

CANADA / JUDGMENT

Johnson v. Korol

2019 BCSC 111

COURT

Supreme Court of British Columbia

DECIDED

30 January 2019

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2019 BCSC 111 Johnson v. Korol

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Johnson v. Korol,

2019 BCSC 111

Date: 20190130

Docket: 51504

Registry: Kamloops

Between:

Blaine Andrew Hunter Johnson

Claimant

And

Irina Korol (aka Iryna Mykolivna Korol)

Respondent

Before: The Honourable Mr. Justice Meiklem

Reasons for Judgment

Counsel for the Claimant:

C. Linde

Counsel for the Respondent:

J.D. Bryan

Place and Date of Trial:

Kamloops, B.C.

June 25-29, July 30-31

and August 1, 2018

Place and Date of Judgment:

Kamloops, B.C.

January 30, 2019

Background and Introduction to the Issues

- [1] The issues in this trial were property division and spousal support. The trial was heard June 25-29, July 30-31 and August 1, 2018. Counsel's written closing submissions were received on October 17, 2018.
- [2] The parties first met in August 2007 in the Ukraine. Ms. Korol came to Canada with Mr. Johnson on October 24, 2007. They were married in Kamloops on December 8, 2007. The separation date set out in the Notice of Family Claim filed by Mr. Johnson was September 27, 2013, which I find was the separation date, despite Mr. Johnson's argument at trial for a date some months earlier in 2013. The period of cohabitation was five years and 11 months. They were divorced by Final Order dated August 31, 2015.
- [3] Mr. Johnson re-married another woman in August 2016 and has since separated from her. She resides in Belarus.
- [4] Ms. Korol was engaged in December 2017 to Mr. Greg Howden, an Australian divorcee who resides and works in Turkey for a gold processing company. As of the trial date, they planned to be married in Australia in September or October 2018.
- [5] The parties were previously self-represented in a high-conflict proceeding in the Provincial Court concerning the guardianship, parenting and support of the sole child of the marriage, a boy born in August 2010. Those proceedings included an 18-day hearing extending over the period of January to June 2016. In written Reasons for Judgment dated September 16, 2016, Dickey P.C.J. granted guardianship to both parties, with primary residency to Ms. Korol, and made many specific orders regarding the exercise of guardianship and parenting time. He imputed an income of \$50,000 per year to Mr. Johnson and set child support at \$458 per month.

- [6] Although the Provincial Court proceeding included Ms. Korol's application for spousal support, Dickey P.C.J. declined to make any order in that regard. His written reasons stated that her application for spousal support was supported by very little information, she appeared to be then employed full-time, and the marriage was of short duration. He took into consideration the recommendations in the Spousal Support Advisory Guidelines [SSAG].
- [7] The high conflict nature of the parties' relationship was carried over into this trial, with contradictory testimony and both parties focussing on attacking the character of the other in pursuit of their objectives.
- [8] Mr. Johnson's opening submissions propounded the theory that Ms. Korol used him to facilitate her immigration to Canada and left him once her Canadian citizenship was assured.
- [9] In order to challenge her credibility, Mr. Johnson strove to portray Ms. Korol as a fraudulent manipulator and swindler, largely on the basis of her dealings during a previous brief relationship. A man in Scotland ("Mr. F."), who had been rendered blind as a result of a UDA shooting in Northern Ireland in 1990, had hired Ms. Korol as a live-in housekeeper/caregiver and they quickly became romantic partners. In March 2006, Mr. F. advanced £41,000 GBP (approximately \$71,000 USD) to Ms. Korol's mother in the Ukraine for the purchase of an apartment in Kiev. This transaction became a source of concern to Mr. Johnson after their marriage, particularly when Ms. Korol refused to divulge Mr. F.'s identity or contact information.
- [10] Mr. Johnson considered the Kiev apartment to be family property and prevailed upon Ms. Korol to begin repaying her unidentified benefactor. She did send Mr. F. approximately \$8,500 CAD in 2012, but she did not reveal his name or contact information until ordered to do so by Master McDiarmid in October 2017.
- [11] Mr. Johnson still claims an interest in the Kiev apartment and, in an amendment to his Notice of Family Claim, sought a finding that the unpaid balance of the money advanced by Mr. F. is a family debt. After learning Mr. F.'s identity and contact information, Mr. Johnson travelled to Scotland to meet Mr. F. He obtained affidavit evidence, and eventually brought Mr. F. to Kamloops to testify at the trial. Mr. F.'s trial testimony certainly contradicted Ms. Korol's on several points, and did undermine her credibility to some extent, although some points of conflict were not directly relevant to the specific issues at trial relating to the Kiev apartment.
- [12] Ms. Korol's attacks on Mr. Johnson's character included allegations that he is faking the extent of his disability arising from a medical malpractice incident, that he remortgaged the family home without her knowledge to extract equity and reduce the divisible family assets, and that his explanation that the funds were used for living expenses is false. She stated that a joint venture agreement between Mr. Johnson and his mother, apparently drawn up in July 2005, was a fraud. Ms. Korol's testimony was marked by incorrigible editorializing challenging Mr. Johnson's conduct and character.

Property Division

The Kiev Apartment

- [13] This property was paid for entirely by the £41,000 GBP (approximately \$71,000 USD) advanced by Mr. F. to the account of Ms. Korol's mother, Hannah Korol, in March 2006, and the property was registered in Hannah Korol's name in October 2006. Ms. Korol began residing in that apartment from the date of purchase and was residing there when Mr. Johnson first met her in August 2007. She acknowledged that she told him it was her apartment. Ms. Korol resided there until she came to Canada to reside with Mr. Johnson on October 24, 2007, some 45 days before they were married.
- [14] Notwithstanding Ms. Korol's reliance on the registered ownership and her testimony to the effect that Mr. F. intended the advance of funds to be a gift to her mother (which I reject), the evidence convinces me that Ms. Korol has a beneficial ownership interest in the Kiev apartment. However, the apartment is clearly excluded property by virtue of s. 85(1)(a) and (e) of the Family Law Act, S.B.C., 2011, c. 25 [FLA], because her interest was acquired before the relationship began. Only the amount by which her interest in the property has increased in value since the date the relationship began, namely October 24, 2007, is included as family property by virtue of s. 84(2) (g) of the FLA.
- [15] The parties' testimony conflicted on whether or not Mr. Johnson did some fixture or kitchen cabinet installation work in the apartment. Under the FLA, however, ordinary family use or occupation of property owned by one spouse is not required in order to classify it as family property. The question of a contribution to value would be relevant to the unfairness of him not sharing in any increase in value of this excluded asset, but even if I preferred Mr. Johnson's evidence on that point, the contributions that he claims he made were very minor and there is no evidence that they had any material effect on the market value.
- [16] Case law has established that the market value of family property is to be interpreted as meaning the net equity value in the property after deducting financial encumbrances. In the case of the Kiev apartment, there are no registered mortgages.
- [17] Considering that neither party is an ongoing participant in the Ukrainian economy, and considering the admitted significant inflation in the Ukraine and the devaluation of Ukrainian currency relative to other international currencies, I agree with the approach of the parties to measure the market value of the Kiev property in terms of the more stable currencies of the United States or Canada. The most appropriate currency for the purposes of this trial is naturally the Canadian dollar. Reliable evidence of historical currency exchange rates is readily available from several open sources on the internet.

