

CANADA / JUDGMENT

Cook v. Cook

2020 BCSC 389

COURT

Supreme Court of British Columbia

DECIDED

16 March 2020

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2020 BCSC 389 Cook v. Cook

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Cook v. Cook,

2020 BCSC 389

Date: 20200316

Docket: E53048

Registry: New Westminster

Between:

Bernice Marie Cook

Claimant

And

Donald Mark Cook

Respondent

Before: The Honourable Mr. Justice Jenkins

Reasons for Judgment

Counsel for the Claimant:

David R. Greig

Counsel for the Respondent:

Stephen Glanzberg

Place and Date of Hearing:

New Westminster, B.C.

August 12 - 19, 2019

Place and Date of Judgment:

New Westminster, B.C.

March 16, 2020

- [1] In this family law case, each party seeks a divorce. Ms. Cook seeks lump sum spousal support on a compensatory basis and an unequal division of family property. Mr. Cook argues the parties should divide all family property equally. The marriage broke down after a thirty-eight year relationship including a thirty-six year marriage.
- [2] Prior to trial, the parties reached agreement in a document referred to as "Admissions and Consent" (Ex. 1) which sets out agreed facts and agreements which related to several chattels including vehicles, a spousal rollover to equalize the parties Investor's Group Savings Funds and equal division of their respective employment sponsored pension plans pursuant to Part 6 of the Family Law Act, S.B.C. 2011, c. 25, [FLA].
- [3] The remaining issues are:
- I. The date of separation of the parties; and
- II. How to address the disparity in the parties' financial positions post-separation, namely:
- Whether there should be a reapportionment of family assets under s. 95 of the FLA;
 - Whether excluded property should be divided under s. 96 of the FLA; and/or
 - Whether Ms. Cook is entitled to compensatory support, and, if so, in what form.

Background Facts

- [4] The parties commenced dating when they were in their late teens and married on December 13, 1980. Ms. Cook is currently 60 years of age and Mr. Cook is 61 years of age.
- [5] Ms. Cook worked for the Federal Government for many years, taking maternity leave on three occasions in the 1980s when their three children were born. Ms. Cook was also primarily responsible for the upbringing of the children while working part-time. As of 1999 until retirement in 2014, Ms. Cook worked full-time for the government.
- [6] For approximately twenty-five years, Mr. Cook was employed in the finance department of Toyota until he retired in September 2016. Previously, he worked for Ford Canada in a similar capacity.

- [7] These parties resided with their family at a home in Pitt Meadows for many years, selling the home in the summer of 2016. Upon the sale of the family home the parties divided the net proceeds of sale with Ms. Cook receiving \$212,000 and Mr. Cook receiving \$209,000, the difference representing re-payment of costs incurred by Ms. Cook in connection with the sale of the Pitt Meadows home.
- [8] Ms. Cook works part-time during ski season at the Mt. Baldy resort where she resides and during the summer months works in an Okanagan wine store. Her total employment income approximates \$13,000.
- [9] Mr. Cook is unemployed by choice since retiring from Toyota. Although he testified as to health problems with his back, a hernia and a detached retina, he stated those problems had resolved before an examination for discovery in April 2018 and subsequently he was disabled by a detached retina for one month. Mr. Cook also stated that he was not currently working because of this litigation and that he chooses to spend his summers at the cottage at Tie Lake.
- [10] During their marriage, Ms. Cook testified as to paying household bills and depositing her earnings into their joint account. Ms. Cook never had a separate bank account of her own. Mr. Cook looked after any investments in separate accounts, some of which Ms. Cook was not aware of until after separation.
- [11] Ms. Cook received three inheritances during the marriage totalling slightly over \$100,000, the last of those inheritances coming in 2007. The funds from those inheritances were deposited to family accounts. The parties did not make submissions on this \$100,000 inheritance.
- [12] Subsequent to separation, Ms. Cook received an inheritance of approximately \$111,000 from her mother's estate.
- [13] Mr. Cook received inheritances from his parents in 2014 and 2015 amounting together to \$425,000. Mr. Cook also inherited an interest in a cottage at Tie Lake, B.C.; he shares ownership with his sister. Both of those inheritances are "excluded property" as defined by s. 85 of the FLA.
- [14] Ms. Cook testified that in June 2016 she became concerned "there was something wrong" with her marriage when she learned Mr. Cook had, without her knowledge, changed his will to leave his estate to their three adult children, save for his interest in the Mt. Baldy cottage which would pass to Ms. Cook. Also by that time, Mr. Cook's parents had passed and, unknown to Ms. Cook, Mr. Cook had received the substantial inheritances from his parents. Mr. Cook had changed his will after receipt of the inheritances.
- [15] In the Admissions and Consent the parties acknowledged the "interim division" of sale proceeds of the family home was not a division for family law purposes. They also agreed that since separation, Mr. Cook had loaned \$231,000 to their son Cameron, built a garage for Cameron for \$20,000 and has also purchased a travel trailer which is located at Tie Lake. As

