
CANADA / JUDGMENT

Falkener v. Falkener

2019 BCSC 1351

COURT

Supreme Court of British Columbia

DECIDED

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2019 BCSC 1351 Falkener v. Falkener

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Falkener v. Falkener,

2019 BCSC 1351

Date: 20190813

Docket: E52916

Registry: Kamloops

Between:

Linda Christine Falkener

Claimant

And

James Falkener

Respondent

Before: The Honourable Madam Justice Dillon

Reasons for Judgment

The Claimant, appearing in person:

L. Falkener

The Respondent, appearing in person:

J. Falkener

Place and Date of Trial/Hearing:

Kamloops, B.C.

February 5 to 8, 2019; and

April 9 to 12, 2019

Place and Date of Judgment:

Kamloops, B.C.

August 13, 2019

Introduction

- [1] Linda Christine Falkener, the claimant, and James Falkener, the respondent, were married on August 2, 1992 and separated on February 24, 2016. They were divorced on April 12, 2019 at the end of trial. There were no children of the marriage. The issues at trial concerned spousal maintenance, including past maintenance owing, division of family property and debt and determination of excluded property.
- [2] By order of July 17, 2018, the respondent was required to pay the claimant spousal support in the amount of \$1,227 per month from and including December 1, 2016 based upon the court finding that the claimant had an annual income of \$18,602.67 and the respondent had an annual income of \$52,500. On September 19, 2018, the respondent was ordered to pay a penalty of \$500 to the claimant for refusal to pay spousal support, the amount reduced to \$100 if two months of spousal support were paid by September 21, 2018. The claimant was not precluded from taking further steps to enforce the July 2018 order for support, which she pursued at trial in seeking an order for payment of past support due.
- [3] Both parties were self represented and worked hard to present his or her case at trial. However, there were many issues with document disclosure, organization, and admission into evidence. There were also issues because the parties had not realized what documents or evidence were required, particularly pertaining to the value of family assets. As a result, documents were introduced 'on the fly', but with the consent of each party. The lack of expert evidence as to valuation of real estate and corporations made valuation of these assets particularly difficult. The failure to obtain a proper evaluation of business assets has especially negatively affected the respondent who owns these assets and which evaluations had to be based upon best evidence without discount. The same can be said for the medical status of each party. Without medical evidence, reliance was placed upon acceptance for disability tax credit and reporting medical letters, as well as the testimony of each party. No disrespect is meant by informing that the court had to lead each party through their evidence to ensure that relevant evidence was put before the court so that a fair and just result could be achieved at the end of the day. Even then, there were facts suggested in argument that had not been established during the evidentiary portion of trial and which

this court has not included in considerations of fact.

Facts

- [4] Linda Falkener is 69 years old. She obtained a bachelor degree in 1968 and a masters degree in fine arts in 1974. She worked full time in a city recreation department teaching ceramics until 1977 and then worked summers teaching art for two years. She worked part time as a store clerk in a department store in Penticton, B.C. for three years and then obtained full time employment as a curator at a municipal art gallery for almost two years. In 1985, she met the respondent and moved to Aldergrove where she worked part time as the front clerk at a drycleaner and kept an art studio in her home. The claimant has not had employment since, although she very occasionally sold a piece of her art for minimal amounts.
- [5] James Falkener is 62 years old. He obtained a bachelor of economics. The respondent has been in the insurance business as an insurance adjuster since about 1985. Since 1994, he has specialized in catastrophic disaster work, establishing his reputation internationally in 1994 following the earthquake in California. He identifies as an independent storm adjuster/loss consultant. A LinkedIn description, adopted by the respondent, described him as skilled in "change management, strategy, business strategy, strategic planning, management consulting, insurance claims adjuster and appraiser insurance storm claims management " as well as a court expert in insurance claims and a dispute resolution appraiser/representative. He has received specialty certification in insurance adjusting. The respondent presently maintains his Alberta insurance adjuster licence and pays for liability insurance. He has been self employed since 1994.
- [6] The claimant had a son by a previous relationship. He lived with the claimant and respondent until he left home at about age 18 in 1996. He studied electronics for a time and then worked briefly with the respondent in Medicine Hat in 2006 and in High River in 2014, assisting with insurance adjusting after floods.
- [7] When the claimant met the respondent, she owned a house with a mortgage in Penticton. She sold the house to move with the respondent to the coast where she invested about \$70,000 received in equity from the sale of her Penticton house into a property bought in joint names in Aldergrove. The respondent trained as an insurance adjuster in Aldergrove and then became a branch manager for the same insurance company in Kamloops. The parties moved together to Kamloops until January 1994 when the respondent became involved in the California earthquake disaster. The respondent spent the better parts of 1994-1995 in California working as a catastrophic storm adjuster after the California earthquake.
- [8] The respondent has maintained his U.S. resident work visa and social security number and has continued to work in the United States from time to time through to 2017. When he was mostly working in the United States, he filed tax returns there, the last being in 2017. When he incurred farm costs in Canada from 1995-2003, he filed tax returns in Canada. He

generally worked 6 months in the United States and the rest of his time working on the farm in Canada. This lasted until about 1998 when the respondent started spending more time on the farm and only about 2-3 months in the U.S., depending on whether there were storms. He was working in the U.S. in 2003 when he learned about fire departments charging for services from insurance companies, leading to the respondent's establishment of Fire Marque Inc., about which more will be said later.

- [9] The respondent returned in 2005 to work primarily in Canada. He was hired by Intact Insurance in 2008 as a consultant for storm operations for western Canada. At about this time, the respondent started his own insurance adjusting company, Canada Cat Inc. ("Canada Cat"), with the plan to hire adjusters to carry out the catastrophic insurance adjusting in Canada and the United States, as required. The respondent still works in the United States when work is available. Bank statements from a Bank of America account registered in the name of the respondent at an address in Mascotte Florida register deposits from what appears to be 'Southwest Adjusters' and other credits from September 27, 2017 to January 10, 2019 in the amount of \$113,365. At the same time, these accounts show expenses incurred by the respondent in Florida, Texas, Arizona, Utah, and California, which suggest a presence there, and continuing work with Intact Insurance. None of these transactions were explained.
- [10] The parties had purchased a five acre property at 1805 Labeau Road in Pritchard, B.C. in 1991 (the "Pritchard property"). This was their matrimonial home. The Pritchard property was initially registered in joint names but was registered solely in the claimant's name in 1999. The claimant explained that the transfer was necessary for security because the respondent was often away from home. The house has been a work in progress since purchase with renovations ongoing and still incomplete by the time of separation. At present, there are still unfinished renovations to be completed on the Pritchard house, including stucco, soffits, some baseboards, and the master ensuite bathroom. There are also repairs required for the ceiling. Outside, some structures are also in need of repair or replacement including a pergola, stairway, barn roof, and deck railing.
- [11] The Falkeners ran a hobby farm with llamas on the Pritchard property. There were also other animals that required daily attention. By 1994, the parties started to raise llamas as a business, with James named as the sole proprietor of the business, but Linda doing most of the work. Their first llama was purchased in a trade for the claimant's art. At the peak, there were 27 llamas on the property. The parties were enthusiastic about the farm at first, building animal shelters and gates, partly with the help of hired hands, and attending conferences and showing/selling their llamas. The claimant managed the farm property, particularly the animals while the respondent was often away for work. She never received compensation for her labour. She kept expense receipts for the business which she gave to the respondent at the end of the year for his bookkeeping for income tax purposes. The llama business began to decline in the late 1990's and had collapsed by 2002.

