

CANADA / JUDGMENT

K.R.W. v. S.A.W.

2003 BCSC 522

COURT

Supreme Court of British Columbia

DECIDED

4 April 2003

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2003BCSC0522

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

K.R.W. v. S.A.W.,

2003 BCSC 522

Date: 20030404

Docket: E006481

Registry: New Westminster

Between:

K.R.W.

PLAINTIFF

And

S.A.W.

DEFENDANT

Before: The Honourable Mr. Justice Preston

Reasons for Judgment

Counsel for the Plaintiff:

S.J. Henshaw

Appearing on her own behalf:

S.A.W.

Dates and Place of Trial:

April 15-May 2, 2002

February 17-28, 2003

Vancouver, B.C.

- [1] This is a divorce proceeding. The issues are quantum of spousal maintenance, division of assets and general and punitive damages for spousal assault. Mr. K.R.W. is 55 years old, his wife is 54. He is employed as a log broker; she is not employed outside the home. The parties separated in May 1999. Since that time, Mrs. S.A.W. has lived in the family home. In May, 2002, during the course of this trial, Mrs. S.A.W. purchased Mr. K.R.W.'s interest in the family home.
- [2] The most contentious issue is the alleged spousal assault. Mrs. S.A.W. attributes her current emotional disorder and resulting disability to prolonged physical and emotional abuse by her husband.

Background

- [3] The parties were married on July 13, 1966 in Idaho, U.S.A. They eloped after high school. They have two adult children: A daughter, L. (aged 36), who is married and lives in the Interior and a son, J. (aged 33), who is also married and lives on Vancouver Island.
- [4] After their marriage, the parties worked extremely hard. Mr. K.R.W. worked at a number of labouring jobs. Mrs. S.A.W. was the manager of the family finances. After J. was born in 1969, Mr. K.R.W. completed his high school diploma by correspondence and embarked on university studies which led eventually to a degree in microbiology at the University of British Columbia. He was unsuccessful in obtaining admission to medical school and began a career as a log broker. In order to finance his university studies and provide for his family, he worked extremely long hours at summer jobs. Mrs. S.A.W. provided the careful management necessary to maintain the home and raise their two children.
- [5] Following university, Mr. K.R.W. worked for B.C. Forest Products Ltd. for 13 years; Teal Cedar Products Ltd. for 11 years; Timberwolf Log Trading Ltd. for one year; and latterly with his own company, T.[] Inc. since January, 2001.
- [6] In 1975, the parties purchased a home in North Vancouver. They enlarged it to more than twice its original size. Mr. K.R.W. did the construction work and Mrs. S.A.W. acquired the materials and arranged the financing.

- [7] The W.s' daughter L. left home at 19 in 1986. She had been having escalating difficulties with her mother. She is now estranged from Mrs. S.A.W. but has a close relationship with Mr. K.R.W.. Their son J. describes himself as the "peacemaker" in the family. He has a successful career. He has minimal contact with his mother. He has a close relationship with his father. He last lived with his parents in 1991. He has visited them frequently and, until a few years ago, had frequent telephone contact with his mother, usually at her initiation, late at night.
- [8] Mrs. S.A.W. testified that she has been the victim of repeated physical and emotional abuse by Mr. K.R.W. for many years. She described a number of stressful events in the last decade of the marriage that she said contributed to the strain she was under as she tried to keep the marriage together and present the image of an untroubled relationship to the outside world.
- [9] When J. left home in 1991, Mrs. S.A.W. said, "it kind of left us alone together".
- [10] "A.M.", a close friend of the W. family died on July 7, 1992. Another close friend of Mrs. S.A.W.'s died in September of 1992. Mrs. S.A.W. testified that these events placed her under considerable strain. L., was married during the summer of 1992. Mrs. S.A.W. considered the timing of the wedding inappropriate.
- [11] In December, 1992, Mrs. S.A.W. discovered that her mother had an aortic stenosis. Her mother had a heart valve replacement. In January of 1993, Mr. K.R.W.'s stepfather, who had spent a good deal of time at the W. home, died. In her evidence, Mrs. S.A.W. stated cryptically "I don't believe he died of cancer as stated." Mrs. S.A.W.'s mother's operation was successful, however, she later developed atrial fibrillation and died in April of 1993. Mrs. S.A.W. felt that her mother's doctor was responsible and that his negligence had "killed her". After her mother's death, Mrs. S.A.W. began to have difficulties in her relationship with her father. While her father was living at the W.s' home, he and Mrs. S.A.W. got into a verbal argument which led him to stand behind her car, telling her to run over him. In the struggle between the two of them, his hand was injured in the car door. Mrs. S.A.W. blames this incident on Mr. K.R.W..
- [12] Approximately one year after her mother's death, her father remarried. Mrs. S.A.W. refused to go to the wedding. Mrs. S.A.W.'s father died on September 4, 1997. Mrs. S.A.W. apparently suspects that his second wife killed him.
- [13] In describing the difficult period between J. moving out on his own and her father's death, Mrs. S.A.W. said,

K.R.W. would not discuss anything that wasn't pleasant. I was the bad guy -- I supposed. I don't believe K.R.W. ever connected with the children on a 'life' level -- the ups and downs of life -- the mistakes. I don't tell lies. I said that to K.R.W. when I found out they had killed my mother. The doctor said 'don't injure the patient -- kill them -- don't cover it up'.

I had been deceived as a human being.

K.R.W. didn't foster L. and I getting our bridges mended. He went behind my back.

I was the fostering, nurturing, primary caregiver. We didn't have big problems until L. was 16.

I call it violence, abuse, deceptions -- crazy making. It has been the worst in the last ten years. L. cut herself off -- not only from me, but from my parents. The year before my mother died, L. was emotionally abusive to me. A very negative attitude. Not wanting to problem solve. She cut herself off from my mother and my mother died. I think L. was devastated. L. cut herself off from me. It was like a knife in my heart -- it was with me every day. L. cut herself off from my mother because my mother and I were best friends. We should all have gone to counselling. J. wanted us to get counselling. Things were not allowed to be discussed or remedied -- they got big -- that is what happened. Each time I was injured -- I said I won't tell -- just get help. Then I told J. on Mother's Day in 1998.

He was abusing me 24 hours a day either psychologically or physically. It was terror.

I finally took myself to the hospital in September or October of 1999 -- after I changed the locks.

[14] In her counterclaim, Mrs. S.A.W. advances claims for:

- (1) general damages for "numerous verbal and physical assaults committed against the Defendant's person by the Plaintiff throughout the parties' marriage, including a final incident on or about April 24, 1999";
- (2) punitive damages for "the Plaintiff's high-handed and abusive treatment of the Defendant throughout their marriage causing the Defendant psychological distress and post-Traumatic Stress Disorder";
- (3) special damages "including counseling sessions, necessarily resulting from the Plaintiff's high-handed and abusive treatment of the Defendant throughout their marriage and causing the Defendant to suffer from Post-Traumatic Stress Disorder".

[15] Mr. and Mrs. S.A.W. gave very different accounts of the nature of their relationship in the latter years of their marriage. Mr. K.R.W. described Mrs. S.A.W.'s behaviour as abusive to him and ultimately to their children, particularly L. He said that Mrs. S.A.W. would seize on issues that were inconsequential and not let them go. She would berate him and their daughter verbally. Those verbal assaults would escalate to physical violence on occasion, particularly toward Mr. K.R.W.. Mr. K.R.W. responded by attempting to placate her or storming out of the home, drinking heavily, and damaging furniture or parts of the home.

[16] Mrs. S.A.W. said that Mr. K.R.W. physically abused her and injured her regularly for many years of their marriage. She testified that she kept this hidden from her children and their friends in order to portray the image of a successful marriage. She described incidents in which Mr. K.R.W. stabbed her in the groin with a fork, threatened her with knives, forced her to have intercourse when she was injured in childbirth, threw her down on the front hall table, threw a beer bottle at her and injured her and, on a final occasion, pulled her from a seated position on the couch by the hair and assaulted her. Mrs. S.A.W. complained to the police after the beer bottle incident and Mr. K.R.W. was arrested. Mrs. S.A.W. later arranged

to have the charges stemming from that incident withdrawn. The last incident resulted in the final of many separations. Six months later, Mrs. S.A.W. laid an assault charge. Mr. K.R.W. pleaded guilty to the charge and was placed on probation for 18 months.

- [17] Most of the incidents referred to by both parties are based on an actual event but the parties' accounts of the details of the incidents differ dramatically. If Mrs. S.A.W.'s versions of the events are to be accepted, Mr. K.R.W. was entirely in the wrong on all occasions. I do not recall Mrs. S.A.W. admitting to a single fault during the course of the trial. It is also noteworthy that she seldom, if ever, attributed to Mr. K.R.W. a single virtue. Mr. K.R.W. admitted that he was at fault on some occasions but denied fault with respect to others.

Mrs. S.A.W.'s psychological condition.