well, it is admitted that Mr. Cook has received \$425,000 from the estates of his parents plus a one-half interest in the Tie Lake cottage which had a value of approximately \$700,000, his one half interest amounting to \$350,000.

- [16] Also subsequent to separation, Ms. Cook came to realize that Mr. Cook had established funds in a Tax Free Savings account and in Canada Savings Bonds.
- [17] Finally in the Admissions and Consent, the parties agreed upon "the division of specific assets and dismissal of claims respecting any other chattels or vehicles, or effects in the possession of the other party . . . save for the contents in the Baldy property which contents are to be negotiated" and the equal division of their respective employment sponsored pension plans under Part 6 of the FLA.

Date of Separation

- [18] Exhibit 1 includes an agreement that "The parties separated January 9,, 2017, but remain married to date". In submissions, however, Mr. Cook's position is that January 9, 2017 was the date of "financial separation" of the parties, but that their relationship ended previously, that they were not living as a married couple from either 2008 or 2012. Mr. Cook testified that they had "emotionally separated sometime in 2008".
- [19] The admission referred to above regarding the date of separation is not stated to be conditional or limited in any way. In addition to the admission contained in Exhibit 1, Mr. Cook's counterclaim in this proceeding, filed in July 2017, stated that he and his spouse had lived separate and apart since January 9, 2017.
- [20] There was considerable testimony from both parties as to their relationship from approximately 2009 through to January 2017. They continued, through to the sale of the family home in 2016, to reside in the Pitt Meadows home and continued to attend family functions as a married couple. The parties also travelled and shared accommodation during a trip to Tuscany with another couple during 2016. Ms. Cook testified sexual relations continued until late 2016 whereas Mr. Cook testified sexual relations ceased in 2011.
- [21] The parties told their children of their separation in January 2017.
- [22] Based upon all of the testimony I find that the parties did discuss the possibility of separating over the years leading up to January 2017, however, a final decision in that respect was not made until either late 2016 or in January 2017.
- [23] In light of the admission of the parties on the date of separation and testimony on this issue, the court finds that most likely the date of separation was January 9, 2017.

The Tie Lake Recreational Property

- [24] The Tie Lake cottage and inheritances were received by Mr. Cook prior to separation of the parties in January 2017.

- [25] Tie Lake is a resort area in the East Kootenays where a recreational cottage was purchased by Mr. Cook's father in the 1970s. Upon the passing of Mr. Cook's father in 2015, title to the Tie Lake cottage was transferred to Mr. Cook and his sister, Kathryn.
- [26] The parties vacationed at the Tie Lake cottage from the time they were dating and every year of their marriage until 2014 when Ms. Cook last was at the cottage. For all intents and purposes, the parties and their children vacationed for between two to four weeks at Tie Lake each year of the marriage until 2015. Mr. Cook has resided at the Tie Lake cottage since early 2017 except during the winter months as the cottage is not winterized.
- [27] Ms. Cook testified that each year she would usually open up and clean the cottage, work on the lot, stock the cottage with food, clean laundry, paint and provide appliances and furniture, among several other tasks. Most significantly, she testified to preparing meals daily which is a passion of hers and represented a large portion of her contribution to life at the cottage for their family and friends through the summer. Ms. Cook also testified as to having gone to Tie Lake with Mr. Cook since she was eighteen years old until 2014. Over those years, she worked, weeding out lily pads, placing sand on the beach, worked on the shoreline, weeded, painted the outside of the cottage and decks, stacked wood and otherwise cleaned out the cottage each spring.
- [28] Mr. Cook was also involved in improving and maintaining the cottage. Ms. Cook agreed maintaining the cottage required a determined effort from both her, Mr. Cook and other family members.
- [29] It is Mr. Cook's intent to retain the Tie Lake cottage in his family.