- [18] Section 87 of the FLA prescribes that family property is to be valued at fair market value as of the date of the hearing dealing with division, unless there is an agreement or court order providing otherwise. The alternative valuation date that is sometimes used by the court is the separation date of the parties, but generally the discretion to depart from the valuation date prescribed in s. 87 of the FLA is exercised where it is an appropriate means to remedy significant unfairness that would result from using the trial date as the valuation date.
- [19] Ms. Korol did not make a specific submission about the valuation date respecting the Kiev apartment, but argued for trial date valuation of the other significant real property involved in this action, the former matrimonial home on Sudbury Avenue.
- [20] Mr. Johnson did not approach the Kiev apartment property issue as one of valuing the increase in value of an excluded asset and, therefore, did not make any submissions on the appropriate valuation date.
- [21] There is no appraisal evidence valuing the Kiev apartment as of the beginning of the parties' relationship in October 2007. The valuation closest in time is the purchase price of approximately \$71,000 USD (345,161 UAH) in October 2006. That is an exchange rate of 4.93 UAH to \$1 USD. The exchange rate on December 8, 2007, the date of marriage, was 5.07 UAH to \$1 USD, so it is a reasonable inference that the value of the apartment was very close to the original purchase price. At the time Mr. F. forwarded the funds in March 2006 and at the beginning of the parties' relationship in October 2007, the advance of £41,000 GBP was equivalent to \$79,000 CAD.
- (See: www.poundsterlinglive.com/bank-of-england-spot/historical-spot-exchange-rates/gbp/GBP-to-CAD-2006.)
- [22] There is a retrospective appraisal of the Kiev apartment as of October 1, 2013 (very close to the date of separation) at 655,714 UAH, which at the prevailing exchange rate of 7.99 UAH to \$1 USD set out in the appraisal, was \$82,036 USD. At that time, there was near-parity between the USD and the CAD, at \$1 USD = \$1.03 CAD, so the Canadian currency equivalent would be approximately \$84,500.
- [23] There was an appraisal prepared in July 2017 for a previous trial date that was adjourned, valuing the property at 1,293,000 UAH, which at the then applicable exchange rate of 25.97 UAH to \$1 USD, would be equivalent to approximately \$50,000 USD.
- [24] An appraisal as of June 2018 valued the apartment at 925,813 UAH, equivalent to \$35,418 USD at 26.22 UAH per \$1 USD. At the prevailing exchange rates, this would be approximately \$46,000 CAD.
- [25] To summarize, if the trial date is used as the valuation date, there is no increase in value of the Kiev apartment and, therefore, no family property to be divided in respect of that asset. If the separation date is used as the valuation date, there would be a small increase in market value, equivalent to approximately \$5,500 CAD. In my view, there are no facts present in this case that suggest any unfairness in using the trial date as the valuation date

for the Kiev apartment. The fact that choosing the separation date would be more beneficial to Mr. Johnson if valuation was measured in Canadian currency is not material, particularly where his claimed contributions were negligible and the real value of the asset in Canadian currency has dropped so significantly since then. Furthermore, Ms. Korol is still facing Mr. F.'s moral claim for the return of the remaining balance of the funds he advanced for its purchase, which exceeds the current value of the asset, even though legal enforceability of his claim is problematic.

The Sudbury Avenue Property in Kamloops

- [26] Mr. Johnson purchased this house in July 2005 for the sum of \$173,000, with a first mortgage of \$146,750 and the assistance of an advance of \$25,000 from his mother, Ms. Osha. Ms. Korol's submission suggests that there is no proof that the down-payment came from Ms. Osha, and that she had been a single parent of modest income and means.
- [27] The evidence includes an agreement dated July 22, 2005, that Ms. Osha testified was drawn up by her husband, due to the relatively large amount of the advance. The agreement is entitled a joint venture agreement and provides, amongst other things, that both parties are entitled to live in the house and share its management and control and, in the event of a sale, each party would receive 50% of the net proceeds from the sale and, at any time, Ms. Osha could request a sale of the house to redeem her investment or request that her name be placed on title. Other provisions were that Mr. Johnson would make all the mortgage payments and any costs related to renovations were to be treated as for the "sole purpose of building joint equity".
- [28] Ms. Korol theorized and argued that the joint venture agreement was "not a legitimate agreement", and that Mr. Johnson never intended to give his mother half of the equity in the house, but prepared the agreement "when he bought the property so that he would not have to share any of its value with his common law spouse at the time". Her submission goes on to suggest that if Mr. Johnson intended to share ownership with his mother, he would have registered an enforceable agreement, added her name to the title long ago, or bought out her interest.
- [29] These submissions are somewhat redundant because Mr. Johnson made it clear in his testimony that he was not relying on the agreement or asserting that the equity in the house was unavailable because of the agreement. He said he only recovered a copy of the agreement from his mother during this proceeding and the agreement basically went "by the wayside" when he suffered the accident fracturing his ankles, and he implied that subsequent frequent assistance from himself to his mother had also rendered the agreement irrelevant. His sole position was that the Sudbury Avenue property was excluded property and there was no increased equity to be divided as of the date of separation.

- [30] Mr. Johnson argued that to value this property as at the date of trial would give an unearned windfall to Ms. Korol, because she admitted that she did not make a single contribution to the upkeep or debt of the property after she left with the RCMP in September 2013 and, during the intervening five years, it was Mr. Johnson who kept the property up and paid all mortgage, insurance and tax debts on the property. These are some of the reasons relied upon in other cases where the trial date valuation was rejected.
- [31] The evidence regarding the market value of the Sudbury Avenue house at various times consists of BC Assessment Authority assessments, together with an October 20, 2017 appraisal conducted for Ms. Korol by Flynn Mirtle Moran Ltd. and an appraisal conducted for Mr. Johnson in March 20, 2018 by Quality Appraisals, providing retrospective valuations effective September 27, 2013 and December 8, 2007. The authors of the written appraisals were not called to testify.
- [32] Looking first at the market value of this property in December 2007, the retrospective appraisal values it at \$252,000. The appraisal notes that the BC Assessment Authority 2007 assessment was \$216,000, and Ms. Korol's submission is that the court should find that the assessed value is more accurate, based on Ms. Korol's evidence about the renovations that were done during their marriage and the appraiser's description of the property as "below average". I do not find that submission persuasive. Assessments for a given year state that they actually estimate the market value as of July 1 of the previous year. I note that Ms. Korol does not identify any factual errors in regard to the property condition information provided to the appraiser and in fact relies on the recited information regarding improvements present in 2013 as corroborating her own evidence. I note also that the appraisal tendered by Ms. Korol as to value in 2017 of \$415,000 as of October 20, 2017 significantly exceeded the 2017 assessed value of \$346,000.
- [33] I find that the best evidence of the market value of the Sudbury Avenue residence at the date of marriage, which was approximately six weeks after the beginning of the relationship, is the retrospective appraisal of \$252,000. The mortgage balance as of the date of marriage was approximately \$129,000. I find, therefore, that the net equity at the beginning of the marriage was approximately \$123,000.
- [34] As previously mentioned, Mr. Johnson remortgaged the Sudbury Avenue matrimonial home during 2010. The 2010 annual mortgage statement shows a year-end balance of approximately \$213,000.
- [35] There is a retrospective appraisal of the Sudbury Avenue residence in the amount of \$291,000 as of the September 2013 separation date. Ms. Korol's submissions did not analyze the net equity as of the separation date because she submits that the proper valuation date is the date of trial, but her submission is that the remortgaging in 2010 was strategic on Mr. Johnson's part in order to deplete the equity in the home which he might have to share with Ms. Korol. The parties were experiencing significant difficulties in their relationship during the latter part of 2009 and throughout 2010. Ms. Korol submitted that this tactical depletion