- [18] Mrs. S.A.W. maintains that she suffers from post traumatic stress disorder as a result of Mr. K.R.W.'s abusive behaviour during the marriage. Both parties called expert witnesses on this issue. Dr. Ulrich Lanius, a psychologist who treated Mrs. S.A.W. between July, 2000 and April, 2001, assessed her on two occasions in April, 2001, for the purpose of preparing a report for the court. Dr. Lanius saw Mrs. S.A.W. on 21 occasions for treatment purposes before undertaking the assessment. He expressed the opinion that Mrs. S.A.W. suffers from post traumatic stress disorder. Dr. Lanius provided the following diagnosis:

Diagnosis

1. Ms. S.A.W. without doubt meets diagnostic criteria for chronic PTSD. It is my opinion that this disorder is attributable to the violence suffered at the hands of Mr. K.R.W..
2. While Ms. S.A.W.'s history during childhood and adolescence has without doubt increased her vulnerability to developing a PTSD, it is more likely than not that she did not develop a full PTSD syndrome until after the escalation in Mr. K.R.W.'s behavior once the children left the parental home. In fact, the similarity of some of the childhood trauma to the later trauma at the hands of Mr. K.R.W. increased the likelihood of Ms. S.A.W. developing PTSD. The incident of witnessing an acquaintance being physically assaulted, as well as the uttering of death threats after the relationship break-up likely further exacerbated Ms. S.A.W.'s condition. However, it cannot be considered causative of her condition, as Dr. Axler had already diagnosed Ms. S.A.W. with PTSD prior to that event. Thus, it is my opinion that the experience of repeated assaults, as well as ongoing emotional and psychological abuse within that relationship is causative of Ms. S.A.W.'s PTSD.
3. Ms. S.A.W. meets criteria for a severe Major Depressive Disorder. More likely than not, it is a response to the experience of chronic traumatic stress. Major Depressive Disorder and PTSD are co-morbid disorders and when they co-occur they tend to result in much greater impairment with regard to cognitive, social, vocational, and personal functioning, than what is the case if each disorder occurs on its own. This scenario results in a seriously compromised quality of life.

4. Ms. S.A.W. is suffering from severe diarrhea to the point where this makes her unable to leave the house. In addition, she experiences urinary incontinence, experiences breakthrough bleeding, as well as other physical symptoms. In the absence of laboratory findings that suggest a medical disorder and/or absence of a medical disorder that fully accounts for those symptoms, it is more likely than not that at least some of those symptoms represent a Somatization Disorder, particularly an Undifferentiated Somatoform Disorder.
 5. Overall, it is my opinion, that the above noted psychiatric impairments are in fact related conditions, secondary to the experience of severe traumatic stress. Particularly, they are for the most part attributable to the experience of interpersonal violence at the hands of Mr. K.R.W..
- [19] Dr. Lanius testified that the April, 1999 assault by Mr. K.R.W. and the subsequent criminal proceedings were "the straw that broke the camel's back" and precipitated full-blown post traumatic stress disorder. Mrs. S.A.W. had told him about witnessing a home invasion after the parties separated. The home invasion was unrelated to the marriage. Mrs. S.A.W. testified at trial that it resulted in her life being threatened and her being placed in a police witness protection program. Dr. Lanius was unable to provide any detail with respect to that event.
- [20] I was not satisfied by Dr. Lanius's explanation of the manner in which he related Mrs. S.A.W.'s post traumatic stress disorder to abuse by Mr. K.R.W.. I was not satisfied that Dr. Lanius was able to satisfactorily separate his treatment relationship with Mrs. S.A.W. from his assessment relationship.
- [21] Dr. Alexander Levin, a psychiatrist, examined Mrs. S.A.W. pursuant to a court order obtained by Mr. K.R.W. and provided a report. Dr. Levin gave evidence on behalf of Mr. K.R.W.. He said:

Ms. S.A.W. presented with a complex clinical picture with some inconsistencies in historical data, which made it difficult to be definite in assessing the severity of her mood disorder. Considering the medical-legal aspects of this assessment, it is important to differentiate chronic (lifelong) from episodic mood disorder, and to identify underlying personality traits which contribute to the clinical presentation. Looking at the chronology of Ms. S.A.W.'s life, it is evident that she has had a lifelong history of affective (mood) dysregulation and significant personality problems, going back to her early teenage years. It seems that she has not been functioning adequately for the last 8-10 years. Ms. S.A.W.'s mood disorder is complicated by her alcohol abuse.

- [22] Dr. Levin concluded that post traumatic stress disorder was not Mrs. S.A.W.'s primary diagnosis. A person who suffered from that disorder to be socially isolated and that was not the case with Mrs. S.A.W.. He would have expected a higher level of dysfunction if she suffered from post traumatic stress disorder resulting from spousal abuse. Further, she did not exhibit the distrust of men generally that he would expect in those circumstances. He said that one of the characteristics of post traumatic stress disorder is an avoidance of discussion of the underlying abuse. He observed that Mrs. S.A.W. did not display such an

avoidance. On the contrary she brought up, or returned to, the topic.

- [23] Dr. Levin concluded that Mrs. S.A.W.'s problems stemmed primarily from of a major histrionic personality disorder. He said that such a disorder would predispose her to developing depression. He said that she coped with the disorder by presenting her emotions in an exaggerated manner, self-dramatization, and considering relationships more intimate than they actually were.
- [24] He indicated that the medication Mrs. S.A.W. had received was appropriate. He recommended that she continue to be treated with anti-depressant medication and treatment in a community mental health centre. He observed that Mrs. S.A.W.'s condition had improved dramatically between the time he saw her in May of 2001 and the date of trial.
- [25] Both of the parties' grown children testified.

J.W.

- [26] J. left home in July of 1991 and married in September of 2000. He left home to gain independence from his family, in particular, his mother. He said she is loving, she has good intentions, but she is controlling, domineering and strict. He said that at home, "Mom was the boss". He said that his sister, L., was treated differently than he was. More was expected of her. She was a girl and she was older. He said that she was also less compliant than he was. He said that when L. was 13 or 14, his mother called her a bitch. He said that term angered L. and "pushed her buttons". He said that, in his observation, his mother used the word more frequently after that.
- [27] He was asked to describe his father. He said his father was compliant and would not rock the boat. He said that when his father did not support his mother, she would accuse him of not being supportive, of not being a man. She would berate him and call him names. At first, this was subtle, but later she would refer to him as "spineless", "you're not a man", and "asshole". He said that from his late teens to his twenties, his mother used profanity toward his father. He said that she would call him "prick face", "asshole" and "fucking spineless" and she would humiliate him.
- [28] When asked to describe how his father reacted, he said that for the most part, his father would try to "coast", ignore the comments, watch television, and "fly under the radar". He said that occasionally his father would ask why this behaviour did not go away. He said that these incidents occurred approximately once per week. He said that his mother seemed unable to deal with unexpected events and would create issues around things like visits by his grandmother that were not arranged in advance.

- [29] J. described his mother's strong reaction to receiving short notice of L.'s wedding. When Mr. K.R.W. did not support Mrs. S.A.W. in her angry reaction to the short notice, Mrs. S.A.W. berated Mr. K.R.W. and "badgered him" to get L. and her proposed husband to postpone the wedding. On several occasions surrounding that incident, Mrs. S.A.W. confronted Mr. K.R.W. and told him "be a man", called him names and challenged him to do something.
- [30] J. described Christmas Eve day, 1992, when his sister and her husband arrived unannounced at his parents' home. He said his sister made "a peace offering" and that things went smoothly until she and her husband left. He said it was unpleasant from then on. His mother was upset. She was berating everyone (grandparents were present), particularly Mr. K.R.W.. She called him all sorts of names. This behaviour was unprovoked. He said dinner was ridiculously prolonged and arrived on the table at 11 o'clock at night. He said his mother was making comments under her breath and "treating us like we were ungrateful". He said she would not let the issue go even though L. and her husband were not there. He said that for approximately ten years after his sister L. and his mother broke off their relationship, his mother repeatedly took the position that L. had to apologize for everything and that there was to be no compromise.
- [31] J. described Christmas of 1997. He said he arrived, rang the doorbell, and no one answered the door. He could hear his mother's voice. She was shouting. He said he stood on the doorstep for 5 or 10 minutes absorbing the sad state of his parents' marriage, then rang the doorbell, went in, and the shouting subsided. He said his mother attacked him and told him to go to his paternal grandmother's home. He said by then his father had taken to escaping to his mother's residence. He said that he (J.) tried to be passive. He tried to smooth things over. He said that she attacked him. She called him "fucking asshole", said, "go to your fucking grandmother's". He said she poked him in the shoulder and he said, "nobody does that" and poked her back. He immediately realized that things were out of control and he left his parents' home and spent Christmas with a friend.
- [32] He said that during the early years after he left home he would return to his parents' home every third weekend. He said on two out of three of those weekends there was a conflict between his parents. He said he was close to his mother and was her confidante in many ways. He said he would talk to her and try to see if things could be resolved. He would go to bed and then he would hear his "mother start again on his dad".
- [33] He spoke about his parents renewing their wedding vows in 1991. He said that beforehand they were arguing a lot and were not happy. His mother wanted to renew the wedding vows. He said that he believed that she hoped that would improve the relationship.
- [34] He said that his mother told him about the April, 1999 assault. She said that Mr. K.R.W. attacked her and pulled two clumps of her hair out. He said that he was not surprised since he had seen her verbally berate his father.

