the survivor benefits of any pension Brenda has or acquires during the relationship, and
- (b) Bruce will maintain Brenda as the beneficiary of the survivor benefits of any pension Bruce has or acquires during the relationship.
26. Brenda shall be entitled to fifty percent (50%) of Bruce's ICBC Pension, in accordance with Part 6 of the Family Relations Act, based on benefits accrued under the pension plan from the date of his contributions to the pension plan to the date of Bruce's retirement, or his earliest available retirement date under the pension plan should she choose.
27. Bruce shall be entitled to fifty percent (50%) of Brenda's Telus pension, in accordance with Part 6 of the Family Relations Act, based on benefits accrued under the pension plan from 1986 to 2002.
- [28] Mr. Betz confirms that he read, understood and considered the consequences of paragraphs 25 to 27 of the Agreement but he did so on the expectation that he and Ms. Betz would continue to be together until his retirement.
- [29] The parties signed an addendum agreement on May 15, 2008. Once again Ms. Betz had the addendum agreement prepared by a lawyer retained and instructed by her. Mr. Betz testified that when the addendum agreement was presented to him, Ms. Betz explained that she wanted the Agreement clarified for her protection and the protection of the children. She indicated to Mr. Betz that he needed to sign the addendum agreement as soon as possible. Mr. Betz read the addendum agreement over but did not get any legal advice because he could not afford a lawyer. Mr. Betz indicated that he signed the addendum agreement because he wished to maintain harmony in his family and continue to reside in the home with his children.
- [30] Mr. Betz also testified that in 2008 when the addendum agreement was presented to him, Ms. Betz was asking him to leave once again. Mr. Betz did not leave because he was not financially able to incur the additional expenses on top of what he was already paying. Mr. Betz testified that Ms. Betz insisted that he sign the addendum agreement or he would have to leave.

Pension plans

- [31] Bruce Betz contributed to his ICBC pension plan for 32.5 years. He retired in August 2019. Of those 32.5 contributing years, he was in a relationship with Ms. Betz for 15 years.
- [32] In 2011, Ms. Betz requested the forms required for the division of the pension on a marriage breakdown from ICBC. As a result of that request, the administrators for the pension plan provided forms to Ms. Betz in order to establish her interest in Mr. Betz's pension. Mr. Betz turned 55 years of age on September 20, 2013. Ms. Betz commenced receiving pension benefits from the ICBC pension plan on October 1, 2013. She has been receiving benefits from that plan from October 1, 2013 to date. As of September 7, 2018, the amount paid to Ms. Betz from the ICBC pension plan is \$1,227.15 per month.
- [33] Ms. Betz has a pension plan through her employment with Telus. She contributed to the Telus pension plan from November 21, 1987 to March 28, 2003. Ms. Betz had been contributing to the Telus pension plan for only approximately 1.5 years before her relationship with Mr. Betz began.
- [34] As of December 31, 2018, the children of the parties were designated by Ms. Betz as the beneficiaries for survivor benefits under her Telus pension plan. The children replaced Mr. Betz as the designated beneficiary. The removal of Mr. Betz as the designated beneficiary is contrary to section 25(a) of the Agreement.

Financial issues

- [35] There is a great deal of evidence relating to the financial issues that arose between the parties during their relationship. An understanding of the financial history between these parties is important to understand the financial dynamics in their relationship.
- [36] The financial control exerted by Ms. Betz over Mr. Betz commenced early in their relationship. The parties sold the house that they had purchased in Pitt Meadows in August 1998. In order purchase the house the parties obtained financing from CMHC. Mr. Betz's father loaned the couple \$12,000 and Ms. Betz's father loaned them \$25,000. Mr. Betz contributed \$6,500 out of his RRSP to make the down payment and to pay for closing costs and legal fees. During the time that the parties owned this property, they completed various renovations. The parties performed all of the work on the renovations themselves other than the installation of a fireplace.
- [37] The sale of the Pitt Meadows property generated a profit of \$6,200. Ms. Betz retained all of those funds on the basis that she claimed to have put money into the house over and above Mr. Betz. While Mr. Betz disagreed with Ms. Betz keeping all of the profit, she was adamant that she was entitled to these funds. As a result, Mr. Betz relented and allowed her to keep the funds in order to keep the peace in the family.

