

CANADA / JUDGMENT

J.D.R. v. L.J.R.

2019 BCSC 289

COURT

Supreme Court of British Columbia

DECIDED

6 March 2019

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2019 BCSC 289 J.D.R. v. L.J.R. IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: J.D.R. v. L.J.R., 2019 BCSC 289 Date: 20190306 Docket: E12314 Registry: Chilliwack Between: J.D.R. aka J.D.K. Claimant And L.J.R. Respondent Before: The Honourable Mr. Justice N. Brown Reasons for Judgment Counsel for the Claimant: D.M. Frechette Counsel for the Respondent, appearing in person: L.J.R. Place and Dates of Hearing: Chilliwack, B.C. November 20-21, 2018 Place and Date of Judgment: Chilliwack, B.C. March 6, 2019 Table of Contents INTRODUCTION. 4 Claimant's position. 4 Respondent's position. 5 Background information. 5 HISTORY OF PROCEEDINGS. 5 April 4, 2016 Judicial Case Conference. 6 September 18, 2018 Trial Management Conference. 6 Résumé of non-compliance with Court Orders. 7 DIVISION OF PROPERTY DETAILS. 8 Family Home history. 8 Respondent continuing to occupy Family Home post-separation. 9 Defaulting on mortgage and municipal taxes. 9 Other adjustments sought by the Claimant 10 Respondent's Employment Pension. 10 Personal Property. 10 Honda Civic and Honda Pilot 10 Motorhome. 11 Respondent's RRSP (WOF) 11 Buy-out from Respondent's former employment 11 Respondent's obligation to pay child support 11 Claimant's testimony. 12 Respondent's testimony. 14 Agreed to Orders. 15 LEGAL PRINCIPLES CONCERNING PROPERTY DIVISION. 16 Cizmic v. Cizmic. 17 Khorramtash v. Boroojeni 18 Jaszczewska v. Kostanski 18 APPLICATION. 18 Division of vehicles. 19 CONCLUSION. 20 Increase in family debt 20 Tax arrears. 20 RRSP. 20 Motorhome. 21 Respondent's buy-out from his former employment 21 Child support 22

INTRODUCTION

[1] These reasons for judgment address claims relating to division of property, in particular the following matters:

- a. division of the net proceeds of sale of the family home, \$425,878;
- b. division of the respondent's employment pension for the period of the relationship;
- c. division of miscellaneous personal property including family vehicles and RRSPs in the respondent's name; and
- d. division of Canada Pension Plan ("CPP") benefits the parties acquired during the relationship. Claimant's position

- [2] The claimant wife, J.D.R. aka J.D.K., seeks an equal division of the proceeds from the sale of the matrimonial home located in the Fraser Valley (the "Family Home") and other miscellaneous personal property. She also seeks an equal division of the respondent husband's, L.J.R.'s, employment pension and the CPP benefits of the parties for the period during their relationship.
- [3] The parties have a 16-year-old child from the marriage named "K." Presently, K. mainly resides with the respondent. She determines where she will reside and she wants to spend time with each of her parents. Accordingly, the parties are not disputing guardianship or parenting time.
- [4] Currently, the claimant earns approximately \$23,800 annually from her employment. She plans to pay Federal Child Support Guidelines, SOR/97-175 [Guideline] child support based on this income.
- [5] The claimant also sought an order for divorce on an uncontested basis. I granted a divorce during the hearing. Respondent's position
- [6] The respondent does not oppose many of the claimant's claims for relief. He agrees that the parties should share equally in the RRSPs; his employment pension; and agreed to the proposal to share the vehicles. Background information
- [7] In May 2000, the parties began to cohabitate in a marriage-like relationship. They married on May 19, 2001. They separated on September 19, 2014.
- [8] The respondent was employed by a large grocery chain store. He began working there after he completed high school in 1989. He continued to work at the store until his employment was terminated in 2013. The respondent testified, however, that the employer did not terminate his employment, rather, provided him with a buy-out when he left his employment. The respondent also had a pension with this employer, to which he contributed until his employment ended.
- [9] Throughout much of the relationship, the parties lived in the Family Home located in the Fraser Valley. After the parties separated, the respondent continued to reside in the Family Home until January 2, 2018, when it was sold.
- [10] The claimant suffered from mental health issues, most notably, depression and anxiety. When the parties separated the claimant was hospitalized. She suffered a significant injury to her right shoulder, which is her dominant side. Her condition improved but she continues to suffer from significant anxiety. HISTORY OF PROCEEDINGS
- [11] Counsel provided a succinct history of proceedings in this matter:
- a. On January 21, 2015, the claimant filed a notice of family claim. On December 11, 2015, the respondent filed a response to the family claim.