of equity was consistent with his past behaviour with former spouses to avoid paying them. Regrettably, this submission is consistent with Ms. Korol's behaviour during the trial of repeatedly providing her subjective opinions and bare allegations, rather than the evidence that might support them. There is no evidence of Mr. Johnson behaving in that fashion with previous spouses; in fact Mr. Johnson's testimony was that when he separated from his first wife she retained all the assets and he retained all the debt.

- [36] Ms. Korol suggests that the original mortgage would probably have been fully paid off by the trial date and the court should extrapolate the 2017 appraisal value of \$415,000 to \$448,000 for the trial date, based on the fact that the 2018 tax assessment is 8% greater than the 2017 tax assessment.
- [37] Mr. Johnson's testimony was that he increased his mortgage by \$100,000 at the five-year renewal date in July 2010 because his income had suffered considerably as a result of his significant disabling accident in March 2009, his medical malpractice claim was not yet settled, and he needed the funds to finance living for his family (including four children) and travelling expenses. Ms. Korol testified that she was not aware of the 2010 remortgaging until after the separation. Mr. Johnson testified emphatically that she was aware of it and they had discussed it.
- [38] Mr. Johnson acknowledged that he did not have receipts for purchases made from the funds advanced in the 2010 remortgaging. Ms. Korol's written submission states that Mr. Johnson is deliberately concealing relevant documentation to obfuscate how he used the funds and thereby failed to discharge his burden to prove that the funds were used to support the family. She makes reference to the absence of disclosure of his banking documents for the 2010 to 2011 period that might cover the period that these funds were expended, but in fairness, the trial record shows a series of pre-trial orders obtained by one side or the other dealing with specific documents, and the banking records for those years were apparently not sought. Nor does it appear that the pertinent bank account records were asked to be produced after an examination for discovery.
- [39] In my view, the evidentiary burden of proof in respect of Ms. Korol's allegation that the increased borrowing in 2010 was a tactical depletion of equity lies upon her to prove the allegation, rather than on Mr. Johnson to disprove it. In any event, regardless of where the burden of proof lies, I accept Mr. Johnson's evidence that the funds were used for family purposes following July 2010 and were not an anticipatory dissipation of family property.
- [40] That finding means that the actual mortgage balance in effect on the appropriate valuation date will be used to measure net equity, without reduction for the 2010 increased borrowing. The mortgage balance as of the separation date of September 27, 2013 was approximately \$170,850. The mortgage balance as of the date of trial was not the subject of direct evidence, but as of December 31, 2017 it was \$108,925.09. The 2017 year-end mortgage statement reports principal reduction of \$15,176.29 during the calendar year, so 1/12 of that, or \$1,264, is a reasonable estimate of the monthly principal reduction during the January 2018 to June

2018 period pre-trial. This would result in a mortgage balance of \$101,400 as of the trial date.

- [41] I do not accept the suggestion that it would be reasonable to infer an 8% increase to the 2017 appraisal to match the proportionate increase in the 2017 tax assessment in measuring the trial date equity. I am concerned that there was such a large discrepancy between the 2017 appraisal of \$415,000 and the 2017 assessment of \$346,000. Therefore, if the valuation was to be made as of the trial date, I find the net equity would be \$415,000 minus \$101,400, which is \$313,600. The increase in net equity between the marriage and the trial would be \$313,600 minus \$123,000, which is \$190,600.
- [42] If the valuation date is determined to be the date of separation, the net equity would be the retrospective appraisal valuation of \$291,000 minus \$170,850, which is \$120,150. Using this valuation date would result in no divisible family property on account of an increase in the value of this excluded asset, because the net equity at the beginning of the relationship was \$123,000.

Determining the Valuation Date

- [43] The parties' testimony is conflicting on the extent of Mr. Johnson's improvements to the property post-separation, with Ms. Korol saying that most of the improvements were completed before separation, and Mr. Johnson producing a compilation of post-separation expenditures totalling approximately \$29,000. Ms. Korol's submissions included a critical analysis of the invoices produced by Mr. Johnson, and suggested that some invoices may actually relate to expenditures on Kamloops Indian Band Reserve lands because of notations on them, or the naming of one or more of his children as the customer. Clearly, Mr. Johnson customarily utilized his family Indian status for tax saving purposes, and his evidence (and that of his mother, Ms. Osha) was that his children (also status Indians) helped him considerably with the improvements. I cannot infer that Ms. Korol's conclusions about the location of the services based on the invoice notations are necessarily correct, in the absence of a targeted cross-examination on specific invoices, which did not occur.
- [44] There is no dispute about the fact that Ms. Korol made no contributions of any kind to the Sudbury Avenue property post-separation, whereas Mr. Johnson has maintained the property, and paid the mortgage payments, taxes and insurance. From 2013 to 2017, his weekly payments on account of principal, interest and taxes have varied from approximately \$410 to approximately \$430.
- [45] Ms. Korol makes the point that Mr. Johnson had the use and occupation of the residence until he moved out in August 2016, and thereafter he collected rents totalling \$2,500 per month, which would offset some of his ongoing expenses. It must be borne in mind that under the FLA, the family property that a spouse is entitled to is not an undivided half interest in a real estate asset, if that property is excluded, but rather an undivided half interest in the increased value described in s. 84(2)(g). That is a purely monetary claim (except for claims for exclusive occupancy of a family residence under s. 90).