- [12] The business had never been profitable for the parties and the losses that occurred from 1998-2003 were the subject of an appeal in 2007 from income tax assessments that had disallowed the losses as against the respondent's income earned from insurance adjusting on the basis that the respondent's llama farm was a hobby. The tax court disagreed with the assessment and determined that the respondent's main source of livelihood was the farm, notwithstanding that he also did insurance adjusting to supplement farm income. Thereafter, the respondent claimed costs related to the llama business as an expense against his income obtained from insurance work, even though the respondent spent less and less time at the Pritchard property and more time engaged in insurance work. The respondent claimed a loss of \$25,000 from the farming business against his income in 2015, even though he spent minimal time working at the llama business. A small loss was also declared in 2017, after the parties had separated and the respondent no longer attended at the Pritchard property, even when the property was threatened by forest fires in 2017. The claimant eventually surrendered the last three llamas to a sanctuary in December 2017.
- [13] As a result of Revenue Canada's re-assessment following judgment in the tax court, the claimant owed Revenue Canada \$144,867 for property deemed received from the respondent after the respondent had failed to pay income tax. As a result, the claimant obtained a new mortgage in 2010 on the Pritchard property in the amount of \$180,000 to pay Revenue Canada.
- [14] In 2015, the parties applied for an increase of the mortgage, claiming the value of the Pritchard property at \$650,000 with the existing mortgage then at \$175,000. This application was refused because of the discrepancy between the respondent's stated income of \$90,000 and his reported income for tax purposes of \$55,000. The parties then kept with their original mortgagor. In a personal financial statement that the respondent prepared for his own use in 2015, he listed the value of the Pritchard property at \$800,000 with a mortgage of \$169,421. At the time of separation in February 2016, the mortgage amount outstanding was \$165,239. As at February 1, 2019, the first mortgage registered against the Pritchard property was outstanding in the amount of \$151,201. Interest paid from February 2016 to January 2019 was \$35,447. The claimant had paid this mortgage since separation on February 24, 2016 in the monthly amount of \$1,699.
- [15] The claimant took out a second mortgage on the Pritchard property in October 2017 for \$50,000 because she needed the money for expenses related to the Pritchard property, including mortgage, taxes, maintenance and other expenses. The respondent had stopped all payments to her in May 2016. This second mortgage was payable in the amount of \$49,340 as at January 30, 2019. Interest paid on this mortgage since inception was \$4,255. The claimant has paid the monthly mortgage amount of \$495.
- [16] The respondent was often away from home for lengthy periods for work. By 2008, the respondent was infrequently at home in Pritchard. His storm adjuster work meant that he was frequently in the United States and elsewhere in Canada doing insurance adjusting after major disasters. He became unhappy about living mostly in hotels: hence, the purchase of

property in Airdrie, Alberta in 2012. He started to spend most of his time in Airdrie, Alberta where, in November 2012, he arranged for the rent to own of a house, located at 428 Summerwood Place SE (the "Airdrie property"). The respondent lived there while he was working and rented rooms to other adjusters who worked for him through Canada Cat.

- [17] The Airdrie property was originally rented to own by the respondent's company, Can State Holdings Inc. ("Can State"), and used as an independent adjuster office and residence for short term lodgings for adjusters working for the respondent, allowing for a deduction for tax purposes whilst paying for itself through rentals. The details of the rent to own transaction are confused because the respondent personally paid \$15,000 as down payment for the rent to own but receipts were made out to Can State Holdings Inc. According to the boarding rental agreement drafted between Can State as landlord, there are three rooms available for rental, at the rate of \$375 per week for one bedroom and \$325 per week for the other two bedrooms. The respondent stated in a 2015 statement of assets and liabilities that he received \$1,200 per month rent per storm adjuster during storm season at the Airdrie property. From the evidence of one adjuster, Peter Evans, it is concluded that the insurance adjuster tenants stopped paying rent sometime after 2015. The respondent kept an office in the basement of the house and wrote off most of the cost of the Airdrie property against income for tax purposes. The respondent shares the house with Amanda Parsons, a friend and former insurance adjuster, who does not pay anything for rent or upkeep of the property.
- [18] The respondent completed purchase of the Airdrie house in 2013 and basically moved out of the Pritchard property, although the parties were not separated. The Airdrie property was purchased by the respondent personally because he could not obtain a mortgage through Can State. The purchase price of the Airdrie property was \$348,500, with a first mortgage of \$278,800 and a second mortgage of \$17,425.00. The balance payable of \$55,054 was paid by James personally along with a personal loan received from Canada Cat Inc. for \$15,000. There are no documents to support the details of this payment or loan. The respondent valued the Airdrie property at \$350,000 with a mortgage of \$275,000 in his personal financial statement of 2015. In his F8 of September 2018, he valued the Airdrie property at \$280,000, with a first mortgage of \$268,397 and a second mortgage of \$16,879.46. A renewal statement of August 2016 for the first mortgage indicates principal remaining of \$275,197.34. A statement for December 31, 2018 indicates outstanding balance on the first mortgage of \$267,207.75 Documents relating to renewal of the second mortgage in September 2018 indicate \$16,770.32 owing. The 2019 property assessment gave a value of the Airdrie property at \$327,000.
- [19] The respondent claims 50% of the first and second mortgages as an expense against income and plans to continue to do so.
- [20] The respondent maintains that the Airdrie property is contaminated by mold as a result of an incident that occurred before he became owner of the property in 2013. The respondent presented a list of house expenses from Home Depot and the like that he said were incurred

as a result of mold in the amount of \$17,090; but, there are no details or receipts provided to establish that the expenses were specifically related to mold or any other particular expense. The respondent has said that he has "mold flakes in my brain", as a result of this situation, a fact unproven in evidence. Amanda Parsons testified that she was hired by the respondent in 2017 to renovate the property because of mold. In 2018, the respondent's family physician reported to Service Canada that the respondent had suffered from toxic mold exposure since April 2017, there being no other explanation for symptoms incurred since 2017. Notwithstanding the doctor's suggestion, it is unlikely that the respondent would have purchased the property in 2013 if it was contaminated with mold. Further, there is no expert or other opinion that the property was so contaminated as to cause a health condition. Finally, in any event, the respondent has since renovated the property.