- b. On December 7, 2015, the parties attended a Judicial Case Conference conducted by Master Caldwell. He made the following orders:
1. The parties shall be mutually restrained from disposing of, transferring, converting, or exchanging into another form, property in which either party has an interest pursuant to Rule 91 of the Family Law Act, save and except the Claimant may have access to her RRSPs.
 2. The Respondent, [L.J.R.] shall file Financial Statements within thirty (30) days from the date of this Order and shall file a Response and Counterclaim within fourteen (14) days. April 4, 2016 Judicial Case Conference
- [12] On April 4, 2016, the parties attended another Judicial Case Conference. Master Caldwell at that time made the following orders:
1. The [claimant, J.D.R. aka J.D.K.] shall pay child support to [the respondent, L.J.R.] for the child namely, [K.] ... in the amount of \$133.00 per month based on an annual income of \$17,000, commencing May 1, 2016 and payable on the first of each and every month thereafter until further order of the court.
 2. [The respondent, L.J.R.] shall prepare and file a Financial Statement complete with all attachments within fourteen (14) days.
 3. Each party shall prepare and exchange their own List of Documents within thirty (30 days).
 4. Costs are fixed at \$350.00 payable to the [claimant], in any event of the cause. September 18, 2018 Trial Management Conference
- [13] At a September 18, 2018 Trial Management Conference, Mr. Justice Crabtree made the following orders:
1. Each party shall provide to the other their last 2 years' income tax returns within 14 days of the date of this Order;
 2. The respondent shall prepare and file a Trial Brief within 14 days of the date of this Order and shall serve a copy on the claimant's lawyer;
 3. The respondent shall provide a List of Documents and copies of any documents he intends to rely on at trial to the claimant's lawyer on or before October 24, 2018; and
 4. Within seven days after the respondent provides his List of Documents, the claimant's lawyer shall advise if there are any objections to the admissibility of the documents.
- [14] The respondent did not comply with the above-stated orders. Résumé of non-compliance with Court Orders
- [15] In sum, the respondent has not attended to the following steps the court ordered him to undertake:

- a. produce a List of Documents required by the Supreme Court Family Court Rules, B.C. Reg. 169/2009, and by court orders made April 4, 2016 and September 18, 2018;
- b. prepare a Trial Brief as required by the Supreme Court Rules and by a court order made September 18, 2018;
- c. produce his income tax returns for 2016 or 2017, as required by the September 2018 order; and
- d. respond to the claimant's requests for production of relevant documents.

[16] The respondent advised the court that he could not produce some documents because they were in the hands of his former solicitors and they would not provide him with copies of them unless he paid legal fees owed to them. It was apparent, however, that there were periods during which he had not yet retained counsel. He should have had the documents in his possession and been able to produce them. DIVISION OF PROPERTY DETAILS

[17] This is a summary of the constituent elements of the division of property claim:

- a. the Family Home sale net proceeds in the amount of \$425,878;
- b. the Honda Civic insurance proceeds paid to the respondent following an accident (documents related to this were not disclosed);
- c. the Honda Pilot, which is in the claimant's possession;
- d. the sale proceeds of the parties' motorhome;
- e. the respondent's employment pension;
- f. CPP benefits;
- g. The respondent's RRSP (documents relating to his "Working Opportunity Fund" ("WOF") were not disclosed before the trial or in the evidence); and
- h. The respondent's buy-out from his former employment (documents regarding this were not disclosed). Family Home history

[18] The respondent purchased the Family Home for \$158,500 on February 3, 1996, with his parents. Two mortgages were registered against the title at the time, in favour of the Royal Bank: the first was registered in the amount of \$118,875; the second for \$46,125. Accordingly, the total amount of the first and second mortgages was \$165,000; the amount owing on the mortgages therefore exceeded the purchase price by \$6,500, leaving little equity in the property.