The Mount Baldy Cottage

- [30] The property on which the Mt. Baldy cottage was built was purchased by the parties in 2006 and remains in joint tenancy. Upon separation in January 2017, both continued to live at the Mt. Baldy cottage until June 2017 when Mr. Cook moved out. Ms. Cook has been living alone in the cottage since separation of the parties.
- [31] Up to June 2017, the parties shared payments on the mortgage registered against the Mt. Baldy cottage of \$1,061 per month, however, since Mr. Cook's departure Ms. Cook has been making all payments relating to the cottage in addition to the mortgage payments.
- [32] From the time the cottage was built until 2016, the cottage was used by family and friends in both summer and winter.
- [33] The assessed value of the Mt. Baldy cottage as of 2019 was \$450,000 and approximately \$170,000 was owing on the mortgage which results in an equity in the property of \$280,000.
- [34] Ms. Cook has been able to rent out a suite at Mt. Baldy on occasion, however, her financial statements have revealed a small net loss on the rentals. Ms. Cook wishes to retain the Mt. Baldy cottage as her primary residence.

The Claimant's Position

[35] Ms. Cook submits the court should consider and apply the presumption of economic equivalency which would be appropriate and fair after a relationship of almost 40 years. She submits that with his inheritances from his parents received prior to separation of these parties, Mr. Cook has a "\$775,000 advantage" after considering family property. Ms. Cook says the court may remedy the economic inequivalency by way of a lump sum compensatory spousal support order and/or a reapportionment of property, whether family property or excluded property or both.

The Respondent's Position

[36] In response, counsel for Mr. Cook urges the court in his written submissions to make orders as follows:

8. The respondent says the parties should divide all family property, including the amount by which the value of the excluded property has increased, equally between the parties. The respondent does not agree the claimant is entitled to spousal support and says the claimant has not been economically disadvantaged by the marriage or the separation.

Addressing the Disparity

[37] As indicated above, the issue is whether there is a need to address the disparity in the parties' financial positions post-separation, and if so, whether that disparity should be addressed through reapportionment under s. 95, s. 96 or through an award for spousal support.

Facts: The Disparity

[38] I will first address the facts as they relate to the disparity in the parties' financial positions post-separation.

[39] In her financial statement filed August 8, 2019, Ms. Cook deposes to having an income of \$65,807 including \$51,981 in pension income and \$13,826 income from part-time employment at a winery in Oliver, B.C. She also deposed to having a net loss in seasonal rental of a portion of the Mt. Baldy home of \$896.07. In 2018, Ms. Cook's income was assessed at \$67,613 and in 2017 her income was assessed at \$63,449 with similar proportions of income from pensions and part-time employment. Ms. Cook was 60 years old at trial. Prior to retirement, Ms. Cook was earning \$84,631 in 2013 and \$78,744 in 2014, retiring at the end of 2014.