- [21] With renovations to the Airdrie property nearly complete, the respondent expects to rent a 2 bedroom suite in the basement while he lives upstairs, sharing this accommodation with Amanda Parsons. There was no evidence as to expected rental income for the suite, but it can be concluded that it is at least half of the rental that the respondent received renting individual rooms or about \$2,050 per month.
- [22] The claimant located a personal financial statement prepared by the respondent for his personal use in September 2015, just months before separation in February 2016. This statement listed various assets and liabilities that will be referred to herein. Of particular significance is his statement and valuation of corporate interests. In the absence of expert valuation, this personal statement of the value of the respondent's corporate interests has worth to determine the value of the corporate assets held by the respondent.
- [23] The respondent also owned or owns and operated or operates other businesses.
- [24] The respondent owns his own insurance business, called Canada Cat Inc., with one partner. Canada Cat Inc. is in the business of insurance adjusting. The respondent held a 34% ownership interest in Canada Cat as at November 2012. This interest had expanded to 50% in 2015 according to corporate tax returns and the respondent's statement of assets in 2015 and 2018. The respondent valued this asset at \$100,000 in his 2015 personal statement. He valued this interest at \$500 in his September 2018 F8. The 2014 balance sheet for Canada Cat indicated revenues in excess of \$785,000 with retained earnings, after payment of fees to the respondent, of \$83,585. The financial statement also indicated payment to Can State and Arbour Ridge for "goods sold" in excess of \$180,000. The 2014 corporate tax return for Canada Cat indicated gross taxable income of \$35,218, net \$20,275. The 2015 corporate tax return for Canada Cat indicated an income loss of \$86,747, along with diminution of retained earning to the minus bracket and a drop by half in sales. No explanation was given for this reversal. No further tax or other corporate statements from Canada Cat were in evidence. The respondent's long time partner in this company did not testify. James has been a director/storm adjuster for Canada Cat since September 2009. This is his major business.

- [25] The main employee of Canada Cat from 2009-2017 testified. Peter Evans was trained by the respondent to be an insurance adjuster specializing in storm disasters from hail, wind or flood. He described that he performed the front line work while the respondent did the reporting and computer work on an insurance file, usually from the Airdrie property. Evans shared his earnings 50/50 with the respondent, minus expenses. Evans stayed at the Airdrie property in 2015 and paid rent of \$250 per week directly to the respondent. Evans said that he worked a storm in Red Deer and the Florida hurricanes with the respondent in 2017. They obtained emergency insurance adjuster licences. He said that the respondent's role has not changed since Evans left Canada Cat in December 2017.
- [26] The claimant's son worked with the respondent for awhile in this business, which the son said was very lucrative, potentially earning James \$300,000 per year. The son confirmed Evans' evidence that as a senior insurance adjuster, James is no longer expected to go onto roofs or other dangerous structures. The respondent hired other younger adjusters for this purpose. The son testified that James spent most of his time training younger adjusters and doing the paperwork on claims. Canada Cat received a portion of the claims processed by the other adjusters.
- [27] Can State Holdings Inc. ("Can State") was incorporated in 2005 and was wholly owned by the respondent. This company was the intended owner of the Airdrie property and was used to receive rental funds from the Airdrie house. The respondent has been the managing director since 2009. James stated that this is a "shell corporation" used for business arrangements requiring a corporate signature. Although the respondent stated that Can State never earned income, it was used to receive rental income from the Airdrie property and was listed as receiving \$180,000 from Canada Cat for "goods sold" in 2014. It was also used for the lease of a Porsche vehicle used by the respondent. No corporate records were produced related to Can State. The respondent stopped filing records for this corporation in 2016 and it was struck from the Alberta corporate registry in 2018.
- [28] Can State owned and operated a business known as Arbour Ridge Claims Adjustment, also called Arbour Ridge Holdings Group ("Arbour Ridge"), as a trade partner. The respondent listed this entity as his employer for professional liability insurance purposes. Arbour Ridge received fees from Canada Cat in 2014, presumably for insurance adjuster services rendered. From this, it is concluded that Canada Cat paid the respondent through Arbour Ridge, at least in part. The respondent also said that funds from Arbour Ridge were transferred to Can State. Arbour Ridge was struck as a trade partner name of Can State when Can State was struck from the Alberta corporate register in 2018.
- [29] Fire Marque Inc. ("Fire Marque") was incorporated in 2009 as a cost recovery service provided to municipalities for the attendance by emergency fire departments at insured properties. The fire department costs are recovered by insurance companies and remitted to the municipalities through Fire Marque. The respondent originally held a 48% ownership interest in Fire Marque Inc. According to the respondent's personal financial statement that he prepared in 2015, he held 450,000 shares valued at \$1.50 per share for a total value of

\$675,000. The respondent declared that he owned 450,000 shares valued at \$500 on both his 2016 and 2018 F8 financial statements with no disposal listed. However, the respondent testified that he sold 75,000 shares in 2014 for \$25,000, leaving him with 375,000 shares. The shares value at this sale price would be \$125,000. The 2016 corporate registration for the company indicates that the respondent was a director and held 43.2 percent of voting shares of the company, the largest holding block. Although the respondent stated in cross-examination that his shareholding was now down to 24 percent, there is no disposal listed on the respondent's F8 and no other supporting evidence of a disposition. The respondent's statement is rejected in favour of the documentary evidence. The respondent said that the company was still in the start up stage in 2015 and had no declared income through to June 2016. However, notes indicate that 2012 was the last year of loss, with break even expected in 2013 and profitability afterwards. The financial statements for the company from 2014 to 2016 are in evidence. In 2011, the respondent held the position of secretary/treasurer of the company. He was a director/vice president from January 2003 to January 2017.

- [30] Eligio CRM Inc. ("Eligio") was founded in 2008 as a technology consulting business, evolving over time into a business software consulting firm specializing in customer relationship management software. Eligio holds itself out as business software experts. The respondent said that Eligio was used to set up the systems for Canada Cat Inc.. The respondent held a 5% ownership interest in Eligio CRM Inc. ("Eligio") as at November 2012. This has expanded to an 8.75% interest, valued at \$65,625, in 2015 according to the respondent's summary of worth prepared in 2015 and a 2018 statement in response to the claimant's questions. At trial, the respondent valued these shares at \$15-20,000. He valued them at \$500 in his September 2018 F8. Eligio paid dividends for the first time in 2018, with the respondent receiving \$2,000. The respondent assumed a management position with the company in August 2015 and was the chief operating officer of the company and director in 2016. He was able to perform most work duties from a home location. He relinquished this position in January 2017 but has remained as a member of the board.
- [31] The respondent also held an interest in Perihelion Server Farms Inc., valued at \$80,000 in 2015, according to his 2015 personal statement of worth. James was the managing director of the company from August 2015 to January 2017. According to the respondent, this company never got off the ground and nothing much was done with the company after incorporation in 2015. The respondent stopped filing records for this corporation in 2016 and it was struck from the Alberta corporate registry in 2018.
- [32] The respondent held a 30% ownership interest in Pangea International Inc. as at November 2012. In a 2016 self report, the respondent listed this shareholding at 20%.
- [33] The respondent also held a business card that stated that he was president of Street Legal Research, related to Cohof Holdings Ltd.. Neither of these enterprises was listed in the respondent's F8 and the evidence failed to establish the nature or financial status of these businesses.