- [38] When the parties separated in 1999, Mr. Betz agreed to pay child support in the amount of \$400 every two weeks. He continued to make those payments throughout the period of their separation. When Mr. Betz eventually obtained his transfer to Kelowna, he moved back in with Ms. Betz and the children. Ms. Betz allowed him to do so subject to Mr. Betz continuing to pay \$400 every two weeks even though he was residing with his family.
- [39] In 2006, the parties consolidated their personal debts. At that time, Mr. Betz had debts totaling \$45,000 and Ms. Betz had debts in the amount of \$25,000. The parties borrowed the sum of \$70,000 to satisfy these personal debts on the security of a second mortgage on the Hespeler Townhouse. Mr. Betz testified that Ms. Betz required him to pay the mortgage payments on the second mortgage because they were putting a mortgage on her property to pay Mr. Betz's debts. The mortgage payments were \$465 every two weeks.
- [40] While Ms. Betz agreed that the purpose of the mortgage was to satisfy personal debts of both parties, she testified that the plaintiff agreed to pay off the entirety of the \$70,000 debt. On this point, she relies on the documents filed by Mr. Betz in his bankruptcy that show a debt of \$70,000 owed to Brenda Betz. On Ms. Betz's insistence, Mr. Betz made the payments on the second mortgage as required.
- [41] Mr. Betz did not make the second mortgage payments directly. Ms. Betz required Mr. Betz to arrange an automatic transfer of the mortgage payments from his bank account to the account of Ms. Betz. Mr. Betz arranged the automatic withdrawal and transferred funds from his account to Ms. Betz's account on a monthly basis. Mr. Betz found out quite some time later that Ms. Betz had refinanced the second mortgage into her first mortgage without advising him.
- [42] Ms. Betz agrees that she received funds by way of automatic deposits from Mr. Betz and she also agrees that she refinanced the second mortgage into her first mortgage. However, she testified that this was none of the plaintiff's business because he had agreed to pay off the \$70,000 second mortgage debt.
- [43] One of the personal debts owed by Mr. Betz was a line of credit in the amount of approximately \$6,200. The line of credit was one of the debts to be paid out by the funds from the second mortgage on the Hespeler Townhouse. The finance company provided the parties with a cheque to pay out the line of credit. However Ms. Betz insisted that the funds for the line of credit be paid to her. Mr. Betz resisted payment of these funds to Ms. Betz but he signed the cheque over to her because she indicated that unless he did so he would need to get his own place.

- [44] Ms. Betz did not recall keeping the cheque for the line of credit when questioned at her examination for discovery but she indicated that it was possible that she did so "for the children". On cross-examination at trial, Ms. Betz admitted that she told Mr. Betz that he needed to give her the line of credit funds. She also admitted that she did not use those funds to pay Mr. Betz's line of credit. She testified that she was the one who decided how those funds were to be spent.
- [45] In February and April 2002, Mr. Betz had been involved in two motor vehicle accidents. The claims arising from those accidents were settled in May 2007. As a result of the settlement, Mr. Betz was entitled to \$23,500 in net settlement funds. When Mr. Betz received those funds Ms. Betz allowed Mr. Betz to keep \$2,000 but insisted that \$20,500 be paid to her if he wished to continue living with the family. As a result, Mr. Betz issued a bank draft payable to Ms. Betz in the amount of \$20,500. He delivered the bank draft to her with the direction that those funds were to be applied to the second mortgage. Mr. Betz testified that the additional \$1,000 of the settlement funds were paid by his lawyer directly to Ms. Betz.
- [46] On cross-examination, Ms. Betz initially testified that she did not remember the motor vehicle accident settlement nor did she remember receiving the bank draft. However when she was shown a copy of the bank draft she acknowledged that she received it on the date shown on the draft. She then acknowledged that she put those funds into her own account. Ms. Betz denies having received an additional \$1,000 of the settlement funds from Mr. Betz's lawyer.