- [35] He said that in 1998 he told both his parents that they were not happy and he encouraged them to end the relationship. He said that on Mother's Day, 1998, his mother was upset with him for only coming over for the day, not the weekend. He said that he and his father wanted her to go out for a meal with them. He said his mother called them names. He and his father went out and played pitch and putt. J. returned to the home. He said that his mother continued to call him names. He went back to Vancouver Island and his father did not go back to the home.
- [36] J. said that he has had minimal contact with his mother in the last few years. He said that before that he had a lot of contact through a number of late night conversations. He said that he always thought he could help her be happier by resolving small problems but that he was frustrated because she just made the problems bigger.
- [37] He said that since the separation in May 1999 he has noticed a steady decline in her behaviour. He said that everything got progressively worse for the past ten years on an even ramp. He said it was more difficult to talk to her in the last year than four years ago, for example. He said that she constantly accuses his father of having physically abused her for many years. He said that she told him that she was afraid of his father about six months after his parents' separation. J. said he never saw his father physically abuse his mother.
- [38] Describing his mother's behaviour in the past, J. said that "mom had projects". He said that dramas were common. She drank alcohol to excess. Her personality changed when she was drunk over the past six to eight years - maybe ten years. He described her drinking. He said that she drank daily. During his teenage years, she drank light beer. Later on, it was white wine. He said she managed to keep her drinking to the point where it affected her personality but not her balance. When she drank, she would be easier to be around but if she drank too much she would bring up issues and not let go of them. He said they often ate meals extremely late - as late as 11:00 p.m.
- [39] He described his mother's good attributes. He said that she was extremely outgoing, very inspiring, and a "fabulous cook". She ran a bed-and-breakfast during Expo '86. He said she taught J. to make beds and to properly run a bed-and-breakfast. He said she has incredibly good visual sense. She talked about being an interior designer. He said she is extremely quick and smart. She filed all the tax returns and took care of all the finances during the marriage. He said she was good with contractors when they were building the house and exhibited ingenuity when organizing the extensions to the house.
- [40] In cross-examination, he said that in the last ten years the disturbing situations began to outweigh the loving situations in his relationship with his mother. At times she would say "I love you -- I am proud of you" and at others, "you're an asshole and you are spineless", etc. He said he did his best to avoid taking these things personally. He said the difficulties became worse after his sister left home. He described physical attacks by Mrs. S.A.W. on Mr. K.R.W.. He said that he observed his mother verbally abusing his father over the issue of his sister's estrangement from her. She would criticize him for the behaviour of his relatives and

any number of other small issues. He said she wouldn't stop. She would verbally attack his father, wave her finger right in his face and shout or swipe at him. He said that he saw scratches on his father's face on two occasions and bruises on his mother's arms and an injury to his mother's elbow.

L.W.

- [41] L. left home when she was 19. She returned briefly when she was 22. She said that she severed her relationship with her mother in 1992 when she was 25 years old. She came home after her marriage and talked to her mother and that they mutually decided to end the relationship. L. said, "I told her that the way she talked to me and treated me wasn't normal." L. did not realize that it would permanently dissolve the relationship. She thought that her mother would "see the light". She said her mother belittled her and called her names.
- [42] She described her mother as "domineering, intimidating -- could be loving -- unpredictable". L. said that "she loved her mother more than anything on earth" -- she "was scared of her" -- that her mother was "quick with her hands". She said her mother called her a "little bitch" a lot and on five or six occasions called her a "fucking cunt". She reminded L. that she was unplanned and that she could have had an abortion. She said that she was called a "little bitch" a lot in front of her father, her brother and grandparents, but not friends or neighbours. She said that she was in grade 5 when she realized something was wrong with her mother. She said that her mother "wore the pants" in the family and that she and her brother and her father pretty well did as her mother said. She said that her mother would yell at her father frequently, more often than weekly, and that this started when she was a small girl. She said that her mother would call him names and belittle him. Her mother called her father an "asshole", "weak", and a "mamma's boy". She said that her mother would get angry with her father because he would not support her in whatever she was angry about. She said that her father just sat there and took it. Sometimes he left. At one time he took the dishwasher lid and slammed it and broke it when her mother was yelling at him about something. She has never seen her father attack her mother physically. She saw her mother sometimes scratch him and strike him in the same manner as she did to her two children. She said that her mother would sometimes lunge toward her father and he would hold her arms.
- [43] In 1988, L. returned to her parents' home in order to resume her schoolwork. She said that her mother seemed to respect her before she returned but that their good relationship only lasted about three months. She testified that her mother treated her worse than she had been before. Her parents fought about her and she concluded that it was in the best interests of all if she moved out. There was a big row when she wanted to move out. She testified that her mother came to her wedding shower in an intoxicated condition, and on the few occasions she has seen her mother since their estrangement, her mother has been intoxicated. She said that she has often concluded that her mother was intoxicated during telephone calls.

- [44] The parties' two children impressed me as fine, straightforward and truthful witnesses. I did not detect undue animosity toward Mrs. S.A.W.. I concluded that they were both genuinely unable to continue a relationship with her because of her behaviour and they were distressed by that. I am satisfied that they described the behaviour of their parents accurately.

Joseph Lloyd, Realtor

- [45] Mr. Lloyd was the realtor with whom Mr. K.R.W. listed the family residence pursuant to Master Nitikman's order of November 6, 2001. Mr. Lloyd described his attempts to sell the W.s' home. Once the home was listed, Mrs. S.A.W. refused to give him access to show the home and refused her permission to put a "for sale" sign on the property. She placed a "sold" sign on the stairs at the front of the house. Master Nitikman made a further order on February 22, 2002, requiring Mrs. S.A.W. to permit the home to be shown to prospective purchasers on Thursdays for a two-hour period and on Sundays for a two-hour period. The order included a term empowering a peace officer to arrest Mrs. S.A.W. if she breached the terms of the order by refusing to cooperate in the showing of the home.
- [46] Mr. Lloyd was able to gain access on the first occasion in early March of 2002 with the assistance of the R.C.M.P. and a locksmith. The prospective purchasers withdrew their offer. Mr. Lloyd gained entry again on Sunday, March 10 and showed the home. A police officer was present. Mrs. S.A.W. was there with her "bodyguard". Mr. Lloyd observed some signs of deliberate damage to the house. He saw a cracked front door and a cracked bedroom door and a baseball-sized hole in the wall near the family room downstairs. He described the kitchen as a "pigsty" and said that the home was littered with possessions and the only way to navigate through the rooms was to walk in paths between the piles of possessions. He said that in the 26 years that he has been selling real estate he had never seen the interior of a house in such a mess.
- [47] He arranged for another visit to the home on March 28, 2002, with a house inspector retained by a prospective purchaser. The purchaser had made an offer of \$430,000 subject to an inspection. Again, entry was gained with the assistance of a locksmith and the R.C.M.P. The R.C.M.P. removed Mrs. S.A.W. from the home in handcuffs. The home alarm was triggered by their entry into the house.
- [48] The listing price of the home was \$459,000. Mr. Lloyd was of the opinion after seeing the interior of the home that the appropriate selling price would be between \$425,000 and \$435,000. An offer of \$430,000 subject to Court approval with a possession date of June 29, 2002, was made after the showing of the home on March 28, 2002.
- [49] Mr. K.R.W. Hollett, a Real Estate Appraiser, had appraised the home at \$390,000 in 1999 and at \$436,000 in 2001.

- [50] Subsequently, Mrs. S.A.W. requested and was permitted to purchase the home at the time of the application to sell it to the prospective purchaser partway through this trial in May 2002.

Mr. K.R.W.'s Mother

- [51] Mr. K.R.W.'s mother testified that she saw injuries to Mr. K.R.W. on a number of occasions before the separation. She described Mrs. S.A.W. as manipulative. She said that things could never be resolved with Mrs. S.A.W. like they could with other people. In cross-examination, Mrs. S.A.W. referred to a letter written by Mr. K.R.W.'s mother which accused Mrs. S.A.W. of stealing money. The letter was not produced. Mr. K.R.W.'s mother denied ever having written such a letter. It was clear from her reaction under cross-examination that the suggestion astonished her. I accept Mr. K.R.W.'s mother's evidence on this point. Mr. K.R.W.'s mother could not provide direct evidence with respect to the allegations of spousal assault but her description Mrs. S.A.W.'s behaviour differed markedly from that of Mrs. S.A.W.. I preferred her evidence in that regard to that of Mrs. S.A.W..

Constable Khamphoune

- [52] Mrs. S.A.W. called Constable Khamphoune as a witness. He was at the family home on two occasions upon which it was shown to prospective purchasers. The Constable was a thoughtful and precise witness. His description of the events on one of the occasions on which Mrs. S.A.W. was removed in handcuffs accorded with the description of those events given by Mr. K.R.W. and Mr. Lloyd. His evidence differed from, and did not support, the evidence given by Mrs. S.A.W. of that incident.

Mrs. S.A.W. Brother

- [53] Mrs. S.A.W. called her brother as a witness. He was unable to provide any direct evidence with respect to assaults by Mr. K.R.W. on Mrs. S.A.W.. He said that when he learned that Mr. K.R.W. had pleaded guilty to assault he determined he would have nothing further to do with him.
- [54] In cross-examination he was referred to the section of Dr. Lanius's report in which he recounted Mrs. S.A.W.'s description to him of her childhood. He was clearly shocked that she had accused their father of violent physical abuse toward their mother and toward her brother (the witness who testified). She also accused her brother of sexual abuse.
- [55] Mrs. S.A.W.'s brother testified that his father was a gentle man who never assaulted him or his mother. He denied sexually assaulting Mrs. S.A.W.. He was re-examined by Mrs. S.A.W. on these matters. I am completely satisfied that Mrs. S.A.W.'s allegations of sexual assault by her brother are false.

- [56] Mrs. S.A.W. called a number of witnesses who testified about injuries to her at various times. She called neighbours who testified about the April 1999 assault which Mr. K.R.W. admits. None of these witnesses had direct knowledge with respect to any assaults other than that of April 1999. The evidence of these witnesses was not inconsistent on any major point with that of Mr. K.R.W..

Assaults by Mr. K.R.W. on Mrs. S.A.W.