- [34] The respondent had registered retirement savings of \$2,236 as at January 1, 2016 according to bank statements of 2017. Because there is no evidence of contributions or withdrawals in 2016 or 2017, it is concluded that this RRSP existed as at the date of separation. The most recent statement for this RRSP dated March 31, 2018 indicated a market value of \$2,652. In the respondent's F8 dated September 18, 2018, he listed an RRSP at \$1,500, but did not specifically identify the RRSP or any disposal of this asset in the previous 2 years. No withdrawal was listed in the respondent's 2016 or 2017 income tax return and no current documentation was produced for this RRSP.
- [35] The claimant held \$2,170 in savings at a credit union as at the end of February 2016. This amount was spent for upkeep of the Pritchard property and for personal living expenses in the absence of payment of spousal support.
- [36] The claimant also held a GIC of about \$22,000 in February 2016 that was proceeds from an inheritance from her father that had been held since 2012 without the funds being used in any way. The claimant withdrew these funds in April 2016 to fund her living expenses and to pay for bathroom renovations at the Pritchard property.
- [37] The respondent listed a 1/3 interest in property in Stansted, England, valued at \$203,000, on a 2015 statement of assets that he prepared for his own use. This property was not listed in his F8 statement. The respondent testified that it is inherited from his family. As at October 12, 2018, the respondent also has 114,200 GB pounds in a bank in England which he testified was inherited funds recently received, no further details or documents provided.
- [38] The respondent held \$25,000 in bullion, coins, silver, and unmounted diamonds according to his 2015 personal financial statement. A purchase statement from October 2011 indicated purchase of diamonds valued at \$2,500. The details and actual values of these assets was not established in evidence.
- [39] By 2013, James appeared to be doing well financially, as he leased a Porsche, declaring an income of \$250,000 per year on the lease application which was in his name. The lease was for 48 months at \$1,682 per month. Although the respondent argued that he had bought out the lease on the Porsche and then sold the vehicle, resulting in a net gain, there is no evidence of this. In the meantime, the claimant spent much time alone on the farm. The relationship had deteriorated, especially after a physical altercation in December 2008 in which the claimant was significantly and permanently injured.
- [40] The parties purchased a lot in Baja, Mexico in about 2013 in joint names for \$25,000. The property remained bare land. It was sold in early 2019 for US\$34,000, with proceeds from sale after costs being US\$21,704 (C\$ 28,722). These funds were retained by the claimant with the consent of the respondent. He agreed in cross-examination that these funds are to be applied towards arrears of spousal support.

- [41] The parties operated financially as a team with the respondent giving the claimant \$5,000 per month for household expenses and operation of the llama business. Payment of this monthly amount started in 1991 and ended when the respondent was served with the Notice of Family Claim in May 2016. The source of these funds was not consistent, sometimes coming directly from business interests such as Eligio and Arbour Ridge Adjusters and sometimes personally from the respondent.
- [42] The respondent failed to list in his 2016 and 2018 F8 financial statements all bank accounts that he held. Particularly, the respondent failed to list the following accounts that he held in 2018: a TD bank account held in Airdrie, Alberta; and the Bank of America U.S. account referred above at paragraph 9 referenced to the respondent at an address in Florida. The TD account was originally in joint names with Amanda Parsons but was solely in the name of the respondent by March 2018. The respondent testified that he wired money from his U.S. Bank of America account into the TD account to pay bills. Deposits into the TD account in 2018 totalled \$101,821. Not all of these, however, can be followed into the Bank of America account. The respondent testified that \$32,808 received in August, 2018 came from his mother's estate: but there is no documentation to support this statement and the deposits to the respondent's United Kingdom Santander bank account suggest that the respondent did not receive estate proceeds of 114,200 GBP until October 2018. The Bank of America account documents are not complete but demonstrate that the respondent had significant deposits throughout late 2017 and 2018, leading to the inference that the respondent was still working in the United States in 2018.
- [43] The respondent also received a substantial deposit of funds into his U.K. Santander savings account no. X0573008 in February 2019. The transaction was not included in the respondent's documents introduced at trial. The Santander account documents ended as at October 2018. The documents confirming the transaction were sent to the respondent at the Pritchard property; hence, the claimant found out about it. The respondent explained in cross-examination that the funds came from an old neighbour in Alberta, that he was simply holding the funds for this person, and that he transferred the funds in small amounts to the neighbour's account in Germany. He further explained that this friend lives in the Turks and Caicos but has funds in the Bahamas and that the Bahamas has "no reciprocity with Germany". He gave no reason for engaging in this transaction except that it was a favour for an unnamed friend. This explanation defies reality when looked upon in the context of the documents themselves.
- [44] The respondent received 60,710 Euros from a "Peter Meronek" at the Winterbotham Trust Company on February 20, 2019, just after the first week of trial at a time when the trial was not otherwise expected to have continued. This amount was immediately exchanged into 52,253 GBP in a savings account in the name of the respondent. The transaction was detailed as "for investment purposes". Because the money was originally sent in Euros, it is inexplicable as to why it needed to be exchanged into GBP before being sent on to Germany as the respondent suggested. Further, there is no evidence that any of these monies were

actually sent to Peter Meronek, the name listed as the original transferor, if that is indeed the name of his friend. The confirmations of electronic funds transferred on February 20, 2019, the same day that the funds were received by the respondent, shows two transfers of these funds from the respondent to the respondent: the first, 1,700 Euro to bank account AA92N84G46AA4CCQ in the respondent's name at the "Fidor Bank AG" (an account not disclosed in the F8) and, the second, to the respondent's account at the Toronto Dominion Bank as already described. The purpose of this second and largest transfer on February 20, 2019 of 20,000 GBP was stated to be "pay bills and personal use". On February 26, 27, 28 and March 1, 2019, the respondent sent (1,700 Euros x 4) 6,800 Euros to the same account .AA4CCQ in the respondent's name with details of Payment related to "Kraken.com". The respondent transferred 2,220 Euros to an unnamed account at "Bank Frick & Co AG for "consulting and set up costs" on February 26, 2019. None of these transactions were explained adequately by the respondent. It is concluded that these funds were originally owned by James Falkener and that he had several accounts in foreign jurisdictions in which he deposited funds and received payments. The details of these foreign accounts have not been disclosed.