- [40] In his financial statement filed October 30, 2017, Mr. Cook deposed to an income of \$39,709 consisting of pension income. In the three previous years, Mr. Cook was employed at Toyota and earned between \$138,732 and \$144,145. As of trial, Mr. Cook was 61 years of age. While working in credit for Ford and subsequently for Toyota for 25 years, Mr. Cook was working away from home for much of his career which placed emphasis on Ms. Cook's parenting time.
- [41] During the years when Ms. Cook was primarily responsible for caring for their three young children, she took short maternity leaves, following which she returned to the government to work part-time. Ms. Cook testified that by being a mother and foregoing full-time employment she was not able to take advantage of any promotional opportunities. Although no specific opportunities for promotion were in evidence, it is reasonable to assume that a mother who was otherwise performing well in her employment with the government, would likely have fewer opportunities for promotion because she was only working part-time, and her early career progression was interrupted by three maternity leaves. Returning to full-time work in 1999, Ms. Cook used her income primarily for household expenses and did not save significant amounts. Ms. Cook had no post-secondary education save for public administration courses for two weeks each summer after her return to full-time work.
- [42] Ms. Cook continued with her employment with the Federal Government until retirement in December 2014.
- [43] The incomes of Mr. and Ms. Cook in the few years leading up to their retirement when both were working full-time were quite diverse, Mr. Cook earning approximately \$140,000 and Ms. Cook earning in the area of \$80,000. At Question 328 of his examination for discovery testimony, Mr. Cook agreed that "as a general rule" his income "was almost always double hers". There is reason to believe that there always had been a similar discrepancy in their incomes in prior years and this fact is consistent with the words of the Supreme Court of Canada in *Moge* as quoted in *Chutter* (see below). This couple had the economic benefit of both incomes which enabled them to purchase the lot in Mt. Baldy, build a comfortable home on that lot and enjoy the pleasures of the home with other family and with friends. Mr. Cook had also saved funds set aside in accounts of which he alone was aware and which amount to family assets which should be for the benefit of both parties and their heirs. The entire family was able to enjoy a better quality of life due to their joint efforts over a period of almost forty years.
- [44] Also relevant is the admission of Mr. Cook during his examination for discovery regarding his future in the work force:

38 Q Have you thought at all about doing some kind of part-time work or something down the road?

A Yes, I have.

39 Q What kind of thing did you think you might do? Would it be outside the car business?

A I haven't really thought where I could go. You know, someone at my age would not, you know, likely find a good paying job. So, you know, I would have to return to the car business. That is definitely a possibility.

[45] It is also apparent from a review of the many answers of Mr. Cook at his examination for discovery, entered as Exhibit 2, that there was a considerable lack of disclosure to his wife of funds which he had invested over several years. Much of the money came from inheritances from his parents in recent years as well which amount to approximately \$425,000.

[46] The current allocation of family and excluded assets as between the parties is as set out below. Per s. 87(b)(ii) of the FLA, there is a presumption that the value of family property be determined as of the date of the hearing.

[47] It should be noted that the equalized pensions of the parties and their pensions from employment are similar. I have equalized the amounts received on the sale of the Pitt Meadows home at \$209,000 as the additional \$3,000 which Ms. Cook received was for payment of selling expenses relating to the home. Assuming equity in Mt. Baldy of \$280,000, or \$140,000 each after deducting the mortgage upon which approximately \$170,000 owed, these parties currently control:

Ms. Cook

Proceeds from sale of Pitt Meadows home \$209,000

Savings 70,000

One half of Mt. Baldy 140,000

Inheritance post separation 111,000

Agreed settlement on incidental chattels 24,000

Total \$554,000

Mr. Cook

Proceeds from sale of Pitt Meadows home - \$209,000

Savings 70,000

One half of Mt. Baldy 140,000

Financial inheritances from parents 425,000

Tie Lake Cottage (one-half) 350,000

Total \$1,194,000

[48] Assets assigned to the parties in the above chart results in Mr. Cook having a financial advantage of \$640,000 over Ms. Cook.

[49] Mr. Cook has agreed Ms. Cook is entitled, under s. 84(2)(g) of the FLA, to share in the growth of his excluded property. He has agreed to pay Ms. Cook:

50% of \$7000 for the TFSA

50% of the growth in Tie Lake from 2015-2019

50% of the growth in his \$300,000 investments from 2015-2017

[50] Exhibit 8 at trial includes calculations submitted by Mr. Cook which show the increase in value of the financial inheritances and in Tie Lake between the inheritance, separation and the trial date. The breakdown is as follows:

- Wood Gundy (Investment) Growth: \$45,687; \$22,844 to Ms. Cook
- Tie Lake Growth: \$59,925; \$14,981 to Ms. Cook.