- [46] I agree with the analysis of Masuhara J. in *Wells v. Campbell*, 2015 BCSC 3 at paras 28-29 to the effect that the FLA draws a distinction between value and property. I think it follows from that distinction that a spouse may not successfully claim occupational rent or a share of rental revenue from excluded family property, since these are incidents of property ownership, but not of an interest in increased market value.
- [47] I note that s. 96 of the FLA provides that the court may not order a division of excluded property unless it would be significantly unfair not to do so on a consideration of the duration of the relationship and a spouse's direct contribution to the preservation, maintenance, improvement, operation or management of the excluded property. The corollary of that provision is, of course, that the court does have jurisdiction to order a division of excluded property if it would be significantly unfair not to do so considering the specified factors. In my view, the same test should be applied to any claim by a non-owning spouse to occupational rent compensation or sharing of rent revenue in respect of excluded property. That test is not met in the circumstances of this case.
- [48] In *Blair v. Johnson*, 2015 BCSC 761 at paras. 57-69, Fleming J. conducted a review of the jurisprudence to that date regarding valuation dates. Fleming J. concluded, amongst other things, that s. 87 of the FLA was intended to codify the common law under the Family Relations Act, R.S.B.C. 1996, c. 128 in respect of providing that the presumptive valuation date was the date of trial, but that the new test of significant unfairness that is set out in s. 95 of the FLA regarding deviating from an equal division of family property should also be met before the court departs from the date of trial as the valuation date pursuant to s. 87. Several subsequent cases have applied the same test for deviating from the trial date valuation prescribed in s. 87.
- [49] The reasoning in *Blair* was set out in para. 69:
- [69] Section 95 of the FLA requires significant unfairness on specified grounds before the court may order an unequal division of family property. To the extent that s. 95 and s. 87 may provide alternate routes to address the substantial unfairness that would arise from awarding parties equal shares in family property valued at trial, it seems to me the significant unfairness threshold should also be met before the court departs from the date of trial as the valuation date pursuant to s. 87. To conclude otherwise would allow for an earlier valuation date resulting in a radical departure from an equal division as of the date of trial in circumstances where the significant unfairness threshold under s. 95 is not met. I say this leaving aside circumstances where it is necessary to set an earlier date because family property has been sold etc. or debt eliminated prior to the hearing. It is important to bear in mind the basic principle of equal entitlement (and responsibility) found in s. 81 that is integral to the division of family property regime in the FLA.
- [50] In *Blair*, Fleming J. held that it was not significantly unfair to use the trial date as the valuation date for the increase in value of an excluded asset, but then she reapportioned the trial date increase in value on the basis that an equal division would be significantly unfair.

As I read the decision, she rejected the use of the date of the separation because to do so would have been to "improperly ignore" (para. 70) the respondent's ongoing (albeit relatively minor) contribution of consenting to the use of the matrimonial home registered in her name as security for a line of credit for the excluded business asset. It was not necessary to deviate from the trial date valuation as a means to remedy the significant unfairness of an equal division, because the circumstances called for an unequal division when s. 95(2)(a), (c) and (f), and most particularly (f) were considered.

- [51] In the present case, there is no analogous unfairness to Ms. Korol of using the separation date valuations, given my findings regarding the 2010 remortgaging issue. She made no contributions whatever to the Sudbury Avenue property post-separation. While it would be unfair to deprive her of purely market-based increases in value if the interest which vested in her at the separation date was an interest in the real property itself, as it would be in non-excluded property, we are dealing here with excluded property, and on the separation date there was no amount of increased value to constitute family property. If the calculation of value differential defined in s. 84(2)(g) of the FLA is made as of the trial date, one would be valuing something that did not exist as of the date of separation. This is another fact distinguishing Blair, where a smaller, but not insignificant increase in market value did exist as of the separation date.
- [52] In the five years since the separation date, Mr. Johnson has directly increased the net equity in Sudbury Avenue by reducing the mortgage principal by approximately \$70,000. Notwithstanding Ms. Korol's challenge to the total \$29,000 direct expense outlay claimed by Mr. Johnson, and the absence of evidence valuing the specific improvements, it is likely that the paving and retaining wall and other improvements that he made with the help of some of his children since separation have also contributed significantly to its increased equity value.
- [53] Ms. Korol's submissions on valuation date simply relied on the prescription of the trial date valuation set out in s. 87(b) of the FLA, without elaboration or argument.
- [54] If the trial date valuation is accepted and there would, therefore, be the net equity increase of approximately \$190,000, I note that s. 95(2)(f) permits the consideration of an unequal division based on a significant decrease or increase post-separation in the value of family property caused by one spouse, and the subsection restricts the relevant increases to those "beyond market trends". This would clearly apply to the mortgage principal reduction of approximately \$70,000 by Mr. Johnson and whatever value increase resulted from his expenditure of approximately \$29,000 and labour on improvements.

- [55] If unequal division results because the significant increases or decreases due to one spouse post-separation would render equal division significantly unfair, the unequal division could take the form of an apportionment that credited Mr. Johnson an extra amount to offset his disproportionate contributions and then divided the pure market trend increase, or it could be a division of the whole increase in proportion to the relative post-separation contributions of the parties.
- [56] In this case, the family property is an "amount" that was worth nothing at separation. Given that I find the post-separation contributions of the parties increased equity in Sudbury Avenue "beyond market trends," with Mr. Johnson contributing approximately \$99,000 and Ms. Korol contributing nil, I would divide that family property 100% in favour of Mr. Johnson if I were to use the trial date as the valuation date.
- [57] In my view, in all the circumstances of this case, it would be significantly unfair to Mr. Johnson and would provide Ms. Korol with an unearned windfall if she was to share the equity increase due purely to market forces in the circumstances of this case.
- [58] Examples of other cases where the separation date valuation was determined to be appropriate, notwithstanding significant post-separation increases in value, inclusive of market forces, on the basis that only the owner spouse had made contributions to the excluded property are: *Slavenova v. Rangelov*, 2015 BCSC 79; *Davie v. De Mark*, 2017 BCSC 872 and *A.J.E. v. T.B.W.*, 2017 BCSC1657. I have been referred to no case authorities that come to an opposite conclusion on similar facts.
- [59] In my view, varying the valuation date is to be preferred over the reapportionment alternative on the facts of this case and is more consistent with the excluded asset model established by the FLA, on the analysis that I have set out.
- [60] For the reasons set out, I determine that the appropriate valuation date for the increase in net equity in the Sudbury Avenue property, is the separation date of September 27, 2013. There being no increase in the net equity from the beginning of the relationship to that date, there is nothing to include in family property to be divided.

What Amount of Mr. Johnson's April 2013 Medical Malpractice Settlement is Family Property?

- [61] Mr. Johnson was gassed while working as a pipeline welder in the oilfields in 2008 and was prescribed Prednisone to treat respiratory symptoms. Unfortunately, he was prescribed a dosage on a long-term basis at the same level that was meant to be a short-term prescription, and he developed reduced bone density which manifested itself when he shattered both ankles in landing a normally routine jump while skiing in March 2009.
- [62] Mr. Johnson settled the ensuing legal action for an all inclusive \$1,724,210, pursuant to oral discussions close to the trial date. There was no formal settlement agreement or breakdown of various heads of damages. After legal fees, Mr. Johnson received \$1,073,000.