- [45] The respondent held several credit cards with balances owing as at the date of separation. The respondent owed Amex \$2,663.07. This account was used for farm, personal and business expenses. The respondent did not provide a breakdown of amounts incurred and the general ledger of businesses involved were not produced or traced. This credit card was not listed as an unsecured debt in the respondent's September 2018 F8.
- [46] The respondent also owed \$5,925.79 to Canadian Tire Mastercard No .0496 as at the date of separation but much of this expense was for the vehicle expenses and for Can State bills, the particulars of which were not detailed in evidence. The previous balance of \$4,227.92 more probably reflects the debt as at the date of separation. This credit account was listed in the respondent's September 2018 F8 as having a balance owing of \$15,609.
- [47] The respondent also owed \$13,095.26 to Visa account no 2594 as at the date of separation. This account was used for business, farm and personal expenses but the respondent did not provide a breakdown of relevant expenses. This credit account was listed as at September 2018 in the respondent's F8 at \$15,830.
- [48] The respondent owed \$9,496.03 on a PC Mastercard no .2238 as at the date of separation. This account was used to pay for expenses for the Airdrie and Pritchard properties, details not provided. The balance on this account as disclosed in the September 2018 F8 was \$15,179.
- [49] The respondent also had a Royal Bank Visa account no .6235 that was owed \$2,288.88 as at the date of separation. This account was listed on the respondent's September 2018 F8 as having a balance owing of \$16,230.

- [50] The respondent had an Amazon Visa account no ..5639 that was owed \$4,545.23 as at the date of separation. This credit account was not listed on the respondent's September 2018 F8.
- [51] From a review of the limited statements provided for these accounts, it is apparent that they were used for personal, business, and farm expenses. The charges were intermingled between accounts such that it is impossible to discern what amounts were for business as opposed to personal and would, therefore, have been written off as an expense against income. The respondent testified that he gave these invoices to his accountant at the end of each year and the accountant did the calculations. The respondent did not provide a breakdown of relevant expenses and the accountant did not testify. There was no documentation in evidence except for the period near separation in February 2016. None of the credit card debt listed as owing on the September 2018 F8 were verified through documentation and none of the debt was documented as for the purpose of maintaining family property.
- [52] The respondent filed his income tax returns for 2015, 2016, and 2017 in September 2018. The 2015 income tax return disclosed self employment income through commissions of \$223,049, with a net income after expenses of \$126,725. The total business expenses were \$88,768. The respondent also declared farm losses of \$25,130, even though the respondent acknowledged in cross-examination that they did not have enough animals for farm status in that year. There was a tax liability of \$25,793 declared for 2015. This was reassessed for penalties and arrears interest at \$36,903.
- [53] For the 2016 tax year, the respondent declared gross self employment income of \$106,000, with a net income after expenses of \$50,575. The total business expenses were \$44,886. There was a tax liability of \$12,087 declared for 2016.
- [54] For the 2017 tax year, the respondent declared gross self employment income of \$125,335, with a net income after expenses of \$59,619. Total business expenses were \$49,726. The respondent claimed farming expenses related to the Pritchard property of \$1,175. There was a tax liability of \$14,557 declared for 2017.

Division of property

(a) Family assets

- [55] Under s.81 Family Law Act, S.B.C. 2011, c.25 ("FLA"), spouses are presumptively entitled to an equal division of family property and are equally responsible for family debt upon separation (*Parton v. Parton*, 2018 BCCA 273 at para. 35). The presumptive date for valuing family property is the date of the hearing respecting the division of property (*Namdarpour v. Vahman*, 2019 BCCA 153 at para. 59). The valuation on a date closest to the hearing date is the value to be used (*Namdarpour* at paras. 56-69).

- [56] The Pritchard property was the matrimonial home throughout the marriage. Following separation, the claimant obtained a real estate appraisal of the property which recommended certain finishing work if the true value of the property was to be obtained upon sale. Otherwise, the agent valued the property at \$520,000 to \$550,000 in January 2019, the same value as at April 2016 with the property in the same state. The assessed value of the property was \$554,000 in 2016, \$560,000 in 2017, \$620,000 in 2018, and \$678,000 in 2019. The assessed value in 2019 is accepted as the present value at trial.
- [57] The two mortgages on the Pritchard property total \$200,541 as at the date of trial, leaving an equity in the home of \$477,459 (\$678,000 - \$200,541).
- [58] The Airdrie property's assessed value in 2019 was \$327,000. The most recent to trial mortgage statements indicate a total owing of \$283,977. The equity in the Airdrie property is valued at \$43,023.
- [59] The values of business and other interests owned by the respondent has varied between values listed by the respondent in his own personally prepared financial statement of 2015 and his declared values at trial. Without the benefit of expert valuation, the best evidence as to value of the corporations has been used.
- [60] The respondent valued his interest in Canada Cat at \$100,000 in his personal statement of 2015, just months before separation. In the absence of any other evidence of value and in the absence of recent tax or corporate statements for Canada Cat, this statement of value is accepted as the value as at the date of trial.
- [61] Valuation of the respondent's shares in Fire Marque is complicated by the fact that the respondent's F8 and 2015 personal statements indicate that he owns 450,000 shares. However, the respondent testified that he sold 75,000 shares in 2014 for \$25,000, leaving him with 375,000 shares. The respondent testified that the company generally valued the shares at \$1.50 each. However, based upon the 2014 sale price, the shares are worth \$0.333 each. There is no evidence that the value of this minority interest in a privately held corporation has dramatically increased since 2014, except in the minds of the shareholders themselves and in the absence of expert opinion. It is accepted for purposes of valuation here that the respondent holds 450,000 shares valued at \$149,850.
- [62] The value of the respondent's 8.75% interest in Eligio is accepted at \$65,625 based upon the 2015 personal statement of worth and the response in 2018, the respondent not offering adequate explanation for his stated evaluation at trial of \$15,000-20,000.
- [63] Proceeds from the sale of the Baja property in the amount of \$28,722 were retained by the claimant. This balance was agreed by the respondent to be applied towards arrears of spousal support. However, the amount attributed to the respondent is half or \$14,361, leaving still a balance payable to the claimant for arrears of spousal support.