[19] After the original purchase, the Family Home was transferred into the respondent's name alone. The transfer took place before or near the May 2000 start of the parties' relationship.

- [20] On January 3, 2018, the Family Home was sold for \$740,000. The balance outstanding on the Royal Bank mortgage at the time of that sale was \$266,214. The net proceeds from the sale, including interest and adjustments in the amount of \$425,878 is currently being held in trust pending resolution of this matter. Respondent continuing to occupy Family Home post-separation
- [21] As noted briefly above, after the parties' September 2014 separation, the respondent continued to reside in the Family Home and to have exclusive possession of the property, until it was sold on January 3, 2018. Defaulting on mortgage and municipal taxes
- [22] Because the respondent did not make all necessary payments due on the mortgage during this period, the mortgage defaulted; and on October 20, 2017, the Royal Bank commenced a foreclosure action. The mortgage debt increased from \$259,588 at the time of the parties' separation, to the amount of \$266,214 at the time of sale. There was a sum of \$6,656 owing on the mortgage when the parties separated.
- [23] The respondent, while in exclusive possession of the property, also failed to pay municipal taxes owed to the City. When the property was sold, taxes of \$7,007 were owing.
- [24] The claimant took the position that division of the net proceeds of sale from the Family Home in the amount of \$425,878 must be adjusted to account for the increase in the amount owed on the mortgage between the date of separation and the sale of the property, and the municipal tax arrears accumulated by the respondent, while he had exclusive possession of the residence after the parties separated.
- [25] The claimant seeks an order for equal division of the net sale proceeds with adjustments for the increase in the mortgage debt because of the respondent's failure to pay mortgage payments and for the arrears of municipal taxes. Accordingly, she argues for this calculation: $(\$6,241 + \$7,007) \div 2 = \$6,624$. Other adjustments sought by the Claimant
Respondent's Employment Pension
- [26] As stated already, the respondent had an employee pension with a large grocer company. The claimant submits that it should be shared equally. The respondent does not dispute that claim.
- [27] The claimant also submits that the parties' CPP benefits should be divided equally for the period of the parties' relationship. The respondent does not dispute that claim either.
Personal Property Honda Civic and Honda Pilot
- [28] After the parties separated, the respondent had a motor vehicle accident in the parties' Honda Civic. After the vehicle was deemed a total write-off, he received insurance proceeds from ICBC for the loss. He did not produce documents showing the insurance monies received. On examination for discovery, he testified the insurance proceeds were around \$6,000. He retained those funds.

- [29] The parties also had a Honda Pilot. The claimant estimated in her financial statement that the Honda Pilot is currently worth \$4,500.
- [30] The claimant proposed that the respondent retain the proceeds from the write-off of the Honda Civic and that she keep the Honda Pilot. Motorhome
- [31] The parties owned a family motorhome that the respondent sold. He has not produced documents for the sale of the vehicle. At his examination for discovery, he valued it at \$1,500. The claimant accordingly seeks compensation for one-half of those estimated sale proceeds. Respondent's RRSP (WOF)
- [32] As stated earlier in these reasons, when the parties separated, the respondent owned an RRSP. His financial statement indicates unsecured debt. As of November 5, 2014, the balance in his WOF was \$13,623, but he still has not produced documents showing that. On his examination for discovery, he testified he still had that investment. The claimant seeks compensation for one-half of the value of the WOF. Buy-out from Respondent's former employment
- [33] When the respondent's employment at the large grocer company was terminated in 2013, he received a buy-out. On his examination for discovery, he stated the amount of the buy-out was \$19,000 and that he received that amount two years after his February 13, 2013 termination.
- [34] The respondent neither produced any documents concerning the buy-out nor produced copies of his income tax returns for 2014, 2016 and 2017.
- [35] The claimant seeks one-half of the buy-out the respondent received from his former employment. Respondent's obligation to pay child support
- [36] As noted above, on April 4, 2016, Master Caldwell ordered the claimant to pay child support in the amount of \$133 monthly, starting on May 1, 2016. Between 2014 and 2017, the claimant's ability to pay child support was limited. Her tax returns indicate at line 150, an income of \$450 in 2014; \$19,835, in 2015; \$25,709, in 2016; and \$24,728, in 2017.
- [37] Currently, a paystub attached to the claimant's October 9, 2018 financial statement indicates current earnings of \$15 hourly. In the most recent two-week period, she worked 54.28 hours. In her financial statement, she estimated a \$23,800 current annual income.
- [38] As ordered by Master Caldwell, the claimant paid \$133 child support payments to the respondent from the date of the 2017 order through to August 2017.
- [39] In addition, the claimant paid K.'s iPhone and cell phone contract in the amount of approximately \$70 monthly, from August 2015 to date. She has also provided money directly to K. by e-transfers, as indicated by the bank records. Since July 2017, she has transferred approximately \$1,421 in total.