- [63] The parties agree that the settlement is excluded property, except for the component constituting past income loss. Mr. Johnson bears the burden of proving excluded property, under s. 85(2) of the FLA, which necessarily involves proving the amount of the non-excluded past income loss. He is obviously not able to provide any conclusive evidence on that question because of the nature of the settlement. His counsel suggests an inference be taken by averaging his actual pre-injury wages as determined by his Canada Revenue Agency ("CRA") Notices of Assessment, extrapolating that over the four years after the injury, subtracting his actual post-injury earnings and reducing the result by the 33% reduction in his recovery on account of legal fees. This procedure would produce a divisible family asset of \$41,072.00. For the reasons that follow, I think that would significantly undervalue that asset.
- [64] Ms. Korol cited the cases of *Jackson v. Jackson*, 2015 BCSC 2114 and *A.A.P. v. G.T.F.*, 2015 BCSC 52, which held that failure to prove the excluded portion means the entirety of a global settlement is family property, but she did not press an argument that the court should take the same approach. I would have had great difficulty following those cases on the facts of this case.
- [65] While better evidence could certainly have been provided to enable the court to determine the non-excluded component of past wage loss for the four years preceding the settlement, a cursory analysis of the available evidence relating to the claim clearly suggests that it must have been a relatively small component of the global settlement of \$1,724,210. The first evidence that shouts that out is the January 15, 2013 economist's report, compiled by Associated Economic Consultants Ltd. ("AEC") for Mr. Johnson's medical malpractice action, wherein the author estimates the present value of his future wage loss claim at an amount that is approximately five times larger than his estimate of his past wage loss claim. The components of non-pecuniary damages and future care costs must also be considered. In my view, an imperfect but reasoned assessment must be preferred to the rather draconian result that would flow from defaulting to declaring the entire settlement as divisible family property.
- [66] Ms. Korol suggested that the court should take the January 15, 2013 report compiled by AEC as the best evidence relating to his lost past income claim. She claims the divisible asset is \$331,074 on that basis, because Table 4 in that report indicates that as the total potential incomes from full-time, full year employment.
- [67] I am not sure I understand her argument that the economist's report is likely the most accurate evidence because Mr. Johnson was motivated to have his lost earnings as a welder as high as possible in providing information to his expert.
- [68] I accept that the stated context might usually be some assurance that a claimant would not intentionally understate his income, but I question how motivation to maximize is an assurance of accuracy. In any event, the AEC report makes no mention of Mr. Johnson's information about his actual earnings history. It states on the first page that the author was

specifically requested to provide a census-based simulation of earnings and the report estimates potential incomes for the lost earnings years based on census data "for BC and Alberta males that could be achieved from full-time, full year employment". Although Appendix 1 attached to the report lists documents reviewed and the list includes several of Mr. Johnson's Notices of Reassessment and some corporate tax returns, the body of the report makes no reference to Appendix 1, or any of the individual financial information listed.

- [69] The AEC report provides estimates of potential incomes for 2009 to 2013, with the first and last years pro-rated for the months Mr. Johnson would have worked, totalled \$331,074 in current dollars. Ms. Korol puts that sum forward as the amount of the lost income award that should be divided equally between the parties. The report also provides estimates of probable incomes based on average contingencies for effects of choices and risks, which total \$292,587, and probable incomes adjusted only for average risks, which total \$306,983.
- [70] One could infer that the census-based data was used because it was more favourable to Mr. Johnson's claim than his actual earnings record. That conclusion is reinforced by the evidence of his income tax assessments, which for the three years preceding his accident, were as follows: 2008: \$20,172.00; 2007: \$34,005.00; and 2006: \$23,861.00.
- [71] It is likely that the medical malpractice defendants were aware of Mr. Johnson's actual reported income pre-injury, but for some years before his accident he provided his welding services and occasionally the services of other hired welders through an Alberta corporation doing business as Hydro-Weld Industries ("Hydro-Weld"), and clearly some of his earnings could have been retained in that corporation. The limited evidence suggests that to be the case.
- [72] Prior to the incorporation of the Alberta corporation, Hydro-Weld, was Mr. Johnson's personal proprietorship. There was very little evidence in this trial of Hydro Weld's income, but there is one five-year income statement comparison which includes income and expense for the period March 2008 to February 2009. This document records job income of \$234,873 and total expenses totalling \$219,769, for net income of \$15,104. The management salaries were \$23,000, payroll expenses were \$28,430, real estate rental expenses were \$33,600 (other evidence indicates this was rental of Kamloops Indian Band lands from Mr. Johnson's children), auto mobile expenses were \$28,780, depreciation expensed was \$14,854, and expenses were claimed for meals, entertainment, travel and depreciation.
- [73] The AEC report provides an estimate of the present value of potential future incomes and probable future incomes adjusted for risks and choices, based on the same census-based data. The economists report suggests the potential high point for the past and future wage loss claims combined of \$331,074, plus \$1,719,615, which equals \$2,050,689. The low point suggested is the probable values adjusted for both choices and risks of \$292,587, plus \$1,297,962, which equals \$1,590,549.

- [74] Typically the malpractice claim would have included a component for non-pecuniary damages and a component for future costs of care. The letter from Mr. Johnson's lawyer in the malpractice action could be more helpful if it had at least set out the claim being advanced under those heads of damages. One could then more easily provisionally reconstruct the global claim being advanced and then pro-rate the components by the same proportion that the global settlement of \$1, 724,210 bore to the global claim.
- [75] The evidence in this trial included copies of the January 15, 2013 physical capacity evaluation and cost of future care analysis report, as well as an economist's analysis of present value of the recommended services and equipment, which presumably were utilized in settling Mr. Johnson's malpractice action. These are of some use in estimating the notional quantum that may have been negotiated for future care costs. The current and future care costs for recommended equipment and services included expensive items such \$6,515 per year for home and yard maintenance assistance, with a present value of \$137,455 and a stair glide and a motor scooter, which together added approximately \$25,000 to the economist's report based on the lower cost and less frequent replacement rates recommended. These are items that certainly appear to be unnecessary, in my opinion, and I doubt that they were seriously put forward for settlement purposes. With those items excluded, the AEC low cost valuation of the claim for future care costs would have been approximately \$120,000, and the high cost valuation (with an additional exclusion of a "personal support worker", which AEC had removed as not required in the low cost assessment) would be approximately \$280,000.
- [76] In my opinion, it is likely that the non-pecuniary damage component of the claim advanced was in the range of \$150,000.
- [77] Assuming that the gross claim was advanced at the high end of the ranges for the various heads of damages suggested by the evidence referred to, it would have been \$2,050,689 plus \$280,000, plus \$150,000, for a total of \$2,480,689. At the low end of the ranges suggested, it would be \$1,590,549 plus \$120,000, plus \$150,000, for a total of \$1,860,549.
- [78] I have performed this theoretical reconstruction to test the merit of Ms. Korol's proposal as to how to assign a value to the lost wage component of the global settlement. The most contentious or labile heads of damages to negotiate would likely have been the future care costs and future wage loss (or loss of earning capacity as it was more likely described), and past wage loss claim was likely not very contentious. Given the relatively high proportion of the global settlement that was apparently comprised of past and future wage loss, and the importance of past earning capacity to the assessment of future earning capacity, it is clear that Mr. Johnson's submission that his average annual reported income of \$26,012.00 pre-accident should be used to determine the likely past wage loss recovery is not realistic.
- [79] I think Ms. Korol's approach to valuing the likely past wage loss component of the settlement is to be preferred on the evidence in this case, but having said that, I find that the AEC report's estimate of probable incomes adjusted for average effects of contingencies for