- [64] The most recent value of the respondent's RRSP according to documentation as at March 2018 was \$2,652. Because there was no disposal of this asset, the documentary evidence is accepted as to the value of this asset as at the date of trial.
- [65] The claimant held \$2,170 in savings as at the date of separation. This amount was used to maintain the Pritchard property after separation and is not included as a family asset because it was properly spent before trial. The claimant's GIC of \$22,000 has been proven to be excluded property as received by inheritance. The value of this asset was also spent to maintain the Pritchard property after separation when the respondent failed to pay spousal support.
- [66] Also excluded as family property is the interest of the respondent in property in Stansted, England. It is accepted that this is inherited property. The miscellaneous bullion, coins, diamonds and silver were not adequately itemized or evaluated so to be considered family property. Finally, there is no reliable valuation given to Canada State or Perihelion, the two companies struck from the corporate registry in 2018 for failure to file corporate records since 2016. However, given the nature of these businesses and the fact that only the respondent was a shareholder, it is concluded that these corporations had little or no value as at the date of separation.
- (b) Family debt
- [67] Family debt includes all financial obligations incurred during the period of the relationship (s. 86(a) FLA) but does not include financial obligations incurred after the date of separation unless they were incurred for the purpose of maintaining family property (s. 86(b) FLA).
- [68] The respondent established that there was a total of \$36,314 owing on credit card debt as at the date of separation (Amex \$2,663; Canadian Tire \$4,227; Visa \$13,095; PC Mastercard \$9,496; RBC Visa \$2,288; and Amazon Visa \$4,545). The Amex and Amazon Visa accounts were not listed on the respondent's September 2018 F8 and so were presumably paid off. The other credit card debt increased from the date of separation to the September 2018 F8: but, the respondent failed to prove that this increase was incurred to maintain family property (*Chatha v. Uppal*, 2018 BCSC 6 at para. 309; *MacGinnis v. MacGinnis*, 2018 BCSC 1507 at para. 22; *K.P.B. v. K.E.*, 2019 BCCA 152 at para. 43). The respondent also has failed to establish which amounts of credit card debt were incurred as a business expense and deducted from income in the 2015 or 2016 tax years. However, because the benefit of any business portion of any expense was shared by the claimant, these debts are considered family debts in the total amount of \$36,314.
- [69] The respondent had a balance of \$36,903 owing on his 2015 income tax return, a debt that crystallized when he filed his tax return in September 2018. Although there is no evidence that this amount has been paid, the amount is accepted as family debt.

(c) Determination of family property less debt

[70] In summary, the following assets are family property valued as follows:

Pritchard property

\$477,459

Baja property proceeds

28,722

Airdrie property

43,023

Canada Cat

100,000

Fire Marque shares

149,850

Eligio shares

65,625

RRSP

2,652

Total value

\$867,331

[71] The family debt is as follows:

Credit card debt

\$36,314

Revenue Canada

36,903

Total debt

\$73,217

[72] An equal division of family property minus family debt results in \$397,057 to each of the claimant and the respondent. If the claimant retains the Pritchard property (including mortgages) and half of the Baja proceeds, she will have received \$491,820. If the respondent retains the Airdrie property (including mortgages), half of the Baja proceeds (to be applied towards arrears of spousal maintenance), Canada Cat shares, Fire Marque shares, Eligio shares, and his RRSP and if the respondent is credited with assuming all of the family debt,

he will have received \$302,294. This amount is \$94,763 less than an equal division of family property and debt.

(d) Unequal division

[73] The claimant has claimed an unequal division of family property. As stated in Parton at paras. 35-36:

[35] Sections 81 and 95 of the Family Law Act concern property, although s. 95(3) incorporates spousal support considerations into the test for unequal division of family property. Under s. 81, each spouse is presumptively entitled to an undivided half interest in all family property and equally responsible for all family debt: *Jaszczewska v. Kostanski*, 2016 BCCA 286 at para. 38. However, under s. 95(1) the court may order an unequal division of family property if an equal division would be "significantly unfair", having regard to the factors set out in s. 95(2). Section 95(2) provides a non-exhaustive list of factors for consideration with respect to significant unfairness, including the duration of the relationship and a spouse's contribution to the career or career potential of the other spouse. In addition, s. 95(3) provides:

(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.

[36] The test for significant unfairness under s. 95 of the Family Law Act is more stringent than the unfairness test contained in the predecessor legislation. As Justice Harris explained in *Jaszczewska* at para. 42, to meet the significant unfairness test under s. 95 "something objectively unjust, unreasonable or unfair in some important or substantial sense" is required.

[74] The main asset of the parties, as it turns out, is the Pritchard property which the claimant has maintained at significant cost to herself, both physically and financially. The claimant has significantly and permanently suffered from the responsibilities of the llama farm property that she assumed, to the detriment of her own career. The respondent had not fully participated in the operation and maintenance of the Pritchard property since 2008. The claimant wants to sell the property and move into more modest and less demanding housing. The respondent basically ran rough shod over the claimant financially over the years, supporting her and the llama business in the amount of \$5,000 per month, but not otherwise sharing financial information, decision making, or additional benefit. The claimant was unable to accrue any means for herself in the future, except for the Pritchard property for which she had been sued because of the respondent's failure to pay income tax. She used excluded property, her inheritance, to maintain the Pritchard property after separation. In the meantime of all of this, the respondent established himself in the insurance industry with his own business that operates internationally and with shareholder

interests in related businesses. He has engaged in recent undisclosed financial transactions involving significant sums of money and undisclosed bank records. His firm control over finances was mismanaged because he failed to separate business from personal expenses such that the credit card debt that existed as at the date of separation is incapable of differentiation between business and personal expense.

- [75] It would be significantly unfair for the respondent to receive an equal share of the Pritchard property. The division as set out at paragraph 72 will benefit the claimant to the amount of \$94,763. This unequal division reflects the extent to which the financial means and earning capacity of the claimant have been detrimentally affected throughout this marriage.
- [76] To effect this division, the parties shall each keep the properties and debt as presently registered in his/her own name. The respondent shall be removed as a mortgagor on the Pritchard property.

Spousal support

(a) Past support paid and payable

- [77] The respondent continued to pay the claimant the traditional \$5,000 per month in the first two months following separation. After being served with these proceedings, no payments were made for two months. \$2,000 was paid in July 2016 from an account held by Arbour Ridge Claims Adjusters before an anticipated judicial case conference: but, then no further payments were made until November 1, 2016 when the amount of \$3,200 came from Arbour Ridge Claims Adjusters and November 30, 2016 when the amount of \$3,954 was paid. No payment for spousal support was made in 2017 or 2018. The claimant had to take out a second mortgage on the Pritchard property in October 2017 to cover her living expenses and maintain the Pritchard property. An order was made on July 17, 2018 for payment of spousal support in the amount of \$1,227 per month from and including December 1, 2016.
- [78] The respondent did not pay support as ordered in August or September 2018. When ordered in September 2018 to pay past support of two months or face a fine, the respondent paid two months as required in the amount of \$2,454 plus a fine of \$400 but has paid nothing since. In the meantime, the respondent continued to pay for the lease on his Porsche and deduct the full amount from business expenses.
- [79] As at January 16, 2019, there was arrears of maintenance payable in the amount of \$29,448. This amount has increased to the date of judgment as the respondent has continuously failed to pay as ordered. The respondent agreed that the claimant would retain for her sole use and as payment for arrears of spousal support the proceeds from the sale of the Baja property in the amount of \$28,722. Attributing half of these proceeds to the respondent leaves a balance payable for arrears of spousal support in the amount of \$14,361 as at January 2019. Arrears through to the end of August 2019 are an additional \$8,589 for total arrears of \$22,950.

[80] Arrears of spousal support in the amount of \$22,950 are payable forthwith.