- [57] Mr. K.R.W. admitted to assaulting Mrs. S.A.W. on a number of occasions. The first time was 34 years ago. He and Mrs. S.A.W. visited friends in Kitsilano. Mr. K.R.W. was drunk but insisted on driving from Kitsilano to North Vancouver. He said that he drove too fast and that they had an altercation when they got out of the car in North Vancouver. He said he did not remember striking her but the next day she had a black eye.
- [58] He admitted to hitting her on June 21, 1994 by throwing a beer bottle at her. He had been breaking beer bottles by throwing them in the fireplace downstairs. One of them hit her on the elbow. She called the police. He was arrested and held in jail overnight. Mrs. S.A.W. discussed the matter with Crown counsel and the charges were dropped.
- [59] During 1998 and 1999, Mr. K.R.W. left the family home for periods of varying length. The longest was about three months. He lived at his mother's home during these periods.
- [60] In April 1999, Mr. K.R.W. violently assaulted Mrs. S.A.W.. He described the events of the week leading up to the assault. He had been to a counselling group on Tuesday and had a discussion with his counsellor about "choices". He said "I told the counsellor that Mrs. S.A.W. pushed my buttons and my counsellor said that I did not have to react". Mr. K.R.W. realized that that was so. On Thursday, Mrs. S.A.W. began to harangue him and he said that he did not react by getting angry as usual. He just sat there. She shouted at him that he was a "bastard" and that he had abandoned her. She poked him in the face. She then began spitting in his face and pulled his hair. He said that he just let her do it. He went for a walk and when he came home she was asleep. On Friday, he went to work. He had scratches on his face from the incident the night before. He said, "it was starting to fester inside me". When he came home, everything was quiet and nothing was said about the incident the night before. On Saturday, he was golfing and during the course of the day he thought about what had happened. He brooded about "what kind of a man I was". He came home with a rented a movie. They were watching the movie. He was drinking heavily. He said she started another confrontation and he stood up and grabbed her by the hair and lifted her from the sofa. She struggled and got away from him into the bedroom. He followed her into the bedroom. He then got into his vehicle and started it, revved the engine. He fell asleep in the vehicle. He later went into his son's room and slept. On Sunday morning he said that he was "sick from what I had done". He said that he apologized and said that he could not make it right. His wife was afraid. He brought a friend over to console his wife.

- [61] On May 5, 1999 Mr. K.R.W. was watching the news and Mrs. S.A.W. was getting dinner. She said to him, "Your mother is a bitch, so is your daughter, and you're just like them." He said, "Sue, you're never talking to me like this again" and left. That was the final separation. They did not reside together after that.
- [62] He was charged with assault six months later. He pled guilty and was placed on probation and ordered not to contact Mrs. S.A.W. for eighteen months.

Damage to the family residence

- [63] Mr. K.R.W. admitted that on many occasions he punched the wall and kicked and broke things in the home. He damaged three doors in the house; two of them by slamming them and one during a struggle when he was attempting to leave the home and Mrs. S.A.W. was attempting to prevent him from doing so.
- [64] Mrs. S.A.W. called a number of witnesses to testify with respect to physical abuse. None of them could give direct evidence. They relied upon Mrs. S.A.W. for their information about the incidents of abuse. One witness testified that Mrs. S.A.W. was visiting her when the telephone rang and she could hear Mr. K.R.W. screaming curses on the other end of the telephone.
- [65] Clearly, the last fifteen years of the W.s' married life were influenced and finally dominated by Mrs. S.A.W.'s emotional disorder. Both children insulated themselves from the effects of Mrs. S.A.W.'s behaviour and Mr. K.R.W.'s inappropriate reaction to it by reducing and finally eliminating contact with their mother. Mr. K.R.W. reduced his contact with the children drastically because of the effect that contact had on his relationship with Mrs. S.A.W.. He testified that when he saw the children, Mrs. S.A.W. would relentlessly question him about what had gone on.
- [66] I am satisfied that Mrs. S.A.W. was physically and verbally abusive to Mr. K.R.W. and that her pattern of focussing on trivial events and relentlessly attacking Mr. K.R.W. and the children about them was the primary source of difficulty in the W. family.
- [67] Mr. K.R.W. reacted inappropriately. He broke furniture and possessions. He kicked and beat on the wall. He slammed doors. He became more physically violent during the confrontations that took place between him and Mrs. S.A.W.. On two occasions at least he seriously assaulted Mrs. S.A.W.. On other occasions the struggles between them, while he was restraining her or attempting to leave the home, injured her in minor ways. On many of those occasions he had been drinking heavily. They were often both inebriated.
- [68] Mr. K.R.W. sought counselling for a number of years of the marriage. He saw an anger management counsellor after the incident in 1994 when he threw the beer bottle that struck Mrs. S.A.W..

- [69] I accept Mr. K.R.W.'s evidence and that of his son J. that Mrs. S.A.W. resisted participation in counselling of any sort. She took the view that it was the others, not her, that required counselling.
- [70] Mrs. S.A.W. contends that the last fifteen years of the marriage were characterized by constant physical abuse by Mr. K.R.W.. In her evidence she painted the picture of an abused woman who was passive, constantly seeking to "make things better", and terrified that Mr. K.R.W. would injure her or kill her if she told anyone of the abuse. She does not admit any fault for the difficulties that developed in her relationship with her husband and her children. Beginning in 1991, a series of deaths and her suspicions of "cover ups" placed a great strain on Mrs. S.A.W.. I am sure that those traumatic events combined with the estrangement from her children and the disintegration of her marriage greatly contributed to the worsening of her personality disorder.
- [71] I do not accept Dr. Lanius's conclusion that Mrs. S.A.W.'s "disorder is attributable to the violence suffered at the hands of Mr. K.R.W.". I am satisfied that his opinion stems from an uncritical acceptance of Mrs. S.A.W.'s version of the events of the marriage which I find substantially untrue. Her version of the events does not coincide with the evidence of the parties' children, Mr. Lloyd, Mr. K.R.W.'s mother, Mr. K.R.W., Constable Khamphoune, and Mrs. S.A.W.'s brother, all of whose evidence I accept.
- [72] In the past year, Mrs. S.A.W. has made significant strides in overcoming the effects of her personality disorder. Dr. Levin characterized her improvement since his examination of her one year ago as, "very, very impressive". He said that he believes this is because Mrs. S.A.W.'s disorder was never very severe. He said that a personality disorder is "fixable". He recommended psychotherapy. He told Mrs. S.A.W. that she was doing a great job on her recovery. I accept Dr. Levin's conclusion that Mrs. S.A.W. has improved dramatically in the last year.
- [73] I do not accept Dr. Lanius's "single traumatic incident" explanation for Mrs. S.A.W.'s disorder. The evidence satisfies me that her difficulties are of a long-standing nature and were aggravated by a complex series of tragedies, the failed relationships with her children and the dysfunctional continuation and eventual disintegration of her marriage.

Damages for spousal assault

- [74] Mr. K.R.W.'s assault of Mrs. S.A.W. in April of 1999 was savage and out of proportion to the behaviour that immediately preceded it. She was injured and, in her weakened psychological condition, terrified as a result.
- [75] Mr. K.R.W.'s counsel sought to raise the defence of provocation in final argument. It had not been pleaded. I refused her application to amend the pleadings to raise it at that time. It would seldom be appropriate to raise a defence at that stage of the trial when the opposing party is unrepresented.

[76] A number of cases have considered Tort actions for damages for assault in the context of family law proceedings: *Wandich v. Viele* (2002), 24 R.F.L. (5th) 427 (Ont. Sup. Ct. J.); *Megeval v. Megeval*, [1997] B.C.J. No. 2454 (Q.L.) (B.C.S.C.); *L.N.S. v. W.M.K.*, [1999] A.J. No. 723 (Q.L.) (Alta. Q.B.); *Surgeoner v. Surgeoner*, [1993] O.J. No. 2940 (Q.L.) (Ont. Ct.(Gen. Div.)); *Dhaliwal v. Dhaliwal*, [1997] O.J. No. 5964 (Q.L.)(Ont. Ct. (Gen. Div.)); *Pidduck v. Pidduck*, [1987] O.J. No. 1284 (Q.L.)(Ont. S.C.).

[77] In *Wandich v. Viele*, Mr. Justice Paisley concluded that Mr. Wandich had assaulted Ms. Viele during the course of their relationship. He described Ms. Viele's allegations as follows:

In support of her claim for damages, Ms. Viele testified that there had been from seven to nine incidents during their relationship in which she had been assaulted by Mr. Wandich; she described incidents in which Mr. Wandich had threatened her with a knife, choked her, caused her nose to bleed, punched her and poked her in the eye. She testified that during the incident which resulted in the criminal charge, Mr. Wandich had pushed, kicked and punched her, pulled her hair, threatened to poke her in the eye, broke a framed picture on her head and pushed her against the wall. He then picked up a bathroom plunger and said that he was going to hit and bloody her. She ran into the kitchen to call 911. He took the phone out of her hand, put his fingers towards her eye and said, "don't you call anybody", then he dialled 911 and complained he had been assaulted. When the police arrived, Mr. Wandich was charged and taken away in handcuffs.

The injuries sustained as a result of this assault consisted of bruising on the inside of her legs and on her arms and throat. (at paras. 81-82).

[78] After considering the awards in a number of other cases, Paisley J. awarded Ms. Viele \$5,000 in compensatory damages. One of the cases upon which he relied, *Valenti v. Valenti*, [1996] O.J. No. 522 (Q.L.) (Ont. Ct. (Gen. Div.)) dealt with a more serious assault. In *Valenti*, supra, the court awarded the sum of \$10,000 for general damages and a further \$2,500 as punitive damages. Mr. Justice Metivier described the circumstances in *Valenti* as follows:

On 2nd December, 1991, the husband became very abusive towards the wife. As a result, he became violent, punching his wife in the face and head area, and forcing her head into the walls of the hallway. It is also noted that she was kicked and forced to sit on the couch with instructions not to move.