Total: \$3500 (half TFSA) + \$22,844 + \$14,981 = \$41,325

[51] Taking this amount into account, Ms. Cook controls \$595,325 in assets and Mr. Cook controls \$1,152,675. Mr. Cook still has a financial advantage of \$557,350 over Ms. Cook.

The Law: Addressing the Disparity

[52] If I find this disparity requires redress, there are three ways to do so: (i) unequal division of family property under s. 95; (ii) division of excluded property under s. 96; and (iii) an award of compensatory spousal support. In these circumstances, I am satisfied any unfairness can be addressed either under s. 95 or through an award for spousal support; as such, I will not discuss s. 96 of the FLA.

[53] There is a presumption of equal division of family property and family debt under s. 81 of the FLA. . Section 95 gives the court power to make an order for unequal division of family property where equal division would be "significantly unfair". Section 95(2) lists a number of factors that may be taken into account when considering a claim for unequal division. These factors 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;
- (i) any other factor, other than the consideration referred to in subsection (3), that may lead to significant unfairness.

[54] The Court of Appeal set out and discussed the governing principles in *Jaszczevska v. Kostanski*, 2016 BCCA 286 [Jaszczevska]:

[40] Nonetheless, the scheme contemplates judicial discretion to depart from an equal division. That discretion is recognized in s. 81 and further articulated in s. 95. Section 95 defines both the test and the factors for a court to consider in exercising its discretion.

[41] Clearly, the statutory intent is to constrain the exercise of judicial discretion. The test of "significant unfairness" imposes a more stringent threshold than the mere "unfairness" test of the FRA to allow unequal division by a court. As Mr. Justice Butler observed in *Remmem v. Remmem*, 2014 BCSC 1552, "significant" is defined as "extensive or important enough to merit attention" and the term refers to something that is "weighty, meaningful or compelling." He concluded that to justify an unequal distribution "[i]t is necessary to find that the unfairness is compelling or meaningful having regard to the factors set out in s. 95(2)": *Remmem* at para. 44. As the judge here noted at para. 162 of her reasons, the Legislature intended the general rule of equal division to prevail unless persuasive reasons can be shown for a different result. I agree.

The court must consider whether, having regard to the factors set out in s. 95(2), equal division would be "objectively unjust, unreasonable or unfair in some important or substantial sense": *Jaszczewska* at para. 42.

[55] In *Chutter v. Chutter*, 2008 BCCA 507, the Court of Appeal discussed entitlement to compensatory support:

[50] Compensatory support is intended to provide redress to the recipient spouse for economic disadvantage arising from the marriage or the conferral of an economic advantage upon the other spouse. The compensatory support principles are rooted in the "independent" model of marriage, in which each spouse is seen to retain economic autonomy in the union, and is entitled to receive compensation for losses caused by the marriage or breakup of the marriage which would not have been suffered otherwise (*Bracklow*, at paras. 24, 41). The compensatory basis for relief recognizes that sacrifices made by a recipient spouse in assuming primary childcare and household responsibilities often result in a lower earning potential and fewer future prospects of financial success (*Moge*, at 861-863; *Bracklow*, at para. 39). In *Moge*, the Supreme Court of Canada observed, at 867-868:

The most significant economic consequence of marriage or marriage breakdown, however, usually arises from the birth of children. This generally requires that the wife cut back on her paid labour force participation in order to care for the children, an arrangement which jeopardizes her ability to ensure her own income security and independent economic well-being. In such situations, spousal support may be a way to compensate such economic disadvantage.

[51] In addition to acknowledging economic disadvantages suffered by a spouse as a consequence of the marriage or its breakdown, compensatory spousal support may also address economic advantages enjoyed by the other partner as a result of the recipient spouse's efforts. As noted in *Moge* at 864, the doctrine of equitable sharing of the economic consequences of marriage and marriage breakdown underlying compensatory support "seeks to recognize and account for both the economic disadvantages incurred by the spouse who makes such sacrifices and the economic advantages conferred upon the other spouse" (emphasis added).