- [40] The claimant further submits that through her waiver of payment of occupation rent, owed by the respondent for the period between September 2014 and the sale of the Family Home in January 2018, she effectively made an indirect contribution.
- [41] Considering this, I find it is fair and fitting that I order that the claimant does not owe any arrears of child support to the respondent, and that she pay a prospective child support in the amount of \$199 monthly, based on the Guideline income of \$23,800 annually.
- [42] The \$350 in costs which the respondent was ordered to pay on April 4, 2016, remains outstanding and owed to the claimant. Claimant's testimony
- [43] The claimant is 44 years-old. In 1997, she completed a course in Cosmetology. She now resides in the Interior of B.C. and is employed at a spa where she has been working for one-and-a-half years. She works from Tuesday to Saturday, for approximately seven to eight hours per day, at an hourly rate of \$15.
- [44] In 2000, the claimant met the respondent. In May 2001, the parties married. On June 16, 2002, K., their only child was born. At that point, the claimant worked at a large department store and at a spa. The respondent worked at a large grocery store. The claimant was also on maternity leave for six months.
- [45] In September 2005, the claimant started to live with the respondent in his Fraser Valley residence.
- [46] The Purchaser's Statement of Adjustments dated February 3, 1996, indicates, as alluded to earlier in these reasons, that there was almost no equity in the property at the time of purchase.
- [47] At that time, the claimant was the child's primary caregiver. She involved the child in dance classes, preschool, cooking, baking, etc.
- [48] After an injury to her shoulder, the claimant became addicted to medications. The respondent also increasingly consumed pain medications. Problems in the parties' relationship began to develop over differences on drugs and other various domestic disputes. The claimant testified that the respondent physically abused her in front of their daughter. She left and went to live first at her mother's residence, then to her brother's basement suite for three weeks, then to a women's shelter for a few days. She then slept in a car, then returned to the Family Home to see if things could be smoothed out. They could not be. The claimant's attempt to reconcile the relationship with the respondent was not successful.
- [49] The claimant began to experience mental problems, which stemmed from her withdrawal from drugs that she was prescribed for her shoulder injury. She spent two weeks at the Surrey General Hospital in psychiatric care. In combination with that, she suffered depression and hallucinations. She was released from hospital and lived with her mother for a few weeks. She still has symptoms from her shoulder injury which restricted her ability to

move it. She received treatment from other physiotherapists and chiropractors. Work has been hard for her because she cannot use her dominant arm. She experiences pain each day that she works.

- [50] In September 2014, the parties separated and the claimant moved out of the Family Home. As noted earlier in these reasons, the respondent remained and assumed sole occupancy. The claimant explained that the breakdown of their marriage was hastened by various domestic disputes, the respondent's drug use, which started with his consumption of copious amounts of marihuana then escalating to other controlled opiate substances that he obtained from his friends.
- [51] The claimant still suffers from anxiety. This is more prominent than the depression she also experiences. She can no longer consume non-prescription drugs and only consumes one glass of wine on occasion.
- [52] The claimant testified that the respondent pushed drugs on her. After six months, she left and returned to her brother's place to live. She spent one year living there, also in the Fraser Valley. In April 2017, she moved to Kelowna and lived in her mother's residence.
- [53] The claimant acknowledged that on April 4, 2016, she was ordered to pay child support of \$133 monthly. She did so every month for a year, as confirmed by her bank account records.
- [54] Parenting arrangements are not in dispute.
- [55] The central issue in this case concerns property division; specifically, the identification of the family assets and debts and orders for division. Respondent's testimony
- [56] The respondent was polite but nonchalant when he testified. He apologized for his not having disclosed and provided financial documents relating to various assets and their disposition after the parties separated. He did not produce any documentation or affidavits, and had no instructive evidence.
- [57] Shortly after counsel for the claimant finished his submissions, the respondent stood and presented the court with a bundle of documents that had not been previously listed or produced. He made assertions and at times referenced one of the documents that were not put to the claimant on cross-examination. Counsel for the claimant had been seeking production of the documents for a considerable amount of time. Serving them at this late juncture was not tenable. It would be prejudicial to have to recall the claimant. Having her questioned is not a reasonable option; neither is adjourning the trial. The facts are relatively straightforward as the respondent opposed few of the orders the claimant was seeking. The bundle of documents the respondent presented were not properly identified and accredited. They had not been filed in accordance with the Rules and did not leave sufficient time for counsel for the claimant to fully investigate them.