Analysis

Application of the Family Relations Act

- [47] The first question requiring a determination is whether the provisions of the Family Relations Act or the Family Law Act apply to the Agreement and its addendum. The Family Relations Act was repealed on March 18, 2013, when the Family Law Act came into force.

- [48] The transitional provisions of the Family Law Act include the following sections:

Transition - proceeding respecting property division

252 (1) This section applies despite the repeal of the former Act and the enactment of Part 5 [Property Division] of this Act.

- (2) Unless the spouses agree otherwise,
- (a) a proceeding to enforce, set aside or replace an agreement respecting property division made before the coming into force of this section, or
- (b) a proceeding respecting property division started under the former Act

must be started or continued, as applicable, under the former Act as if the former Act had not been repealed.

Transition - pension benefits

253 (1) Subject to subsections (2) and (3), if forms prescribed under the former Act were delivered to the administrator before Part 6 [Pension Division] of this Act comes into force, the former Act continues to apply to the division of benefits between a member and spouse.

- (2) If a spouse became a limited member under the former Act but benefits have not been divided as of the date Part 6 of this Act comes into force, Part 6 of this Act applies to the division of benefits.
- (3) If, after an application was made under the former Act for the spouse to become a limited member, the administrator consulted with the member and spouse respecting how the former Act would apply to an agreement or order dividing benefits between the member and spouse, the former Act continues to apply to the extent of, and in accordance with, that consultation.
- (4) If forms prescribed under the former Act are delivered to an administrator after Part 6 of this Act comes into force, the administrator may
 - (a) accept the forms as compliance with the requirements of Part 6 of this Act, or
 - (b) require the parties to give notice in accordance with section 136 [notice or waiver] of this Act.

[49] The date of the Agreement is June 9, 2006. The date of the addendum agreement is May 15, 2008. Both of these agreements came into existence while the Family Relations Act was in force.

[50] Mr. Betz commenced this action to set aside or vary the terms of the Agreement on June 19, 2015, after the Family Law Act replaced the Family Relations Act.

[51] Brenda Betz made inquiries of the ICBC pension plan administrator about what forms were required for a division of Bruce Betz's pension on a marriage breakdown before September 1, 2011. The ICBC pension plan administrator wrote to Ms. Betz on September 1, 2011, advising her of the appropriate forms that were required for a division of that pension. By letter dated September 7, 2018, the ICBC pension plan administrator confirmed that Ms. Betz had been receiving benefits from the ICBC pension from October 1, 2013.

[52] It is my view that the Family Relations Act applies to the review of the Agreement in this case. The transitional provisions under the Family Law Act provide that the Family Relations Act will apply in a proceeding to enforce, set aside or replace an agreement respecting property division made before the coming into force of the Family Law Act. Since the agreement and its addendum were made prior to March 18, 2013, the Family Relations Act applies.

- [53] Further, the transitional provision provides that if the forms prescribed under the Family Relations Act are delivered to the administrator of a pension plan before the new Family Law Act comes into force, the Family Relation Act continues to apply to the division of benefits between spouses. From the evidence presented, I am prepared to conclude that Ms. Betz submitted forms prescribed by the regulations under the Family Relations Act to the ICBC administrator before May 18, 2013. She received directions from the pension administrator about the required forms on September 1, 2011 and she commenced receiving benefits as of October 1, 2013.
- [54] Therefore, based on the provisions of the transitional sections of the Family Law Act, I find that the Agreement should be reviewed under the provisions of the Family Relations Act [Act].

Legal principles under the Family Relations Act

- [55] There is no question that the Agreement is a marriage agreement as defined in s. 61 of the Act. It is clearly an agreement between Bruce Betz and Brenda Betz for the management of family assets or other property during their marriage and relating to ownership in or division of family assets or other property upon separation.
- [56] Section 65 of the Act provides the court with the authority to review and reapportion the property covered by a marriage agreement if the provisions of the agreement are unfair. Section 65(1) of the Act provides as follows:

65 (1) If the provisions for division of property between spouses under section 56, Part 6 or their marriage agreement, as the case may be, would be unfair having regard to

- (a) the duration of the marriage,
- (b) the duration of the period during which the spouses have lived separate and apart,
- (c) the date when property was acquired or disposed of,
- (d) the extent to which property was acquired by one spouse through inheritance or gift,
- (e) the needs of each spouse to become or remain economically independent and self sufficient, or
- (f) any other circumstances relating to the acquisition, preservation, maintenance, improvement or use of property or the capacity or liabilities of a spouse,

the Supreme Court, on application, may order that the property covered by section 56, Part 6 or the marriage agreement, as the case may be, be divided into shares fixed by the court.