[52] The Court in *Moge* discussed the relevance of the parties' standards of living in the context of compensatory support at 870:

Although the doctrine of spousal support which focuses on equitable sharing does not guarantee to either party the standard of living enjoyed during the marriage, this standard 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.

[Emphasis removed.]

[56] The decision of Martinson J. in *W. v. W.*, 2005 BCSC 1010, was also referred to by the Court of Appeal in *Chutter* at para. 53, and is also applicable to the case before the court:

[53] In *W. v. W.*, 2005 BCSC 1010, 19 R.F.L. (6th) 453, a frequently cited decision in trial decisions in British Columbia, Justice Martinson made the following helpful observation about the interpretation in this province of the emphasized portion in *Moge*:

[11] In British Columbia this comment in *Moge* has been interpreted to mean that in long marriages the result will likely be a rough equivalency of standards of living. Doing so recognizes that the longer a marriage lasts, the more intertwined the economic and non-economic lives of the spouses become.

[12] Throughout the marriage, each spouse makes decisions that accommodate the economic and non-economic needs of the other. The decisions include the way in which child care and other family responsibilities will be handled and the way careers will develop. These decisions can have a significant impact upon the income earning ability of each at the time of separation. Yet it is not easy to determine exactly the relationship between these decisions and the consequent benefits and detriments to each spouse. The rough equivalency of standard of living approach has operated as a workable substitute to assess compensatory claims. See for example, *Dithurbide v. Dithurbide* (1996), 23 R.F.L. (4th) 127 (B.C.S.C.); *Rattenbury v. Rattenbury*, 2000 BCSC 722; *Rinfret v. Rinfret*, [1999] B.C.J. No. 2945 (S.C.); *O'Neill v. Wolfe* (2001), 14 R.F.L. (5th) 155 (B.C.S.C.); *Walton v. Walton*, [1997] B.C.J. No. 1089 (S.C.); *Ulrich v. Ulrich*, 2003 BCSC 192; and *Carr v. Carr* (1993), 46 R.F.L. (3d) 326 (B.C.S.C.).

[Emphasis removed.]

[57] In *Chutter*, the court stated, at para. 76:

[76] In some cases, an order for reapportionment under Part 5 of the Family Relations Act may obviate the need for a spousal support order by fully addressing all the factors and objectives of spousal support: *Tedham*, at paras. 67-69; *Narayan v. Narayan*, 2006 BCCA 561, at paras. 33-44, 34 R.F.L. (6th) 272

- [58] The Court of Appeal decision in *Parton v. Parton*, 2018 BCCA 273, addressed whether property division can reduce or eliminate the need for spousal support. The Court of Appeal stated:
- [42] The fact that a spouse has received substantial assets via property division does not defeat a spousal support claim, even where property has been reapportioned in favour of the support-seeker: *Chutter* at paras. 79-82; *Bodine-Shah v. Shah*, 2014 BCCA 191 at paras. 70-71. As Justice Smith explained in *Bodine-Shah*, in some cases property division may address all or most of the objectives of spousal support and thus eliminate or reduce the need for a spousal support award, but in others it may not. This is particularly so where entitlement to spousal support is based predominantly on compensatory principles
- [45] While each case is fact-specific, in long marriages with children, the marital standard of living may be used to determine a reasonable measure of appropriate compensation: *Zacharias* at paras. 52-54. Even if the recipient spouse has attained a degree of self-sufficiency, spousal support based on compensatory principles should continue until compensation is achieved: *Chutter* at para. 79; *Tedham* at para. 60. Depending on the facts, this means that in some cases full compensation is likely to remain elusive: *Rozen* at para. 60. In other words, although compensation for the economic disadvantage arising from the marriage is always the goal of spousal support based on compensatory principles, in some cases that goal can never be fully achieved.
- [47] In some cases, a lump sum spousal support award is preferable to an order for periodic payments. When deciding whether to make such an award, the court should weigh the advantages and disadvantages of a spousal support order in lump sum form compared to those of an order made in the more common periodic payment form. In *Davis v. Crawford*, 2011 ONCA 294, the Ontario Court of Appeal discussed the relevant factors for consideration and, in doing so, emphasized the need to distinguish the purpose of a lump sum spousal support award from the effect of such an order. As the Court noted, any lump sum spousal support order will, in effect, involve the transfer of property from one spouse to another, although the redistribution of assets is not the purpose of spousal support
- [59] Therefore, it is open to the court to order an award of compensatory spousal support on a lump sum basis or to order an unequal division of family property under s. 95 so long as the considerations in making an order under s. 95(1) are present in the circumstances.