- [58] The respondent was self-represented; but that was not an impediment. What was problematic was his failure to comply with his court ordered production obligations, of which he was well aware. A party's failure to comply with a demand for the production of documents can constitute extreme prejudice to the opposing party: *First Majestic Silver Corp. v. Santos*, 2013 BCCA 312 at para. 22. For the reasons I previously mentioned, I would not admit the respondent's late tendered documents. Agreed to Orders
- [59] The respondent did not oppose an order to divide equally his employment benefits and pension covering the duration of the period of the relationship, which began in May 2001, in a marriage-like relationship, through to the parties' separation on September 19, 2014.
- [60] The respondent is not opposed to the claimant receiving one-half of his WOF, which as of October 13, 2017, he valued at \$10,945.75. According to a document entitled "Hollis Wealth", dated March 31, 2018, its current value is \$10,505.11.
- [61] This document has not been listed or authenticated. Counsel for the claimant did not have an opportunity to cross-examine the respondent on it. This Court was put in a difficult position when it came to the valuation issue, but at least there is some documentation though not properly served, before the court.
- [62] The respondent did not oppose the claimant's sharing of one-half of that fund, which on that basis, works out to approximately \$5,250. LEGAL PRINCIPLES CONCERNING PROPERTY DIVISION
- [63] Section 81 of the Family Law Act, S.B.C. 2011, c. 25 [FLA], states: Equal entitlement and responsibility 81 Subject to an agreement or order that provides otherwise and except as set out in this Part and Part 6 [Pension Division],
- (a) spouses are both entitled a family property and responsible for family debt, regardless of the respective user contribution, and
 - (b) on separation, each spouse has a right to an undivided half interest in all family property as a tenant in common, and is equally responsible for family debt.
- [64] Section 84 of the FLA pertains to what constitutes "family property", which is all real property and personal property: Family property 84 (1) Subject to section 85 [excluded property], family property is all real property and personal property as follows:
- (a) on the date the spouses separate,
 - (i) property that is owned by at least one spouse, or
 - (b) after separation,

- (i) property acquired by at least one spouse if the property is derived from property referred to in paragraph (a) (i) or from a beneficial interest referred to in paragraph (a) (ii), or from the disposition of either, or (ii) a beneficial interest acquired by at least one spouse in property if the beneficial interest is derived from property referred to in paragraph (a) (i) or from a beneficial interest referred to in paragraph (a) (ii), or from the disposition of either.
- [65] Section 85 of the FLA deals with excluded property: Excluded property 85 (1) The following is excluded from family property:
- (a) property acquired by a spouse before the relationship between the spouses began;
 - (g) property derived from property or the disposition of property referred to in any of paragraphs (a) to (f). ...
- [66] The FLA at s. 85(2) provides that "[a] spouse claiming that property is excluded property is responsible for demonstrating that the property is excluded property."
- [67] Further, s. 87 of the FLA with respect to the division of property and family debt provides that: 87 Unless an agreement or order provides otherwise... ...
- (b) the value of family property and family debt must be determined as of the date
 - (i) of an agreement dividing the family property and family debt is made, or (ii) of the hearing before the court respecting the division of property and family debt.
- [68] As no agreement has been made respecting the division of property and family debt, the date of the hearing with respect to the division of property and family debt is the date for valuation. *Cizmic v. Cizmic*
- [69] In *Cizmic v. Cizmic*, 2015 BCSC 1430 [*Cizmic*], Madam Justice Devlin considered the division of excluded property. At para. 107, she referenced the oft-cited case of *Asselin v. Roy*, 2013 BCSC 1681 at para. 106 [*Asselin*]:
- [106] To implement the objectives, more mathematical certainty from a clear evidentiary record is required. Where inheritances are said to come into play, estate documents should be produced. Where exclusion of property is sought, on whatever basis, documents showing the value of property as at the time cohabitation commenced and at the date of separation will be critical in the assessment which the court is to perform. [Underline emphasis omitted.]
- [70] In *Cizmic*, at para. 109, Devlin J. found that "the evidence presented lacks the mathematical certainty required for the Court to determine the precise amount of excluded property", and held that the claimant had not met the onus under s. 85 of the FLA. *Khorramtash v. Boroojeni*