choices and risks totalling \$293,000 is a more realistic estimate than the \$331,000 total of potential incomes. The 33% reduction of the global settlement for legal fees is, of course, applicable to all the components, so I find that the non-excluded portion of the settlement comprising family property is \$196,310.

[80] On an equal division, I find that Ms. Korol is entitled to \$98,155 as a credit or compensation payment for that asset.

Qualicor Industrial Resources Inc.

[81] This company ("Qualicor") was initially incorporated as a numbered company by Mr. Johnson's mother, Ms. Osha, in November 2011, with Ms. Osha subscribed to 80 shares and Mr. Johnson and Ms. Korol to ten shares each. In 2012, the name was changed and the share structure was 80 shares owned by Ms. Osha, 15 shares by Ms. Korol, and five shares by Jessy Combs, who is Mr. Johnson's cousin. The company was dissolved in April 2014 for non-filing and restored in April 2015 for a limited two-year period ending April 2017. According to Mr. Johnson's testimony, the company was set up to facilitate the provision of welding inspection work, and had a short life span which ended in 2012 as far as conducting any revenue-producing activity. However, the company did have an active bank account until September 2013.

[82] Ms. Korol, Mr. Johnson and Ms. Osha were all directors and each had signing authority. Ms. Korol performed bookkeeping services for a time.

[83] Qualicor acquired several assets in 2012, the major ones being a 2012 Dodge Laramie truck in May 2012 for \$66,673.60 and a 2008 BMW car in November 2012 for \$19,256.80. These vehicles are listed on a fixed asset list of Qualicor prepared as of February 27 2015 as part of a GST/HST return for CRA.

[84] Ms. Korol argued that the income and assets of Qualicor are family property regardless of Mr. Johnson incorporating the company under his mother's name and assigning the majority of shares to her. Her suggestion that all Qualicor's assets are family property seems to be based on an argument that Qualicor was Mr. Johnson's alter ego, and he and the company are one and the same, although it was not articulated in those terms. It would follow from her argument that the debts and liabilities of Qualicor would be family debts. That would be going much further than a mere piercing of the corporate veil, and would require a much deeper analysis of the finances of Qualicor than is possible on the evidence provided in this case.

[85] Ms. Korol submits that Mr. Johnson was completely in charge of Qualicor and made all decisions in relation to it. She submits he "deliberately and falsely" named his mother as the incorporating party and majority shareholder and failed to file corporate tax returns in order to keep hidden the fact that he had certified as a welding inspector and was working earning \$150 an hour as opposed to \$110 an hour as a welder while his medical malpractice law suit was unresolved, so there was no evidence to contradict his claim that he was

disabled and unable to work.

- [86] Mr. Johnson testified that the 2008 BMW car was purchased by Qualicor in his name. Ms. Korol normally used it and she took it at the time of separation. It was damaged in an accident and not repaired for a couple of years, for reasons that were not fully explored, but that I infer were due to some sort of stand-off between the parties. Mr. Johnson had given Ms. Korol transfer papers for the car during their marriage but she was apparently advised that it would be problematic if she used them after the separation, so she did not do so. Mr. Johnson eventually had the car repaired and has been driving it. He has offered in his submissions to transfer his interest in that vehicle to Ms. Korol. There is no appraisal of its value, but Mr. Johnson's broad estimate is \$7,000 to \$10,000. I find that the 2008 BMW car is family property because, although the purchase funds were advanced from Qualicor, it was purchased in Mr. Johnson's name, he provided transfer documents to Ms. Korol, and he agreed that it was family property.
- [87] Ms. Korol's submissions do not expressly state that she does not want the BMW car and two other items which Mr. Johnson offered, but that is the implication in this submission:
127. The Claimant did not offer to give the BMW car or the Jet Ski to the Respondent until the closing submissions. At trial, he offered to give her the Sylvan Boat. Six years have elapsed, the Respondent has gotten her own vehicle, the depreciation and current quality of the vehicle are unknown. She doesn't have a truck or trailer to haul the boat or jet ski.
- [88] Mr. Johnson testified on cross-examination that the 2012 Dodge truck, which was paid for with a Qualicor cheque for \$66,673.60, was also registered in his name, but he referred to it as the company's truck, and he did not agree that it was family property. It was shown as an asset on corporate income tax filings.
- [89] His evidence is that when Qualicor needed funds to pay an outstanding debt to CRA in 2015, he sold the truck to his daughter, Isaiah, for \$32,000 and paid the Qualicor income tax debt. The evidence includes a copy of a bank draft from his daughter to him in the sum of \$32,000 with a notation on the draft referencing the 2012 Dodge Ram.
- [90] Mr. Johnson testified that after the sale to his daughter, she and one of his sons used the truck for some time in a business, but that venture did not thrive and the truck later reverted to Mr. Johnson's use as well. One winter he paid to have it insured and used it for the six winter months. He said that he stopped using it approximately one month before the trial.
- [91] Ms. Korol is suspicious and alleges in submissions that he continues to drive the truck and it is doubtful that his daughter, age 18 at the time, had that much money. She argues that:
- .the \$32,000 [bank draft] was obtained with funds from the Claimant, not Isaiah, and the purpose of this transaction was to transfer title to the Truck to his daughter and by washing his funds in this manner, attempt to claim the Truck was disposed of at fair market value of \$32,000.

- [92] Counsel did not confront Mr. Johnson with the suggestion that he had provided the funds himself. There is no evidence to support counsel's assertion that the \$32,000 came from Mr. Johnson's own funds. One would expect that full disclosure of specific pertinent banking records would reveal the necessary evidence if it was there.
- [93] It is unclear what order Ms. Korol seeks in respect of the truck, but I am not satisfied that it became family property.
- [94] What is known about the Sea Doo Jet Ski is that it was purchased in 2012 for \$800. There is no evidence as to its vintage or condition or the extent of use or its storage habitat. I note that Ms. Korol valued it at \$350 in her May 25, 2017 Form F8, which seems reasonable and, if she does not wish to receive it, I will credit her with one-half of that amount, which is \$175.
- [95] Ms. Korol's May 2017 Form F8 values the BMW i28 at \$7,500, which is consistent with Mr. Johnson's estimate, so I will credit her with \$3,750 for that item.
- [96] The 2004 Sylvan boat was purchased for \$6,700 in 2013. Mr. Johnson's August 21, 2015 Form F8 values it at \$3,500. There is no other evidence of its value, so I will utilize that value, and credit Ms. Korol with \$1,750 for that item. I am inferring that further depreciation at that level would be too inconsequential to concern the court.