(b) Ongoing spousal support

[81] The claimant is now 69 years old and has not been employed for over 30 years. Based upon medical reports and letters that the claimant put into evidence, it can be concluded that the claimant suffers from spinal stenosis which required surgery in 2018 and continues to be symptomatic. She has right foot drop and neurological symptoms which render her unable to work. She also suffers from atrial fibrillation which is minimally symptomatic. She has been found eligible for the disability tax credit by Revenue Canada.

[82] The respondent kept control over the finances throughout the marriage. He paid for everything and was generally secretive about his worth. He did not disclose his income tax to his wife. He underreported his income for tax purposes as opposed to other purposes such as mortgage renewal. He did not file tax returns for the years 2015-2017 until recently. He held himself out as owner of the Pritchard property for the rent to own application for the Airdrie property in 2012 when it had previously been transferred to the claimant and had already been the subject of a Revenue Canada assessment. He declared himself as the sole proprietor of the llama business which losses he used as a deduction against his income for income tax purposes. His declared farm expenses were both exaggerated and false such as a claim for \$3,049 for veterinary expenses in 2015 which the claimant testified was really the cost to purchase two show dogs unrelated to the llama business and a claim of \$1,175 for business use of home expenses in 2017 when he had nothing to do with the business at all in that year and had not paid for anything at the Pritchard property. He regularly blended financial transactions between himself and his companies without regard to personal versus corporate liabilities as evidenced in the purchase of the Airdrie property, in initial payments of spousal support, and in credit card debt.

[83] The claimant operated the business and the household frugally and relied totally upon the respondent financially. Prior to and immediately following separation, the claimant received \$5,000 per month for personal and household expenses.

[84] The claimant's taxable income was as follows: \$94 for 2014; \$15,710 in 2016; \$18,602 in 2017. Her income is from old age security and Canada pensions. Her monthly income from these pensions is \$1,808 as at the end of December 2018. This amount is insufficient to meet basic living expenses.

[85] The claimant's total monthly expenses, unchallenged at trial, are \$5,540, consistent with the parties' expected expenses as required by the claimant when living at the Pritchard property and as paid prior to separation.

[86] After separation, the claimant used the inheritance that she received from her father and took out the second mortgage on the Pritchard property to maintain the property. She also received the Old Age Pension.

- [87] For spousal support purposes, the claimant's income is \$18,602.
- [88] Entitlement to spousal maintenance was not contested in evidence at trial or in pleadings. However, the respondent argued that the claimant, at 69 years of age and without employment for over 30 years, should seek employment training in order to become self sufficient. In this situation, the basis for entitlement should be considered.
- [89] Section 161 FLA deals with entitlement to spousal support based upon the following objectives that apply here:

Objectives of spousal support

161 In determining entitlement to spousal support, the parties to an agreement or the court must consider the following objectives: (selected)

- (a) to recognize any economic advantages or disadvantages to the spouses arising from the relationship between the spouses or the breakdown of that relationship;
- (c) to relieve any economic hardship of the spouses arising from the breakdown of the relationship between the spouses;
- (d) as far as practicable, to promote the economic self-sufficiency of each spouse within a reasonable period of time.

[90] Compensatory support recognizes the equitable sharing of the economic consequences of a marriage or its breakdown whilst non-compensatory support narrows the gap between the needs and means of the spouses. Madam Justice Dickson summarized the goals in Parton at para. 39 as follows:

[39] In Chutter, Justice Rowles described the underlying goals of compensatory and non-compensatory spousal support, namely, equitable sharing of the economic consequences of a marriage or its breakdown (compensatory support) and narrowing the gap between the needs and means of the spouses (non-compensatory support). In doing so, she explained that compensatory support provides redress for economic disadvantage arising from the marriage (such as diminished earning capacity and sacrificed career opportunities to take on child care responsibilities) or the conferral of an economic advantage upon the other spouse (such as contributions to enhanced career development). Citing *Yemchuk v. Yemchuk*, 2005 BCCA 406 and *Tedham v. Tedham*, 2005 BCCA 502, she also explained that, for purposes of non-compensatory support, at least for long marriages, "need" is generally measured against the marital standard of living: paras. 50-61. As this Court held in *Yemchuk*, while equalization of the parties' standards of living is not a stated objective of spousal support, in long-term marriages equality of standard of living may well be the just result: para. 50.

- [91] Self-sufficiency is not achieved by meeting basic expenses. A former spouse must be able to support a reasonable standard of living assessed on the basis of what the parties could sustain during cohabitation and what they could reasonably anticipate after separation (Parton at para. 40; Namdarpour at paras. 138 and 144). This requires consideration of factors such as present and potential incomes, the standard of living during the marriage, likely post separation circumstances, and the duration of the marriage.
- [92] It should also be acknowledged that an unequal division of family property does not defeat a spousal support claim. Dickson J.A. addressed this in Parton at para. 42:
- [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. Where property has been reapportioned in favour of a support-seeking spouse, that spouse's entitlement to and the quantum of support is determined by the extent to which the reapportionment adequately compensates for the economic consequences of the marriage and its breakdown, including any claims for compensatory and non-compensatory support: para. 71. In the absence of reapportionment, when spousal support is determined the usual considerations apply.
- [93] However, the division of property must be resolved first since the results of a division will affect the relative condition, means, and needs of the parties (Rochon v. Rochon, 2018 BCSC 1899 at para. 314).
- [94] The claimant gave up her career to support the respondent in his insurance and llama business, the latter of which he always claimed as his own. She maintained the farm when the respondent had essentially abandoned her and the farm to pursue lucrative catastrophic insurance adjusting. She had a relatively isolated and modest lifestyle, confined in her interests to the llama business and maintenance of the Pritchard property. She relied completely upon the respondent financially. After the marriage ended, the claimant was left for a long time with no financial support. She was compelled to use her small savings and inheritance to support the property and herself. At her senior age and in poor health, she had no alternatives. At present, she is left with no capacity for employment and reliant upon Old Age Security and CPP, the respondent having refused to comply with court ordered support. There is no question that entitlement has been established.
- [95] The respondent is a level 2 catastrophe insurance adjuster. He presently works in insurance dispute resolution and has maintained his insurance licence. He continues to operate his own insurance business, Canada Cat, and participate as a director and shareholder in Eligio and Fire Marque. From the evidence of Parsons and Evans, and as inferred from the fact that

the respondent received funds for work in the U.S. in 2017, it is concluded that the respondent is presently capable of and has worked in the insurance business in which he has gained an international reputation for over 30 years.