- [71] In *Khorramtash v. Boroojeni*, 2015 BCSC 2275, Mr. Justice Masuhara also considered general principles that have to be considered when determining excluded property claims. At para. 41 he stated:
- [41] However, the burden of proving that property is excluded is on the spouse claiming the exclusion: FLA s. 85(2). Apart from his F8, Mr. Boroojeni has not brought evidence as to the date of purchase. Further, he has not adduced any evidence of the properties' value at the start of the relationship. The documents he did produce were almost all in Farsi and were not translated into English. Accordingly, Mr. Boroojeni has not established that any portion of the properties' value is excluded property, and I find that all \$90,000 is family property.
- Jaszczevska v. Kostanski*
- [72] In *Jaszczevska v. Kostanski*, 2016 BCCA 286, the Court of Appeal confirmed that "family property is generally valued on the date of hearing"; accordingly, the Court found it followed that "the parties will presumptively share in any post-separation increases in the value of family property": at para. 39. See also *Kumagai v. Campbell Estate*, 2018 BCCA 24 at paras. 74 - 75. APPLICATION
- [73] In the case at bar, there is no basis for an exclusion of property. There was no equity in the property at the start of the parties' relationship; it was in fact in the negative. Even before the parties' cohabitation began, the property which is the Family Home did not have equity; the money owed on two mortgages in favour of RBC exceeded the original purchase price of \$158,500 by \$6,500. The respondent argues for an exclusion of the funds that he put into its purchase - but the equity or value of those funds was, as I just stated, reduced to a negative value.
- [74] However, even if there was equity, the respondent has not produced any documentation to support a claim for the exclusion of the funds from the Family Home proceeds as *Cizmic*, citing to *Asselin*, requires. Although the requirement for "mathematical certainty from a clear evidentiary record" (*Asselin* at para. 106), was made in the context of discussing where "excluded property has changed character into another asset" that engages the tracing provision s. 85(1)(g), the need for such a clear evidentiary record is broadly imperative for a party who bears the onus of seeking to exclude certain property. The respondent has not met his burden of showing a clear evidentiary record in support of exclusion. Accordingly, the equity in the Family Home must be divided equally, subject to some adjustments that I briefly canvassed earlier in these reasons. Division of vehicles
- [75] The respondent stated that he paid off the claimant's Honda Pilot after he withdrew \$15,830 from his RRSPs. There is an amount of \$15,830.52 that is reflected in a portion of the respondent's consolidated RBC statement from March 20, 2013 to April 19, 2013, but it does not show any link between that \$15,830.52 withdrawal and the claimant's Honda Pilot. There is no other receipt or evidentiary linkage. In light of this, the respondent agreed to divide the value of the vehicles in half as proposed by counsel for the claimant; that is for the respondent to retain what ICBC paid him as a write off for the Honda Civic, which had been

in a motor vehicle accident.

- [76] In short, I order that the respondent may retain the payoff amount he received from ICBC, with respect to the Honda Civic, written-off after an accident. The claimant shall keep and have exclusive ownership of the Honda Pilot.
- [77] The respondent referred the Court to an American Express debt that he proposed to be a family debt. Demand for payment of the balance was made in a November 25, 2017 letter to the respondent. The respondent did not provide a document showing the history of charges on the account or when payments, if any, were made. There is nothing to indicate that the debt was incurred during the period the parties were married or in a marriage-like relationship. Further, the claimant is effectively deprived of an opportunity to conduct discovery on that subject and to cross-examine the claimant. There is no admissible evidence before the court to find what the respondent accrued as a family debt.