Hydro-Weld

- [97] As previously mentioned, Hydro-Weld was a proprietorship operated by Mr. Johnson for several years before the parties met and then was operated as a proprietorship of an Alberta company that Mr. Johnson was required to incorporate to continue to work in the oil patch. Ms. Korol acknowledges that it is excluded property, except to the extent that there has been an increase in value since the parties' relationship began.
- [98] Ms. Korol acknowledges that the evidence that would be necessary to assess whether there was an increase in value of the proprietorship since the parties' relationship began, namely the balance sheets of Hydro-Weld, has not been produced. Counsel asserts that Mr. Johnson "chose" not to disclose the relevant balance sheets to Ms. Korol, although he had provided the T2 corporate tax returns of the Alberta corporation doing business as Hydro-Weld for the years 2003 to 2009 to Mr. Struthers of AEC to assist in estimating his lost income. The tacit assumption that those returns would have included balance sheets is probably correct. There is no evidence that Ms. Korol asked for those balance sheets. There were interlocutory orders enforcing requests for documents from one or both parties, but it does not appear that balance sheets for Hydro-Weld were sought. If those balance sheets were in evidence they might not have been sufficient to base an inference of market value without the assistance of expert valuation evidence.
- [99] There is a document in evidence that provides fragmentary evidence regarding Hydro-Weld's finances; that is the five-year income statement comparison that I have previously mentioned for the period March 2008 to February 2013. This document bears a notation that

it was prepared for income tax purposes without audit or review from information provided by the taxpayer, which suggests that it was prepared by a hired professional. It is not a balance sheet, so it does not state assets or liabilities, but it does cover most of the period of the parties' cohabitation. It shows job income of \$234,873 in the year March 2008 to February 2009, \$106,640 in the March 2009 to February 2010 period, nil for the year ending February 2011, \$10,645 for the year ending February 2012 and \$107,606 for the year ended February 2013. The net loss over the five-year period was \$60,516.39. Payroll expense are shown for the first two years, but not thereafter. Management salaries of \$23,000, inclusive of \$3,000 for Ms. Korol, are shown for the first annual period and declining amounts of \$8,600, \$2,900, \$4,000 and nil are shown for the subsequent years.

- [100] The evidence also includes some Hydro-Weld banking records. These show that the account was essentially inactive after May 2013. There had been credit balances ranging from \$70,000 to \$90,000 through the latter six months of 2012, which was reduced to the \$5,000 range in February 2013 and then to a minimal balance by May 2013.
- [101] Hydro-Weld was principally the vehicle through which Mr. Johnson's services as a welder were provided. He suffered his disabling accident on March 8, 2009, which eliminated the primary source of income for the proprietorship just over one year after the parties' marriage. Hydro-Weld was simply phased out over the ensuing years and there clearly was no increase in value during the relationship to constitute family property.

Other Miscellaneous Assets

- [102] The main item of substance in this category is a Quonset building kit purchased for the sum of \$14,265, which Mr. Johnson asserts was purchased prior to the marriage, delivered to Indian Reserve lands and finally assembled post-separation in 2014. His response submissions reiterated that the kit was acquired before the marriage even in the face of Ms. Korol's reliance on a freight bill of lading in Mr. Johnson's document exhibits noting payment by him occurred on October 23, 2008. He is clearly in error about the date of purchase. The named consignee was Samuel Johnson, who is Mr. Johnson's son, who was 14 years old at the time, and age 23 when he testified at the trial. Samuel Johnson testified that he is now the owner of the assembled Quonset building. The building was assembled by himself and his brother Caleb, assisted by a third party and some organizational help from Mr. Johnson. I understand that it is now a fixture on lands which Mr. Johnson leases from his children.
- [103] I have no difficulty holding that the kit was not excluded property on the basis that it was acquired before the parties' relationship began. I find that it was acquired during the relationship and, as of the date of separation, was still owned by Mr. Johnson. Considering that the kit has been assembled and is now a building fixture on leased land, it is appropriate to use the separation date as the valuation date of the kit that existed at that time. There being no evidence to base any inference of depreciation or appreciation of this relatively unique item of personal property since the 2008 purchase, I will credit Ms. Korol

with \$7,133, being one-half of the purchase price.

- [104] I accept that two steel storage containers purchased in 2010 and 2012 for \$3,600 and \$3,800 respectively are family property. I am confident that some depreciation should be applicable to these items, but there is no evidence from either party as to their value as of trial date. At some point, precision in the valuation of a multitude of aging chattels of modest value must give way to expedience. I will apply a depreciation factor of 30% as of the trial date and credit Ms. Korol with \$2,590 in respect of those items.
- [105] I do not accept Ms. Korol's submissions in respect of a 2002 Dodge van, which Mr. Johnson testified was sold for \$50 as scrap, or a 2009 BMW motorcycle which he testified he sold for \$5,000 in 2017 and gave the proceeds to Ms. Korol for child support arrears. Ms. Korol's submission on the latter was that he may not have actually sold the motorcycle, but simply made the \$5,000 deposit from his own money. This accusation was not the subject of confrontation and there is no evidence to support it.
- [106] The final item in this category that I will mention is a 1999 boat trailer purchased in August 2012 for \$800. I will once again infer that it has depreciated by 30% and will credit Ms. Korol with \$280.

Chattels Purchased from Ritchie Bros. in June 2013

- [107] Mr. Johnson purchased several pieces of heavy equipment and other items at two Ritchie Bros. auctions in Alberta in June 2013. Ms. Korol says that he told her Hydro-Weld would take title. The invoices from Ritchie Bros. show the same buyer number and name the Alberta corporation as the buyer, although on the invoice pertaining to the Edmonton auction, there is a handwritten alteration naming Mr. Johnson and his son, Caleb. The bank draft for \$98,476.88 paying the purchase price at that auction was drawn on a bank account (either Caleb's account as it is referred to, or a joint account with Caleb) where the funds to cover it are traceable to Mr. Johnson's malpractice settlement. Ms. Korol's submission reflects her speculation that Hydro-Weld had funds which were used for these purchases, but it is not supported by the evidence. As I mentioned in paragraph 98 of these reasons, Hydro-Weld's bank account balance was down to the range of \$5,000 by February 2013.
- [108] Although a portion of Mr. Johnson's settlement funds were non-excluded family property, the award of compensation to Ms. Korol of one-half of that valuation obviates any need to be concerned about whether Mr. Johnson spent any portion of the non-excluded property in the June 2013 purchases at Ritchie Bros. None of the items purchased were registered to Mr. Johnson.