The husband then forced his wife to the vehicle and as they drove, the accused struck his wife in the face as well as hitting her with the car phone. At one point she became terrified and attempted to leave the vehicle. At this point the accused assumed control of the truck and after driving around for a short period of time returned to the residence. (at para. 70)

[79] Mr. Justice Metivier described the injuries to Mrs. Valenti as a bruised and swollen face. Both eyes were swollen shut for a number of days. She also had a sore nose and a large bruise on the left lower back near her hip with swelling over a number of days. He stated that she suffered from symptoms of post traumatic stress disorder of a mild to moderate nature.

[80] In *Megeval v. Megeval*, Madam Justice Kirkpatrick dealt with an assault causing serious permanent injury to Ms. Megeval's right wrist. The injury caused Ms. Megeval prolonged serious disability. Kirkpatrick J. described the continuing nature of Ms. Megeval's disability as follows:

Mr. Kerr was doubtful that Mrs. Megeval could manage full time work given her demonstrated increased right arm/wrist/hand symptomology over eight hours of work testing. Given the beneficial effects of Dr. MacDonald's treatment, and considering Dr. Favero's reasonably optimistic prognosis, I conclude that Mr. Kerr's findings are excessively pessimistic, although there is no question that Mrs. Megeval, by reason of her injuries, has a permanent disability. (at para. 59)

[81] Madam Justice Kirkpatrick awarded a global figure for non-pecuniary and aggravated damages of \$45,000.

[82] In *L.N.S. v. W.M.K.*, Mr. Justice Perras of the Alberta Court of Queen's Bench described the circumstances of a domestic assault as follows:

The episodes documented and elaborated upon to some extent in viva voce evidence catalogue physical assaults consisting of pushing, hitting, kicking, choking, hair pulling, throwing to the floor, banging head on floor or on walls, while accompanied by threats (occasionally to kill) and highly abusive language that can only be described as vulgar, humiliating and demeaning.

[83] Ms. W.M.K. testified that she often had bruises and was very sore after these episodes. As well, she testified and noted in her diary that the physical and verbal abuse caused her depression and thoughts of suicide to escape the torment. She testified that she was so scared and afraid to tell anyone that even when she did receive counselling, she did not discuss the battering with the counsellor. Ms. W.M.K. testified that the assaults and verbal abuse affected her health and ability to do her work as a receptionist at the R.C.M.P. detachment in Camrose. Perras J. awarded general damages of \$15,000 and punitive damages of \$4,000. In doing so, he said:

Given the length of time over which the verbal and physical assaults transpired in this case and given the injuries, bruises, bumps, bangs, etc. and the mental anguish that Ms. W.M.K. suffered from 1978 to 1996, I am satisfied that the pain, suffering, distress and humiliation were of an aggravated nature and hence I award \$15,000 for general damages. (at para. 41)

[84] The actions of Mr. K.R.W. in this case provide the foundation for an award of damages for assault. The first incident was the throwing of a beer bottle that struck Mrs S.A.W. in the elbow, causing both a bruise and a laceration in 1994. The more serious assault in April of 1999 consisted of pulling her to a standing position by her hair, dragging her across a coffee table, pushing her in a bedroom, causing bruises to her legs and abdomen and tearing loose at least two pieces of her hair. This left her with a bloody, exposed scalp in at least two places. I am satisfied that the second assault aggravated her pre-existing personality disorder. It is difficult to determine the duration or magnitude of the aggravation because of

the multiplicity of other stresses in Mrs. S.A.W.'s life at the time.

- [85] Considering all the circumstances and the foregoing authorities, I award Mrs. S.A.W. the sum of \$10,000 for non-pecuniary general damages for the assaults committed on her by Mr. K.R.W..
- [86] Given the nature and turbulence of the marriage and the great difficulties caused by Mrs. S.A.W.'s behaviour, I am satisfied that this is not a case in which it would be appropriate to award punitive damages.

Division of Family Assets

- [87] A declaration that the parties had no reasonable prospect of reconciliation with each other was made on January 18, 2001. That constitutes the triggering event for the operation of s. 56 of the Family Relations Act, R.S.B.C. 1996, c. 128 (the "Act"). As of that date, the parties had an undivided one half interest in each of the family assets. There are no significant valuation problems.
- [88] Unfortunately, as is common in these cases, little evidentiary importance was accorded the date of the triggering event and it took place well after the parties had in fact established separate property regimes. The evidence concerning most of the assets related to the date of separation. There is a disconnection between the Act and the common sense expectations of parties with respect to the effect of changing from a regime of joint management of assets to separate management of assets. This is particularly so when there are significant delays between separation, the date of the s. 57 declaration (if there is one), and trial. Broad remedial powers are given to the Court in s. 66 of the Act to achieve fairness when, among other things, determination of family assets at the date of the triggering event does not accomplish the objectives of the Act. The relevant provisions of s. 66 in the circumstances before me are:

66 (1) In proceedings under this Part the Supreme Court may determine any matter respecting the ownership, right of possession or division of property under this Part, including the vesting of property under section 65 and may make orders which are necessary, reasonable or ancillary to give effect to the determination.

- (2) Without limiting subsection (1), the court may do one or more of the following in an order under this section:
- (a) declare the ownership or right to possession of property;
 - (c) order a spouse to pay compensation to the other spouse if property has been disposed of, or for the purpose of adjusting the division;

- [89] The principles to be applied when valuing assets were authoritatively stated in *Blackett v. Blackett* (1989), 22 R.F.L. (3d) 337 (B.C.C.A.). *Blackett* confirmed that family assets are to be valued at the date of trial unless there is a reason to depart from that rule.

[90] Compensation may be ordered when a potential family asset has been disposed of before the triggering event. Guidelines for compensation orders were set forth in *Newson v. Newson* (1986), 2 R.F.L. (3d) 137 (B.C.C.A.) at pp. 155-56:

- (1) Where a spouse has disposed of or spent "potential" family assets shortly before the end of a marriage or after separation, a compensation order may be made in respect of such disposal or expenditure.
- (2) Compensation orders are not made in respect of every disposal or expenditure. There must be proof of "unfairness" having regard to the factors enumerated in s. 51 [now s. 65] of the Act. For example, a disposal or expenditure that deprived the other spouse of a reasonable expectation that on the happening of a triggering event the "potential" family asset would be available for division, may well be "unfair".
- (3) Depreciation or appreciation in value of "potential" family assets, resulting from market forces between the date of separation and the triggering event, is unlikely to give rise to "unfairness".

The Assets

[91] The following assets were owned by the parties at the time of separation:

1. The matrimonial home. The appraisals performed by Colliers International Realty Advisors Inc. provide the best evidence of the value of the home. The value of the home was estimated to be \$390,000 as at May 24, 1999. The second appraisal report estimated its value at \$436,000 on June 17, 2001. An offer was received from a prospective purchaser on March 26, 2002 for \$430,000. Mrs. S.A.W. lived in the home after separation. She maintained the home. The value of the home for the purposes of property division is \$430,000. No valuation issues arise with respect to the matrimonial home. Mrs. S.A.W. is to pay Mr. K.R.W. the sum of \$158,172 for his equity in the home. That calculation is based on the value of \$430,000, less the outstanding mortgage of \$93,038, the outstanding taxes of \$4,300 and the real estate commission of \$16,318.
2. Mr. K.R.W. has RRSPs that were worth \$96,252 in January, 2003. That will be their value at trial.
3. Mrs. S.A.W. has RRSPs. Some of them were purchased after separation but before the triggering event from joint funds. I estimate that the amount that were purchased in this way were \$6,181.76, although the evidence is not as clear as I would wish. Mrs. S.A.W. was unwilling to participate fully in the disclosure process despite being ordered repeatedly to do so. I value Mrs. S.A.W.'s RRSPs at the date of trial at \$105,924. That does not include an RRSP that she purchased with family funds for \$8,370 in March of 1999 and redeemed in 2000 for \$8,554. Mrs. S.A.W. is to pay Mr. K.R.W. compensation of \$4,277 with respect to that RRSP. Mrs. S.A.W. is to pay Mr. K.R.W. an additional amount of \$4,836 to equalize the values of their RRSPs.

4. The family bank account had a balance of \$16,163.52 at the time of separation. Mrs. S.A.W. subsequently used those funds. She used \$6,181.76 of the funds to purchase RRSPs and \$3,235 to retire a family debt. In order to achieve fairness, the bank account should be valued at its balance at separation less the \$6,181.76 that found its way into Mrs. S.A.W.'s RRSPs and the repayment of the family debt in the amount of \$3,235. This results in a bank account value of \$6,746.76. Mr. K.R.W. left the family bank account in Mrs. S.A.W.'s hands at separation. I am satisfied that he had no reasonable expectation that those funds would be in existence at the time of the triggering event. No compensation order will be made in that regard.
5. At separation, the parties owned two vehicles; a 1991 Ford Explorer and a 1985 Ford Thunderbird. Mrs. S.A.W. has had the Ford Explorer since the beginning of July, 1999, when she took it from Mr. K.R.W.'s possession. She left him the Thunderbird. He returned the Thunderbird at the end of December, 1999. The evidence concerning the value of the vehicles is unsatisfactory. However, doing the best I can with the evidence, which consists of the oral evidence of the parties and their property and financial statements, and taking comfort from *Newham v. Newham* (1993), 50 R.F.L. (3d) 49 (B.C.C.A.) which sanctions a relaxation of the strict rules of evidence in these circumstances, I value the Ford Explorer at \$7,000 and the Thunderbird at \$1,250 at the time of trial. Mrs. S.A.W. will compensate Mr. K.R.W. in the amount of \$4,125 with respect to the vehicles. From that she is entitled to deduct \$813 because she paid the insurance premiums on both vehicles after separation. For eight months of that time one of the vehicles was in Mr. K.R.W.'s possession. Her net obligation to Mr. K.R.W. is \$3,312.
6. Mr. K.R.W. purchased a 2000 Volkswagen Jetta automobile when Mrs. S.A.W. took the Ford Explorer. Mrs. S.A.W. has had nothing to do with that vehicle. It is not a family asset.
7. The parties own two time shares in a vacation property in the Okanagan for which they paid \$8,000 some years ago. They have made use of them. Mrs. S.A.W. testified that one of the time shares has been lost. She provided no proof of this although the documents pertaining to the time shares were in her possession. Doing the best I can with unsatisfactory evidence of valuation, I value the time shares at \$4,000. Mrs. S.A.W. has made the maintenance payments on them since separation. That asset will become hers. Mr. K.R.W. is to sign all documents required to transfer his interest in the time shares to Mrs. S.A.W.. I make no compensation order with respect to this asset.
8. Mr. K.R.W.'s company, T.[] Inc., was established after separation. It is simply a vehicle through which he carries on his work as a log broker. It is not a family asset.
9. I assign a value of \$15,000 to the household furnishings and effects. Mrs. S.A.W. has retained almost all of these. She is to compensate Mr. K.R.W. in the amount of \$7,500. Mr. K.R.W. identified a number of items which he wishes to receive at tab 11 of Exhibit 6 at trial. If Mrs. S.A.W. provides Mr. K.R.W. with the 5 paintings shown in the photographs at that tab, and commented upon in the evidence at trial, all carpentry tools, the wall clock shown in the