CONCLUSION

- [78] The valuation date is clearly the date of trial, pursuant to the FLA and relevant case authorities which I have reviewed. As noted already, the respondent failed to produce any documents supporting a claim for exclusion. The equity in the Family Home will be divided on an equal basis, subject to some adjustments that I have discussed earlier and which I will summarize here. Increase in family debt
- [79] As I noted earlier in these reasons, after the parties separated, the respondent had exclusive occupation of the Family Home. He failed to consistently pay mortgage payments due on the Family Home. This resulted in a foreclosure of the property. It is noteworthy that the claimant, on numerous occasions, requested that the respondent sell the property and prevent foreclosure on the mortgage. He refused to do so. Further, when he eventually listed the property, he did not consult her. Accordingly, the total increase in the mortgage debt post-separation was in the amount of \$6,624. I find the respondent must pay the claimant \$6,624, in full, from his share of the net sale proceeds at the time of its distribution. Tax arrears
- [80] The payment of tax arrears on the property in the amount of \$7,007, is also the respondent's sole responsibility. He had exclusive occupation of the Family Home at all material times and he did not pay occupational rent to the claimant. RRSP
- [81] I discussed the WOF/RRSP earlier in these reasons. In his financial statement, the respondent indicated the value of the fund was \$13,623 as of November 5, 2014. Counsel submitted that this amount should have increased in value over time. The respondent, however, indicated the market had been down recently. Counsel for the claimant contended that since 2004, the market had not been down in that period and that the value of the fund should have increased over time since that date.

- [82] Further, there was no evidence before the court on which an exclusion order could be made. There were no contributions made to the fund post-separation. Counsel submitted that the court should find that that asset has a present value of \$15,000 and that each party should receive \$7,500, which is one-half of \$15,000. Giving some consideration to the indication in the Hollis Wealth document that the value of the fund is not \$15,000, and also giving some reluctant consideration to the respondent's failure to obey the court's orders for full and transparent disclosure and production of documents, I order that the respondent pay the claimant \$7,000. This amount will be deducted from the respondent's share of the sale proceeds. Motorhome
- [83] I find the respondent sold the motorhome that belonged to the parties for \$1,500, according to his own testimony. Counsel noted that he once again did not produce any documents on that asset. The claimant is content to accept his evidence on that figure and she requests an adjustment in the amount of \$750, for one-half of the value of the motorhome. Accordingly, the respondent shall pay the claimant \$750, which also is to be paid from the respondent's share of the sale proceeds. Respondent's buy-out from his former employment
- [84] The respondent's testimony on the subject of his buy-out from his former employment was not consistent. On examination for discovery, he testified that he received \$20,000, two years after the termination of his employment on September 13, 2013. At trial, however, he told the court he received the buy-out before the parties' September 2014 separation. Again, however, the respondent has not produced any documents on that matter. The claimant testified that she did not recall his having received any buy-out during the parties' relationship. Accordingly, she seeks an adjustment of \$10,000 in her favour.
- [85] The respondent's testimony on the value of the fund is not consistent.
- [86] Accordingly, I order that the respondent will pay the claimant, one-half of the value of the WOF, which I set at \$20,000. He will not have to pay interest to the claimant on that amount.
- [87] The respondent did not oppose equal sharing of his employment CPP benefit. The period of entitlement will be from the start of the parties' relationship to the date of their separation. As for the vehicles, as noted earlier, the claimant shall keep the Honda Pilot and the respondent shall keep the proceeds he received from ICBC with respect to the write-off of his Honda Civic.
- [88] Each party will keep all other assets currently in their name or possession. Child support
- [89] The claimant shall pay ongoing support in the amount of \$199 per month, based on an annual income of \$23,800. Considering the claimant's financial and other circumstances at the material time and the history of support payments she maintained, I order that no arrears are owing at this time.
- [90] The respondent shall pay the claimant's costs outstanding in the amount of \$350. This amount is to be paid from the respondent's share of the sale proceeds.

[91] The claimant was successful and is entitled to costs. In accordance with Appendix B of the Supreme Court Family Rules, costs will be assessed based on the scale of ordinary difficulty. "N. Brown J."

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Prepared on 27 October 2026 · Esheria