- [96] The respondent presented hundreds of pages of medical information to the court, a replication of the medical file that he provided to the Province of Alberta and Canada Pension, to show that he was disabled from work. Much of this was repetitive and composed of laboratory and other test results that were not medically interpreted in evidence. The claim for disability itself was not put into evidence. Neither Alberta nor Canada Pension confirmed a disability as at the completion of trial. The matter was still in progress with Canada as at October 2018 and the respondent testified that he still has not received a decision on the disability claim. There is some evidence that the respondent has suffered from episodic gout for many years. He had difficulties in 2017 that were extensively tested and studied with largely normal results and without diagnosis of any health condition. Ultimately, his general practitioner reported to Service Canada in August 2018 that the respondent's symptoms were thoroughly investigated by multiple specialists and that the only possible explanation for his symptoms was "mold exposure". No further medical follow up was planned. No medications were prescribed. No prognosis was made. In these circumstances, it cannot be concluded that the respondent suffers from any health condition that disables him from employment.
- [97] In this regard, the unqualified opinion of Amanda Parsons, that "the mold and mouse issue in the [Airdrie] home had a dramatic effect on [the respondent's] health and mental condition", is disregarded. The house was never tested for mold by a qualified professional and any evidence is anecdotal. In any event, the house situation has been remedied with renovations.
- [98] The respondent reported his income at various times as follows: for rent to own application in 2012, \$110,000; for lease of a Porsche in 2013, \$150,000 with an annual bonus of \$100,000; and for application for renewal of first mortgage in January 2015, \$90,000.
- [99] The respondent's income tax returns indicate income as follows: for 2015, net commission income of \$126,725 excluding farm loss; for 2016, net self employed income of \$50,575; for 2017, net business income of \$59,619 excluding farm loss. This sudden decreasing pattern runs parallel to the respondent closing down certain of his businesses in the year of separation. The respondent failed to adequately explain why these changes occurred.
- [100] The 2017 gross business income declared for tax purposes by the respondent was \$125,335, with net \$59,619. According to 2017 recipient tax information prepared for the United States Internal Revenue Service, the respondent was paid \$95,013 US in 2017 as nonemployee compensation from two sources in the United States. The respondent obtained accreditation in the United States as an independent disaster insurance adjuster following the Florida hurricanes in 2017. He established a bank account in the United States which he used to pay Amanda Parsons for her work at the Airdrie property in 2017 by way of email

transfer into a joint account that she held with the respondent, the particulars of either account not declared on the respondent's F8 financial statement. It cannot be determined whether this income was included in the 2017 gross business income declared by the respondent. If not included but attributed, then the respondent's 2017 net income would more closely fit with previous declared income prior to separation.

- [101] The respondent has held and presently holds several business interests, none of which he says produce him any income at present. However, both Fire Marque and Eligio are ongoing businesses with potential for income or capital gain in the future. This is especially so for Fire Marque, whose shares have been discounted in value based upon the 2014 share price to a minority shareholder, when the company values the share considerably higher. The liquidity of these assets, however, is uncertain. He also has considerable means from excluded property, his inheritance real estate and bank funds.
- [102] The respondent's monthly expenses, unchallenged at trial, were listed at \$3,792.
- [103] After consideration of all of the evidence, it is concluded that the respondent has not been forthright with the court as to his true income. The circumstances include: failure to disclose bank and other assets; failure to disclose and adequately explain 2017 income from the United States; failure to factor rental from the Airdrie property into income; failure to adequately explain the U.K. Santander bank and foreign bank transactions in February 2019; and deduction of business expenses from income and intermingling of business and personal expenses. Another factor in the imputation of income to the respondent is the respondent's previous statements of income for purposes other than income tax or court and the likely rental income to be received from the Airdrie property. The average income over the 3 years 2015-2017, with deemed income of \$126,000 attributed in 2017, is \$101,100, giving the benefit of a low of \$50,575 in 2016. The respondent is deemed to have an annual income of \$110,200.
- [104] Application of the Spousal Support Advisory Guidelines indicate a range for spousal support of between \$2,745 to \$3,620 per month for an indefinite period.
- [105] Factors favouring indefinite support for the claimant include her age, inability to work, her lack of capital other than her home, the length of the marriage, and the lack of other sources of benefits or gains. Clearly, the claimant is entitled to indefinite support. This means that the support would be subject to variation and review (Parton at para. 57).
- [106] Consideration must be given to the fact that the respondent is 62 years old and has already realistically limited his insurance adjusting abilities. He no longer climbs on the roofs. However, he continues to be active in his own business and is looking for ways to adapt. It is unlikely that the respondent would be able to pay indefinite support at the lowest SSAG level. This is so even though the respondent has purposefully reduced or hidden his work following separation in an effort to avoid payment of spousal support. He is nearing the end of his career. He is unlikely to maintain the earning capacity in retirement that he did throughout the marriage.

- [107] Lump sum support should be considered. The factors to consider were set out in Parton at paras. 47-48. The advantage of an award here would be to terminate ongoing contact in a situation where a s. 183 FLA order has been made, there is a real risk of non-payment of periodic support, there has been a lack of financial disclosure on the part of the respondent, and arrears of court ordered support have accumulated. It is unlikely that the claimant's ongoing needs will be adequately met or that she will be fully compensated for the economic disadvantage that she suffered in the marriage. The disadvantage of such an award include the limited capital ability of the respondent to pay a lump sum and his recent stated refusal to maintain his historical employment. In consideration of a lump sum award, this court is fully aware that such an award would foreclose the prospect of variation in spousal support. The tax effect of a lump sum award has not been presented.
- [108] The means of the respondent for spousal support includes his capital base, his income earning capacity, and "any other available source of benefits or gains" (Parton, at para. 78). A lump sum award would likely result in the sale or transfer of either Fire Marque or Eligio shares, or in the dissipation of excluded inheritance property: however, provision of compensatory and non-compensatory support may not be otherwise achieved.
- [109] The SSAG lump sum recommended after tax range for payment by the respondent is \$381,394-\$513,650 based upon indefinite duration. The demonstrated concern here is that the respondent will not pay periodic support and has hidden assets. It is also acknowledged that the claimant acts for herself and continuation of proceedings is not in her interest.
- [110] The respondent is ordered to pay spousal support in the amount of \$381,394.
- [111] Lump sum spousal support is ordered to be payable as follows:
- \$50,000 payable immediately;
 - \$100,000 payable no later than December 31, 2019;
 - \$100,000 payable no later than March 30, 2020;
 - \$131,394 payable no later than June 30, 2020.

Conclusion

- [112] The division of property and debt has resulted in an unequal division such that the parties shall keep in their own names the property and debt as presently registered in his or her own name. The respondent shall be removed or saved from any liability arising from the first mortgage registered against the Pritchard property.
- [113] The respondent shall forthwith pay arrears of spousal support owing in the amount of \$22,950.

[114] The respondent is ordered to pay lump sum spousal support in the amount of \$381,394 payable as follows: \$50,000 payable immediately; \$100,000 payable no later than December 31, 2019; \$100,000 payable no later than March 30, 2020; and \$131,394 payable no later than June 30, 2020.

[115] The claimant has been successful for the most part, entitling her to costs at Scale B.

"Dillon J."

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