- [57] In *Hanan v. Anderson*, 2014 BCSC 96, the court described a two-stage process to determine whether the provisions of a marriage agreement are fair. The first stage of the fairness analysis requires the court to apply the agreement in order to determine what financial entitlements would be provided to each spouse under the agreement. In the second stage of

the analysis, the court applies the factors set out in s. 65 of the Act to determine whether the marriage agreement operates unfairly. If the court finds that the agreement operates unfairly, then it is open for the court to re-apportion those assets.

- [58] Before embarking on the two-stage analysis described in Hanan, it is necessary to analyze the Agreement on a more basic level. It is necessary to determine whether the Agreement was made without duress, coercion or undue influence (*Hartshorn v. Hartshorn*, 2004 SCC 22).
- [59] Based on the following facts, it is my view that Mr. Betz desperately wanted to maintain his relationship with Ms. Betz and his children:
- a) Even though there were numerous periods of separation, Mr. Betz always sought to re-establish his relationship with Ms. Betz and his children;
 - b) When Ms. Betz and the children moved to Penticton, Mr. Betz took steps to secure a transfer to Penticton so that he could be with his family;
 - c) Whenever Ms. Betz insisted upon financial contributions from him, Mr. Betz complied with those requests, often to his detriment, in order to be able to maintain his relationship;
 - d) Mr. Betz allowed Ms. Betz to retain all of the equity generated from the sale of their home in Pitt Meadows;
 - e) Mr. Betz commuted every weekend from the Lower Mainland to Penticton for over two years in order to maintain his relationship with his family;
 - f) When Mr. Betz was finally able to move to Summerland to live with his family, he continued to pay child support for his two children on the insistence of Ms. Betz even though the parties had reconciled and were living together with the children;
 - g) Mr. Betz allowed Ms. Betz to retain the funds generated from the consolidation of their debts rather than pay off his line of credit which was the original intention;
 - h) Mr. Betz agreed to transfer \$465 every two weeks to Ms. Betz to pay the second mortgage on their property; and
 - i) Mr. Betz, on Ms. Betz's insistence, paid over his settlement monies from two motor vehicle accidents to Ms. Betz.
- [60] Ms. Betz was clearly aware of how important it was for Mr. Betz to continue residing with her and his two children. She testified that she felt sorry for him because sometimes "he would beg me to stay and cried".
- [61] When Ms. Betz presented the Agreement and its addendum to Mr. Betz, I find that she made it a condition that he sign the agreements in order to continue living with the family.