Application

- [60] As indicated above, Mr. Cook walks away from this thirty-eight year relationship with a \$652,000 advantage over Ms. Cook. Following payment for the growth in his excluded property he still has a financial advantage of \$557,350 over Ms. Cook; he has almost two times the wealth of Ms. Cook.

- [61] I find that, in these circumstances, equal division of family property would be significantly unfair. I also find Ms. Cook is entitled to compensatory support. The factors underlying both findings are similar; of particular importance is the duration of the relationship and Ms. Cook's contributions to the household and childrearing.
- [62] As indicated by the Supreme Court of Canada in *Moge*, and quoted in *Chutter*: "the longer the relationship endures, the closer the economic union, the greater will be the presumptive claim to equal standard of living upon its dissolution". That presumptive claim is not rebutted in this case.
- [63] The question is whether the disparity in the parties' financial circumstances is more appropriately dealt with through reapportionment under s. 95 or an award for compensatory spousal support. The following quote from *Parton* is particularly instructive:
- [42] in some cases property division may address all or most of the objectives of spousal support and thus eliminate or reduce the need for a spousal support award, but in others it may not. This is particularly so where entitlement to spousal support is based predominantly on compensatory principles

I am satisfied that an award for unequal division of family property is the appropriate solution in this case.

[64] I order, pursuant to s. 95 of the FLA that:

- i. Mr. Cook is to transfer his one half interest in Mt. Baldy to Ms. Cook; Ms. Cook is to receive the whole \$280,000 value of the property;
- ii. Ms. Cook is to receive 75% of the \$140,000 in savings; i.e. Ms. Cook is to receive \$105,000 and Mr. Cook is to receive \$35,000.

[65] Making those adjustments and accounting for the \$41,325 payment ordered above, the final result is as follows:

Ms. Cook

Proceeds from sale of Pitt Meadows home \$209,000

Savings 105,000

Mt. Baldy 280,000

Inheritance post separation 111,000

Agreed settlement on incidental chattels 24,000

Increase in Mr. Cook's excluded property 41,325

Total \$770,325

Mr. Cook

Proceeds from sale of Pitt Meadows home - \$209,000

Savings 35,000

Financial inheritances from parents 425,000

Tie Lake Cottage (one-half) 350,000

Payment for increase in excluded property -41,325

Total \$977,675

Costs

[66] If they cannot agree on costs, the parties may make submissions in a one-hour hearing to be arranged through Supreme Court Scheduling.

Summary

[67] In summary, I make the following orders:

- i. By consent, the orders at paragraphs (a) through (l) of Ex. 1, Admissions and Consent;
- ii. By consent, an order of divorce is granted and will take effect 31 days from today in accordance with s. 12 of the Divorce Act, R.S.C. 1985 (2nd Supp.), c. 3;
- iii. As outlined above, Mr. Cook is to pay Ms. Cook \$41,325; Mr. Cook is to transfer his interest in Mt. Baldy to Ms. Cook; Ms. Cook is to receive 75%, or \$105,000, of the \$140,000 in savings;
- iv. The Sun Life Fund and both parties' CPP credits are to be divided as provided for in the FLA; and
- v. All past compensation claims for retroactive pension, CPP credits and relative to the Sun Life Fund are dismissed.

"Jenkins J."

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