Summary of Compensation required to Equally Divide Family Property

[109] The total of credits to Ms. Korol as a result of my findings in paras. 79, 92-94, 101, 102 and 104 of these reasons is \$113,833. The credit to Mr. Johnson to offset that is one-half of the \$8,500 that Ms. Korol paid to Mr. F. which she agrees should be credited. Therefore, the compensation payment required to be paid by Mr. Johnson to Ms. Korol in order to equally divide the family property is \$109,583.

Spousal Support

[110] Mr. Johnson argues that Ms. Korol is not entitled to any spousal support because she has not been disadvantaged by the marriage or its breakdown. He argues that she was in a position of dependency at the beginning of the relationship and is in a better position now, both as a result of the employment she enjoyed and qualified herself for and because she now is going to marry Mr. Howden, whose income both presently and prospectively is greater than Mr. Johnson's. Mr. Howden earns approximately \$140,000 USD per annum.

[111] Ms. Korol submits that the marriage and its breakdown did disadvantage her because she was employed in the Ukraine at \$700 USD per month and after marriage she was initially given child care responsibilities in respect of Mr. Johnson's four children, and then, after the birth of their own child in 2010, she was limited in her employment options by the extra care required to deal with his special behavioural problems. She maintains that her ability to obtain full-time employment remains limited by their son's behavioral difficulties because he has been limited to attending school for half days.

[112] Ms. Korol did earn income from employment during the marriage and following separation. In 2009, she earned \$11,010 working on a job with Mr. Johnson. In June 2012, she began working at the Bank of Nova Scotia on an on-call basis at an hourly rate of \$13. In April 2013, she worked on a four-week contract at Thompson Rivers University for \$18 per hour as an instructor's assistant. Her 2013 earnings were \$14,161.00. At the end of 2014, she got permanent part-time work as a teller at \$15 per hour. Her 2014 earnings were \$27,671.00. She was promoted to loans officer in the spring of 2015. Her 2015 earnings were \$37,808.00. She testified that she "burned out" and went on short-term disability in April 2016. After six months, she was placed on long-term disability which was due to end in October 2018. Her 2016 income was \$36,071.00.

[113] As of the trial date, Ms. Korol is receiving disability payments of \$1,275 a month until it terminates in October 2018. Her fiancée contributes each month financially by paying the rent of \$1,650 a month, which includes heat, electricity, cable and internet. Mr. Johnson pays \$470 a month child support and \$500 a year toward s. 7 expenses. Child Tax Benefit and BC Family Bonus are \$656.41 a month. Ms. Korol's June 6, 2018 Form F8 lists her monthly expenses, not inclusive of rent, at \$2,809. She includes as expenses \$208 for an RESP for her son, and \$400 for a fitness program with a trainer.

- [114] Ms. Korol testified that, although her marriage was short-lived, she feels that it has set her back economically. She seeks a lump sum spousal support payment in the amount of \$65,600, which is calculated as sufficient to pay the \$35,000 tuition cost of a two-year program at Yorkville University in New Brunswick for a Masters degree in counselling, plus \$1,275 per month to replace the disability payments and pay her living expenses while she takes the course. She submitted that a lump sum was preferred because she does not believe Mr. Johnson would willingly pay a monthly amount, and he would be difficult to garnishee.
- [115] Turning to a consideration of Mr. Johnson's conditions, means and circumstances, I agree that his present unemployment is not a permanent condition, and he does have a capacity to earn some income, whether as a welding inspector or some other capacity. I do not accept that that full-time work as a welding inspector should be the basis of imputing income to him, but I think the \$50,000 income imputed by Dickey P.C.J. is certainly fair to him.
- [116] Mr. Johnson's monthly expenses are estimated in his June 11, 2018 Form F8 as \$5,145, inclusive of \$500 for child support and \$500 for debt payments. The only expense item that I find questionable as to reliability is \$417 monthly for house repairs and maintenance.
- [117] As to whether Ms. Korol is entitled to spousal support, I must take into account the objectives of spousal support set out in the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp) [DA] and the conventional models for assessing spousal support entitlement. I think it is a fair assessment that both parties were economically advantaged as a result of their marriage. Ms. Korol benefitted from the move to Canada and obtaining immigrant status. Although she was not legally allowed to work for the first two years, which was a temporary economic disadvantage, she eventually got work and broadened her employment horizons, and worked at a bank, where she was promoted to the position of financial solutions specialist. After six years of living with Mr. Johnson, she has increased her net worth by over \$100,000. Mr. Johnson obtained a homemaker and caretaker for his children from a former marriage, which allowed him to work in the oil patch and away from home.
- [118] It is a fair assessment that Ms. Korol's standard of living decreased as a result of the breakdown of the marriage, but that will definitely be remedied upon her marriage to Mr. Howden, which was planned for September or October 2018 and may have already occurred.
- [119] In my assessment, the strongest claim to entitlement for Ms. Korol is to satisfy the objective stated in s. 15.2(6)(c) of the DA (and s.161(b) of the FLA), namely to:
- (b) apportion between the spouses any financial consequences arising from the care of any child of the marriage over and above any obligation for the support of any child of the marriage;

- [120] I am satisfied that there is an entitlement to some spousal support due to the financial consequences of the parties' son's behavioural issues and Ms. Korol's response in limiting her selection of full-time employment. I tend to agree with Mr. Johnson and Ms. Osha that Ms. Korol's view and handling of his behaviour may be enabling and entrenching the behaviour, but obviously the pattern is not going to change overnight and undoubtedly Ms. Korol's earning capacity is going to be affected for some time.
- [121] Reference to the SSAG suggests that the lump sum claim advanced by Ms. Korol is significantly in excess of the guidelines. For example, the claimed lump sum of \$65,600 represents the total of 135 monthly payments of \$486, which would be the mid-point according to the guidelines using estimated incomes of \$85,000 for Mr. Johnson and \$36,000 for Ms. Korol (even without applying a discount to find a present value of a future income flow).
- [122] The SSAG indicate no spousal support payable if Mr. Johnson's income is imputed at \$50,000 and Ms. Korol's at \$36,000, which she has demonstrated an ability to earn. Selecting the mid-point of SSAG recommendations, Mr. Johnson's income would have to be imputed at \$70,000 before any support would be payable, at which point it would be \$11 per month. With his income imputed at \$65,000, the mid-point would be nil, but selecting the high point would trigger a payment of \$156 per month.
- [123] Taking into account the short duration of the cohabitation, the property division, and the condition, means and needs of the parties, I award Ms. Korol spousal support in the lump sum of \$5,000.
- [124] All sums awarded in these reasons are payable forthwith. I consider that neither party can claim substantial success and each party shall bear their own costs.

"I.C. Meiklem J."

MEIKLEM J.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/19/01/2019BCSC0111.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/johnson-v-korol-2019>

Prepared on 28 October 2026 · Esheria