photograph at tab 11, the radial arm saw, the wagon wheel, the cast iron table with two chairs, the wooden bookcase and the old green washstand within 14 days of the date of this order, the compensation that she must pay with respect to the furnishings and effects is to be reduced to \$5,000. Mrs. S.A.W. is to make the arrangements to transfer the items through Mr. K.R.W.'s counsel. Those arrangements are to be made in writing.

10. On September 26, 2001, Mr. K.R.W. was reassessed with respect to his 1999 and 2000 income tax in the amount of \$17,576.36. That arose from Mrs. S.A.W.'s refusal to file income tax returns declaring the support she received as income. On November 6, 2001, Master Nitikman ordered that Mrs. S.A.W. file tax returns declaring the spousal support ordered by the Master. Master Nitikman ordered that Mr. K.R.W. compensate Mrs. S.A.W. for any tax she had to pay as a result in order that the parties would not lose the considerable tax benefit that would accrue. Mrs. S.A.W. did not file returns until the resumption of trial in February, 2003, and in the returns she filed at that time did not declare the spousal support as income. She has refused to sign a letter directed to Canada Customs and Revenue acknowledging receipt of spousal support under the order of Master Nitikman dated November 6, 2001.
- [92] Mrs. S.A.W. has simply refused to cooperate in the attempt by the Court and Mr. K.R.W. and his counsel to pursue a course of action that would be beneficial to both parties.
- [93] Mr. K.R.W. received a tax refund for 1999 of \$559.89. Had Mrs. S.A.W. filed her returns claiming the support paid he would have received a refund of \$10,884.07. He was reassessed \$17,361.02 in 2000. Had Mrs. S.A.W. declared the 2000 support he would have received a further refund of \$6,408.90.
- [94] The net result of Mrs. S.A.W.'s actions is that the parties have lost the sum of \$21,236.30 less any taxes that Mrs. S.A.W. would have to pay. This resulting amount cannot be accurately calculated until Mrs. S.A.W. files her tax returns properly. The amount would be substantial.
- [95] I find as a fact that Mrs. S.A.W. has received spousal support payments from Mr. K.R.W. of \$23,210.90 in 1999 and \$20,500 in 2000. The order flowing from these reasons will include a declaration that Mr. K.R.W. paid Mrs. S.A.W. the sum of \$23,210 by way of periodic spousal support in 1999 and \$20,500 by way of periodic spousal support in 2000 pursuant to Master Nitikman's order of November 6, 2001. If Mrs. S.A.W. provides a properly sworn written acknowledgement of payment of these monies to Mr. K.R.W.'s solicitor within 14 days of these reasons for judgment, Mr. K.R.W. remains obligated to compensate Mrs. S.A.W. for the tax she has to pay pursuant to the terms of Master Nitikman's order. If she does not provide a sworn written acknowledgement, the order of Master Nitikman will be varied to fix Mr. K.R.W.'s obligation to compensate Mrs. S.A.W. for any tax she may have to pay as a result of the receipt by her of spousal support in 1999 and 2000 at \$7,430. That is my rough estimate of the minimum tax she would have had to pay in those years. If Mrs. S.A.W. fails to cooperate, Mr. K.R.W. will simply have to do the best he can with these reasons for judgment and consequent order to obtain a reduced assessment from Canada Customs and Revenue. Mr. K.R.W. is not required to honour his obligation to compensate Mrs. S.A.W. under Master

Nitikman's order or my variation of it until he has received a refund with respect to the taxes he paid on the support amounts for both 1999 and 2000.

11. Mr. K.R.W. has maintained a life insurance policy on his life with Mrs. S.A.W. as the beneficiary. The amount of the policy is \$50,000. It has a cash surrender value of \$9,455. Mrs. S.A.W. made the monthly payments of \$40.67 per month after separation until May of 2002, part way through trial, when Mr. K.R.W. took over the payments again and changed the beneficiary. The asset is a family asset and has a value of \$9,455. Mr. K.R.W. is to retain the policy and is to compensate Mrs. S.A.W. in the amount of \$4,728.
12. The tax refund in the amount of \$559.89 received by Mr. K.R.W. with respect to the 1999 tax year is a family asset, as was the tax refund cheque cashed by Mrs. S.A.W. in the amount of \$5,456.72. Mr. K.R.W. has received the benefit of both those assets. He is to compensate Mrs. S.A.W. in the amount of \$3,008.31.
13. Mr. K.R.W. has two frequent flyer plans, one with Amex and one with Visa. In view of my disposition of the time shares, he need not account to Mrs. S.A.W. for any portion of the plans.
14. Mr. K.R.W. retained Remax, a realty company, to list, show and sell the matrimonial home. Mrs. S.A.W. obstructed the showing of the home. It required the police and locksmiths to gain entry even in the face of a court order requiring her to cooperate. On two occasions, Mrs. S.A.W. had to be handcuffed and led from the house. Mr. Lloyd, the realtor handling the matter, displayed exemplary diligence, tact, and perseverance in showing and obtaining an offer to purchase in these circumstances. When the matter came before the court, Mrs. S.A.W. asked, for the first time, to be permitted to purchase the home for the amount of the offer. I granted her request on condition that she place \$16,317 in court to secure any claim for commission by the realtor. After the sale to Mrs. S.A.W., the realty company threatened a lawsuit against Mr. K.R.W.. He settled the claim for a promise to pay \$5,000. He secured that promise with a \$5,000 promissory note. Mrs. S.A.W. is to compensate Mr. K.R.W. in the amount of \$5,000 for the settlement of that claim. The \$16,317 need no longer be retained to secure the commission. I will deal with its distribution and the distribution of the further \$158,000 held in court to stand in place of Mr. K.R.W.'s equity in the home at the conclusion of these reasons.

Reapportionment

Section 65 of the Family Relations Act provides in part:

65. If the provisions for division of property between spouses under section 56 would be unfair having regard to
 - (a) the duration of the marriage,
 - (b) the duration of the period during which the parties have lived separate and apart,

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

the Supreme Court, on application, may order that the property covered by section 56 be divided into shares fixed by the court.

[96] In the circumstances of this case, only sub-paragraphs (e) and (f) are relevant.

[97] The Act embodies a presumption of equal division. That presumption is only displaced if an equal division would be unfair because of one or more of the considerations set out in the section.

[98] Support and division of property are to be considered separately.

[99] Mrs. S.A.W. has received support payments of \$101,211 from Mr. K.R.W. since separation. She had the use of the family home without cost except for normal maintenance from separation in May 1999, to May 2002. She has borrowed significant sums of money and contracted extensive miscellaneous debts since separation. I will deal in more detail with those debts later in these reasons for judgment.

[100] Mrs. S.A.W. has not taken any substantial steps toward operating her home as a bed-and-breakfast as was her plan when she purchased it. In retrospect, Mrs. S.A.W.'s decision to purchase the home may have been ill-advised. Since separation, Mrs. S.A.W. has proved her inability to manage her finances. There is no evidence to indicate that reapportionment of the family assets in Mrs. S.A.W.'s favour will enhance her ability to become or remain economically self sufficient. Mrs. S.A.W.'s financial security in the future, as it was in the past, will be dependent on Mr. K.R.W.'s earnings. Her ability to generate income from other sources is limited. There is no reason to believe that will change in the foreseeable future.

Spousal Support

[101] Madam Justice McLachlin (now C.J.C.) began her reasons for judgment in *Bracklow v. Bracklow*, [1993] 1 S.C.R. 420 by posing the following questions:

What duty does a healthy spouse owe a sick one when the marriage collapses? It is now well-settled law that spouses must compensate each other for foregone careers and missed opportunities during the marriage upon the breakdown of their union. But what happens when a divorce - through no consequence of sacrifices, but simply through economic hardship - leaves one former spouse self-sufficient and the other, perhaps due to the onset of a debilitating illness, incapable of self-support? Must the healthy spouse continue to support the sick spouse? Or can

he or she move on, free of obligation? (at para. 1)

[102] Those questions define the spousal support issue in this case. The parties' union lasted 33 years until their final separation in May of 1999. For much of that time it was a productive partnership in which both parties participated fully. Mr. K.R.W. was the dominant income earner. Mrs. S.A.W. devoted her considerable energies and acumen to the management of the household and the care of the parties' two children. The latter half of the marriage became increasingly dominated by the onset and progression of the personality disorder which is now the central governing fact of Mrs. S.A.W.'s life.