- [62] I do not accept the evidence of Ms. Betz that in 2003 she accepted a buy out from Telus rather than move to Edmonton because Mr. Betz assured her that if she did so she would receive his pension. It is not believable that if such an assurance was given, it would take until 2006 for Ms. Betz to incorporate it into a written agreement.
- [63] Further, given the level of control that Ms. Betz enjoyed over Mr. Betz on financial matters, I find that it is more likely than not that Ms. Betz required the signing of the agreements in order for Mr. Betz to remain with his family.
- [64] Even if she did not specifically say to Mr. Betz that he must sign the Agreement and its addendum in order to continue living with his family, Ms. Betz certainly would have known that she could exert a significant amount of influence over Mr. Betz.
- [65] Ms. Betz claims that she and Mr. Betz discussed the terms of the Agreement and its addendum and he wanted to sign. However, I find that his desire to sign the agreements was motivated by his overwhelming desire to stay in the relationship.
- [66] Mr. Betz did not obtain independent legal advice before signing the agreements. While he may have read the agreements and understood their contents and their consequences, it is his evidence that he was required to sign those documents in order to stay living with his family. In those circumstances, I find that his signatures on the two agreements were the result of undue influence and duress.
- [67] Based on these factors, it cannot be said that the Agreement and its addendum were executed by Mr. Betz of his own free will and volition. I find that his motivation to sign those agreements was to stay in the relationship with Ms. Betz and his children. I find also that the previous history between the parties would have created an environment of duress and undue influence over Mr. Betz compelling him to sign the agreements.
- [68] On this basis alone, it is my view that the pension provisions of the Agreement ought to be varied.
- [69] I am also of the view that the pension provisions of the Agreement are unfair under s. 65 of the Act.
- [70] Under the first stage of the analysis set out in Hanan, the Agreement provides that Brenda Betz is entitled to retain for herself the specified assets that she brought into the relationship and is responsible for specified debts. The evidence does not disclose the value of the assets as of the date of distribution. However, the Agreement attributes values to specific assets and specific debts for both Brenda Betz and Bruce Betz. Based on the valuations set out in the Agreement, the net worth of Brenda Betz would have been \$105,000 when the Agreement was executed. On the other hand, Bruce Betz would have a net indebtedness of \$36,600 when he signed the Agreement.

- [71] It should also be considered that the debts incurred by Bruce Betz relate, in part, to the second mortgage which was taken to consolidate the debts of both parties which included a debt of \$25,000 owed by Brenda Betz.
- [72] It must also be considered that during the course of their relationship Bruce Betz continued to pay child support of \$400 every two weeks for his children even though the parties were living together.
- [73] Based upon this analysis, there is a significant inequality in the distribution of the family assets in favour of Ms. Betz.
- [74] In the second stage of the analysis, it is my view that the pension provisions in the Agreement are unfair having regard to the duration that the parties lived together and the period of time over which the pension interest was acquired.
- [75] Mr. Betz contributed to his ICBC pension for 32.5 years. His relationship with Ms. Betz was 15 years. Therefore, Mr. Betz contributed to his pension for 17.5 years when he had no relationship with Ms. Betz. Yet the agreement provides that Ms. Betz is entitled to 50% of the ICBC pension based on benefits accrued during the entire 32.5 contributing years.
- [76] Further, Ms. Betz appears to be economically independent and self-sufficient. Since her separation from Mr. Betz she has continued working for the Ministry of Children and Family Development. As part of that position she is accumulating pension and has done so since 2011.
- [77] Ms. Betz has, during the relationship, had the advantage of significant financial contributions made by Mr. Betz including the following:
- a) \$400 every two weeks for child support even when the parties were living together;
 - b) \$425 per month for application to her first mortgage and to reduce her personal debts; and
 - c) \$20,000 from Mr. Betz's motor vehicle accident settlements.
- [78] Based on these factors, I find that the pension provisions in the Agreement are unfair pursuant to s. 65 of the Act.
- [79] The pension provisions for both Mr. Betz and Ms. Betz should reflect their entitlement to each other's pension based on benefits accrued in the plans during the periods that they were together. Accordingly, I will order that paragraphs 26 and 27 of the Agreement be revised to read as follows:
- (26) Brenda shall be entitled to 50 percent (50%) of Bruce's ICBC pension, in accordance with Part 6 of the Family Relations Act, based on benefits accrued under the pension plan over the following periods of time:
- (a) from May 1989 to May 1990;

- (b) from December 1991 to March 1999; and
 - (c) from March 2003 to February 2010.
- (27) Bruce shall be entitled to 50 percent (50%) of Brenda's Telus pension, in accordance with Part 6 of the Family Relations Act, based on benefits accrued under the pension plan over the following periods of time:
- (a) from May 1989 to May 1990; and
 - (b) from December 1991 to March 1999.
- [80] Since the parties have agreed that there should be no restriction on who the parties can designate as the beneficiaries for survivor benefits under their pension plans, I order that paragraph 25 of the Agreement be struck out.
- [81] Since Bruce Betz has been successful in this litigation, I order that he be entitled to costs of the action.

"Hori J."

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