[103] The psychiatric evaluation conducted by Dr. Levin, upon which I rely, was conducted on May 31, 2001. When Dr. Levin testified, he was able to observe Mrs. S.A.W.'s behaviour as she represented herself in the proceedings. He said that it was his view that her ability to function had improved since his examination of her. Because the trial exceeded the original time estimate, it has extended over a period of almost one year. During that time, Mrs. S.A.W. stopped taking medication (Zoloft) that she had been taking for some time. It is my observation that her condition at the end of trial was unchanged or had deteriorated slightly from the time Dr. Levin saw her early in the trial.

[104] Dr. Levin said that Mrs. S.A.W.'s ability to function may be improved by treatment. Mrs. S.A.W. manages her own medical condition and treatment. It is my view that her perceived need to demonstrate that her condition is a post-traumatic stress disorder resulting from a long history of abuse at the hands of her husband interferes with her ability to benefit from treatment for her disorder. The conclusion of this litigation may be a necessary precondition to proper treatment. Even then, I am not confident that Mrs. S.A.W. will embark on a treatment regime that will permit her to achieve a significant improvement in her level of functioning.

[105] At separation the parties were financially stable. They had considerable equity in their home and about \$200,000 in RRSPs. Approximately two months before separation, they borrowed \$110,000 against a mortgage on their home in order to retire accumulated debts. They retired all of their debts except for two RRSPs in Mrs. S.A.W.'s name upon which they were making monthly direct withdrawal payments and a debt of \$3,250 arising from home renovations which was also being paid by direct monthly withdrawals.

[106] \$8,370 of the mortgage proceeds were used to purchase another RRSP in Mrs. S.A.W.'s name.

[107] At the time of separation there was a balance of \$16,163.52 in the family bank account. Mrs. S.A.W. withdrew \$10,000 from the family account on May 20, 1999, leaving a balance of \$4,614.52. She attempted to maintain that all this money was lent to friends. She later said that only \$5,000 was lent to friends. She became upset and defensive when it was pointed out to her that she had indicated on a later property and financial statement that the debt owing by the friends was only \$1,000.

- [108] On or about December 22, 1999, an income tax refund cheque in the approximate amount of \$5,400 arrived at the family home. It was made out to Mr. K.R.W.. Mrs. S.A.W. signed his name to it and cashed it. She immediately withdrew the funds and paid them to her lawyer. At trial, she attempted to maintain that this was done with the knowledge of Mr. K.R.W.. I do not believe that. She denied forging Mr. K.R.W.'s signature on the refund cheque. She said that she wrote his address on the back and just wrote his name above it because she did not think the cheque would be cashed if she did not.
- [109] Mr. K.R.W. later attempted to find out what had happened to the cheque. In the course of his dealings with Canada Customs and Revenue he signed a statutory declaration that he had not cashed the cheque. The funds were recovered by Canada Customs and Revenue from Mrs. S.A.W.'s bank account and a replacement cheque issued to Mr. K.R.W..
- [110] Mr. K.R.W. continued to have his paycheques deposited to the family account until June 8, 1999. After that, he deposited \$1,000 every two weeks until an order was made with respect to spousal maintenance. He has made all payments required under that order. The interim spousal support order requires him to pay \$2,900 per month from May 1, 1999, to the end of December, 1999; \$1,708 per month for all of 2000; \$2,500 per month for the first 11 months of 2001; and \$2,000 per month commencing December 1, 2001 until further order.
- [111] Under the interim spousal support order Mr. K.R.W. is obligated to pay Mrs. S.A.W. the amounts shown in column 1 of the table; the amounts he has paid are shown in column 2.

Year

Support

Ordered

Support

Paid

1999

\$23, 200

\$23,211

2000

20,496

20,500

2001

29,500

31,500

2002

24,000

24,000

TOTALS

\$97,196

\$99,211

[112] Mr. K.R.W. made the initial payments, from May 1, 1999 to June 8, 1999, by depositing his paycheques in the family bank account. After separation on May 5, 1999, Mr. K.R.W. made no further use of the family bank account except to deposit payments for Mrs. S.A.W.'s support. She exercised control and management of the account.

Mrs. S.A.W.'s Finances

[113] At separation there was a balance of \$16,163.52 in the family bank account. Mrs. S.A.W. had the benefit of those monies. She also redeemed an RRSP that was purchased for \$8,370 shortly before separation.

[114] Mrs. S.A.W. purchased Mr. K.R.W.'s interest in the family home in May, 2002. She paid \$158,000 into court to stand in place of Mr. K.R.W.'s interest and a further \$16,317 to secure any claim by the realtor who had listed and obtained a binding offer to purchase subject only to court approval. Mrs. S.A.W. did not indicate a willingness to purchase the home until the sale was about to be approved. As I have mentioned elsewhere in these reasons, Mrs. S.A.W. had gone to exceptional lengths to frustrate any sale of the home.

[115] Mrs. S.A.W. borrowed \$282,000 by way of a first and second mortgage to purchase Mr. K.R.W.'s interest and secure the real estate commission.

[116] A few weeks later, Mrs. S.A.W. negotiated two other mortgages to replace the financing she obtained at the time she purchased Mr. K.R.W.'s interest. She did so because she could improve the terms upon which she had borrowed the funds. At the time she refinanced she increased the total amount borrowed under the mortgages to \$354,400 (an increase of \$72,400).

[117] Mrs. S.A.W. has fallen deeply into debt. Her debts as of February 2003 are:

Credit Union -- Line of Credit

\$ 20,000

Royal Bank -- Line of Credit

10,000

TD -- Line of Credit

20,000

TD -- Credit Card

7,000

Royal Bank -- Credit Card

5,000

Scotia Bank -- Credit Card

9,000

Dr. Lanius--Counselling(approx.)

4,000

Dentist

600

Appraisal Company

400

The Brick -- furniture

2,063

Dairyland

120

Debt to a friend

600

Debt to auto repair company

600

Unpaid medical premiums

378

Lawyer's account

25,000

TOTAL

\$104,761

[118] Since separation Mrs. S.A.W. has spent, or received in monies worth, the following amounts:

Support payments

\$101,211

Bank account and RRSP

24,534

Additional borrowing against home

72,400

Debt and other borrowing

104,761

TOTAL

\$302,906

Mr. K.R.W.'s earnings.

[119] Mr. K.R.W. is a log broker. He was employed by a forest products firm at the time of separation. He is now self-employed. He carries on business through a company which he owns and of which he is the sole employee.

[120] He earned the following gross amounts since separation:

1999

(May 1 to December 31) (estimate)

\$ 72,466

2000

(Severance pay plus commissions)

114,214

2001

61,281

2002

55,199

2003

(estimate to February 28)

9,500

TOTAL

\$312,660

[121] The forest industry in which Mr. K.R.W. is employed has suffered a serious setback because of duties imposed on the import to the United States of Canadian softwood lumber. In addition, and perhaps for reasons related to the trade dispute, the industry has undergone a significant consolidation. Both of these factors have had adverse effects on Mr. K.R.W.'s earnings. I am satisfied that these events are responsible for the declining trend in his earnings since separation. In my view, there is no reason to expect that Mr. K.R.W.'s earnings will increase markedly in the foreseeable future.

Quantum of Spousal Support

[122] In Bracklow, supra, McLachlin J. referred the decision with respect to the quantum of support back to the trial judge with the following comments:

My only comment on the issue is to reiterate that all of the relevant statutory factors, including the length of the marital relationship and the relative independence of the parties throughout the marital relationship, must be considered together with the amount of support Mr. Bracklow has already paid to Mrs. Bracklow. (at para. 61)

[123] The statutory provisions governing support in the circumstances before me are to be found in the Divorce Act, R.S.C. 1985, c. 3. Section 15.2 (4) of the Divorce Act reads:

- (4) In making an order [for spousal support] the court shall take into consideration the condition, means, needs and other circumstances of each spouse, including
 - (a) the length of time the spouses cohabited;
 - (b) the functions performed by each spouse during cohabitation; and
 - (c) any order, agreement or arrangement relating to the support of either spouse.

[124] This was a 33-year marriage. The parties married young and Mrs. S.A.W.'s role was that of a traditional housewife. She ran the home. The deterioration of the marriage and in Mrs. S.A.W.'s psychological condition took place over a long time. Mrs. S.A.W.'s behaviour became increasingly hostile, attacking and vindictive. She has alienated her children, her brother and her husband. She attributes this condition to the assaultive behaviour of Mr. K.R.W.. I am satisfied that is not the cause. I accept Dr. Levin's view that Mrs. S.A.W.'s difficulties are of long standing, that she has not functioned adequately for more than ten years, and that her condition is complicated by her alcohol abuse.

[125] Although Mrs. S.A.W.'s personality disorder had a profound influence on the breakup of the marriage, it is her tragic ongoing disorder upon which her entitlement to spousal support rests. The misconduct stemming from her condition which had an effect on the disintegration of the marriage is statutorily excluded as a consideration (Divorce Act s. 15.2 (5)). Mrs. S.A.W.'s personality disorder is beyond her control. The behaviour that is a consequence of it places huge obstacles before her as she now struggles to make a new life

for herself shorn of the supports that she enjoyed during the long marriage.

- [126] Mr. K.R.W. has been unstinting in the performance of the support obligations placed upon him by the court since separation. Mrs. S.A.W. has demonstrated an inability to prudently manage her finances since separation even though that was her job during the marriage. For most of the history of the marriage she performed that job in an exemplary fashion.
- [127] Since the parties separated, Mr. K.R.W.'s earning ability has declined due to factors beyond his control. The reduced level of earning is likely to be permanent. There is no present indication that conditions in the forest industry will return to the state that permitted the high level of earnings of a few years ago. Mr. K.R.W. does not have other skills that would lead quickly to the level of earnings that he enjoyed in the last part of the marriage.
- [128] Mrs. S.A.W. has formed a relationship with a man she describes as her "bodyguard" whose services she says she requires to protect her from Mr. K.R.W.. Her bodyguard, Mr. Fenton, describes himself as suffering from "a communicable deadly disease". He has lived with Mrs. S.A.W. since June 2000. He said that he would be willing to pay rent for living accommodation in her home. She estimated that he now contributes \$600-\$1,000 per month to the operation of the home.
- [129] Mrs. S.A.W. plans to carry on a bed-and-breakfast business in her home. The home is suited to that purpose. However, little progress has been made toward that goal during the nine months since she acquired the home. In the meantime, her debts have mounted alarmingly.
- [130] Mr. K.R.W. urges that support for Mrs. S.A.W. be ordered in the form of a lump sum rather than by periodic payments.
- [131] I am satisfied that the provisions made for Mrs. S.A.W.'s support in the interim spousal support order of Master Nitikman were adequate in view of the balance left in the family bank account, the overpayment of support by Mr. K.R.W., and Mrs. S.A.W.'s continued residence in the family home until her purchase of it in May 2002. Mrs. S.A.W.'s current financial condition results from her resolute refusal to accept the financial consequences of the separation, not from an inadequate level of interim support.
- [132] Mrs. S.A.W.'s needs are great. She has few resources with which to meet them. Mr. K.R.W.'s income is substantially reduced from that level that the parties' enjoyed in the latter stage of their marriage. Mrs. S.A.W. is ill-equipped to alter her expenditures to accommodate the new financial realities. She should have done so long ago. On the basis of Mrs. S.A.W.'s spending pattern of the last three and one-half years, Mr. K.R.W. does not earn enough to cover Mrs. S.A.W.'s expenditures even if all his income were devoted to that purpose.
- [133] I am satisfied that a lump sum award of spousal support would likely leave Mrs. S.A.W. dependent on the state within a short period of time.

[134] Mrs. S.A.W.'s disability was not caused by the marriage or its breakup. Mrs. S.A.W. suffers from a disability caused by her long-standing personality disorder. It is that disability, not the fact that she was not employed outside the home during the marriage, that limits her ability to attain self-sufficiency.

[135] Mr. K.R.W.'s counsel provided calculations, which I accept, detailing the effect of spousal maintenance on the incomes of both parties at various levels of spousal support and on various assumptions about and about Mr. K.R.W.'s income and Mrs. S.A.W.'s other income

Assumed Monthly Income

Monthly Spousal Support

Net monthly disposable income

% of net disposable income

Mr. K.R.W.: \$5,000

\$2,589

57.6

Mrs. S.A.W.: \$750

\$1,500

\$1,905

42.4

Mr. K.R.W.: \$5,000

\$2,589

52.2

Mrs. S.A.W.: \$1,500

\$1,500

\$2,372

47.8

[136] I anticipate that Mr. K.R.W.'s income will be in the range of \$50,000 to \$70,000 for the purposes of my award of spousal support. I assess Mrs. S.A.W.'s capacity to earn income at \$750 to \$1,500 per month.

[137] I fix spousal support at \$1,500 per month. That amount is to be paid by Mr. K.R.W. on the 1st of each month commencing on May 1, 2003. Until that date, support is to continue at the amounts set out in the interim order of Master Nitikman.

Costs

[138] The pre-trial proceedings in this matter were protracted and difficult. The trial has occupied four weeks. Mrs. S.A.W. has resolutely refused to cooperate. She has disobeyed orders to produce documents, to file documents, and to permit the showing of the home. She has been regularly late for court. She has been unable or unwilling to restrict her extravagant use of the court's time. She has been admonished on several occasions to consider the costs of delay and obstruction. Master Nitikman ordered that she pay the cost of the application to compel her to cooperate in the showing of the home as special costs. She has maintained throughout, without justification, that she is a victim and she is going to stand up for her rights.

[139] Mr. K.R.W.'s counsel informed the court that Mr. K.R.W.'s legal fees stood at approximately \$82,000 before the commencement of the last stage of this trial which took seven days. That does not include the court hearing day fees of an additional \$9,880.

[140] In *Gold v. Gold* (1994), 49 R.F.L. (3d) 56 (B.C.C.A.), McEachern C.J.B.C. set out the general principles applying to awards of costs in matrimonial proceedings as follows:

It is my further view that the rule which should govern the award of costs in matrimonial proceedings should be the same as in other civil litigation, namely, that costs should follow the event unless the court otherwise orders, as specified in Rule 57: *Meneghetti v. Meneghetti* (1979), 17 B.C.L.R. 200 (B.C.S.C.) at p. 201.

The question, then, is: when should the Court order otherwise? is a matter of discretion to be exercised judicially by the trial judge, as directed by the Rules of Court. To lay down any strict guidelines or even to attempt to give exhaustive examples is not, I think, helpful because the facts and issues in each family law case vary so greatly. Factors such as hardship, earning capacity, the purpose of the particular award, the conduct of the parties in the litigation, and the importance of not upsetting the balance achieved by the award itself are all matters which a trial judge, quite properly, may be asked to take into account. (at paras. 19-20).

[141] It is likely that Mrs. S.A.W. would be faced with a bill of costs, after taxation, well in excess of \$40,000 (not including \$4,000 of court hearing fees that were paid from funds held in court during the course of trial). Mr. K.R.W.'s counsel has asked the court to fix costs in a specific amount to avoid taxation.

[142] Mr. K.R.W. was the successful litigant. Mrs. S.A.W. is to pay him the sum of \$25,000 in costs. He admitted the assault that gave rise to the award of damages. His evidence about the nature of the events that underlie Mrs. S.A.W.'s claims was accepted. The evidence of Dr. Levin upon whom he relied was accepted over that of Dr. Lanius. Conduct such as Mrs. S.A.W.'s conduct in this case has significant consequences for the other party to the litigation and must be deterred. Mr. K.R.W. is to bear all the cost of the hearing day fees. To accomplish that Mr. K.R.W. should account to Mrs. S.A.W. for the \$2,000 that was paid from funds in court before their division. The \$25,000 award of costs is my best estimate of a sum

that will recognize Mr. K.R.W.'s success in the litigation and the additional cost that he has borne because of Mrs. S.A.W.'s conduct in the litigation without disturbing the overall result achieved by other aspects of this judgment.

Result

[143] Mr. K.R.W. is to pay to Mrs. S.A.W.:

With respect to the assaults

\$ 10,000.00

Life insurance policy

4,728.00

Tax refunds

3,008.31

Adjustment for court fees

2,000.00

TOTAL

\$ 19,736.31

[144] Mrs. S.A.W. is to pay to Mr. K.R.W.:

March 1999 RRSP

\$ 4,277.00

To equalize RRSPs

4,836.00

Mr. K.R.W.'s interest in the home

158,172.00

The two motor vehicles

3,312.00

Household Furnishings**

7,500.00

Commission on sale of home

5,000.00

TOTAL

\$183,097.00

** This may be reduced to \$5,000 if Mrs. S.A.W. provides the possessions enumerated by this order to Mr. K.R.W. within the time limited.

[145] Mrs. S.A.W. is to pay Mr. K.R.W. \$163,360.69 (or \$160,860.69 if she delivers the possessions to him). This is to be accomplished by transfer of the \$158,000 held in court to stand in place of the equity in the home to Mr. K.R.W.. The balance of \$2,860.79 (or \$360.79) is to be paid to Mr. K.R.W. from what remains of the \$16,317 placed in court to secure the real estate commission.

[146] Any balance then left in court, including that attributable to interest, will be to the credit of both of the parties after consideration of the above compensation orders. I will refer to that as the "Resulting Balance".

[147] The Resulting Balance is to be divided into two shares. One is Mr. K.R.W.'s share. The other is Mrs. S.A.W.'s share before the accounting for costs. Mrs. S.A.W.'s share is to be applied against her obligation to pay \$25,000 toward Mr. K.R.W.'s costs. There will be an unpaid balance. Mrs. S.A.W. is to pay Mr. K.R.W. the unpaid balance by transferring to him, by way of spousal rollover, an amount of her RRSPs equal to the unpaid balance. The parties have liberty to apply if there is difficulty in calculating the amount or accomplishing the transfer.

[148] Mr. K.R.W. is to pay spousal support in the amount of \$1,500 per month to Mrs. S.A.W. commencing April 1, 2003. He is to account to her for the additional taxes she has to pay in accordance with these reasons.

[149] I urge Mrs. S.A.W. to seek legal advice as soon as possible after receiving a copy of these reasons in order that she may fully understand the obligations that they place on her.

[150] The parties have liberty to apply with respect to any matter relating to the order that flows from these reasons.

[151] There will be an order that the parties be divorced from one another in the usual terms.

[152] Both parties are restrained from contacting, molesting, or harassing the other directly or indirectly except for contact, in writing only, between Mrs. S.A.W. and Ms. Henshaw, counsel for Mr. K.R.W., for the purpose of complying with the order flowing from these reasons.

[153] I do not expect that there will be a need for further proceedings between the parties. If there is, any further applications are to be brought before me.

[154] The plaintiff has liberty to enter the judgment flowing from these reasons at the Vancouver Registry.

"B.M. Preston, J."

The Honourable Mr. Justice B.M. Preston

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Prepared on 28 October 2026 · Esheria