
CANADA / JUDGMENT

L.R.A.C. v. S.M.L-C.

2012 BCSC 1341

COURT

Supreme Court of British Columbia

DECIDED

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IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

L.R.A.C. v. S.M.L-C.,

2012 BCSC 1341

Date: 20120904

Docket: 21936

Registry: Cranbrook

Between:

L.R.A.C.

Claimant

And

S.M.L-C.

Respondent

Before: The Honourable Mr. Justice Abrioux

Oral Reasons for Judgment

Counsel for the Claimant:

M. Fuchs, Q.C.

Counsel for the Respondent:

S. Smaill, Q.C.

Place and Date of Trial:

Cranbrook, B.C.

August 14-17, 2012,

August 23 & 24, 2012

Place and Date of Judgment:

Vancouver, B.C.

September 4, 2012

I INTRODUCTION

- [1] The parties began to live together in a marriage-like relationship in the spring of 1999. Their son (R.) was born February 20, 2000. They were married on August 11, 2001 in Morinville, Alberta. Their daughter (P.) was born September 28, 2002, with their second son (A.) born December 10, 2006. They separated in October 2010. At the time of separation R. was 10 years old, with P. and A. being 8 and 3 years old respectively. At the time of trial, R. was 12, P. almost 10 with A. being 5 years old. In September of 2012 R. will commence Grade 7, P. Grade 5 and A. grade 1.
- [2] The parties seek an order of divorce. The issues in this proceeding are:
- (a) who should have primary care of the children;
 - (b) child support and s. 7(1)(d) extraordinary expenses;
 - (c) division of assets, specifically the former matrimonial home (the "home") and apportionment of family debt.
- [3] This matter was heard in Cranbrook over six days in August 2012. A decision as to which of the parties would have primary care of the children would determine whether they resided in Kimberley, B.C. where the two eldest children have been since 2005 and where A. was born, or Edmonton, A.B. where their mother, the Respondent, moved following the separation in the fall of 2010.
- [4] The focus of the trial related to which of the parties would have the primary care of the children.

II BACKGROUND

- [5] The claimant father (the "Claimant") is 34 years old. The respondent mother (the "Respondent") is 36 years old.
- [6] The Claimant was born in Nelson, B.C. His father ("Mr. C.") made his career with the R.C.M.P. The C. family lived both in British Columbia, the Northwest Territories and Alberta.

- [7] The Claimant's family moved to Kimberley in 1985 when he was 7 years old. They stayed there until 1992 when Mr. C. took other R.C.M.P. postings until he retired in 1994. The Claimant's mother, Mrs. C. worked at the Kimberley hospital as a nurse's aide. She later was employed as a facilitator for a rural intervention program which dealt with at risk students in grades 7 & 8. The Claimant's father retired from the R.C.M.P. when the Claimant was 16 years old. The family was living in Edmonton at the time. Mr. C. then became a parole officer with Corrections Canada.
- [8] The Claimant commenced his electrical apprenticeship at the Northern Alberta Institute of Technology in 1996. He has been employed as a journeyman electrician for approximately 12 years.
- [9] The Respondent was born in St. Albert, Alberta, a suburb of Edmonton. She grew up in Morinville which is also a suburb of that city. Her parents, Mr. & Mrs. L. continue to live in Morinville. They have been divorced for many years but have maintained a good relationship. They live close to each other. Mr. L. has been in a common-law relationship with Ms. V. for many years. The Respondent has a close relationship with both her parents and her father's common-law spouse. The Respondent has an extended family in the Edmonton area, including her brother, sister-in-law, nephews and nieces. There is also Ms. V.'s family, including her grandchildren, who reside in the vicinity.
- [10] The parties met in 1998 when they both lived in the Edmonton area. The Respondent was working at a financial firm. They commenced cohabitation in the spring of 1999. When R. was born the following year the couple moved into Mrs. L.'s home. That is because the Claimant's work as an electrician often had him working away from Edmonton for a few weeks at a time.
- [11] The Claimant completed his apprenticeship towards the end of 2000 when R. was still an infant. He obtained his journeyman's ticket in January of 2001. The couple first lived in Medicine Hat, and then in Edmonton. They then moved to Fort Saskatchewan where they built their first home. They lived with Mrs. L. for part of this latter period. The Claimant continued to be employed full time as an electrician, but was no longer required to travel for his work. The Respondent worked in the evenings at a Boston Pizza lounge. The Claimant would take care of R. and P. when the Respondent was working. Both the Claimant and Respondent worked together in the building of their home and were actively involved parents in the lives of their son and daughter.
- [12] Mr. & Mrs. C. moved to Kimberley in late 1999. The Claimant and the Respondent went there from time to time for family visits. In 2005 the Respondent suggested the parties move to Kimberley. The Claimant was surprised since they had a good lifestyle in Fort Saskatchewan and were close to the Respondent's family. In any event, he made inquiries and immediately obtained employment in Canal Flats. The Respondent stayed with P. during the summer of 2005 when the house was being sold. R. went with his father to Kimberley. They stayed in Mr. & Mrs. C.'s home which is located in Meadowbrook, a short distance from Kimberley.

- [13] The house in Fort Saskatchewan was sold, and the Claimant and P. arrived in Kimberley at the time R. commenced school in September 2005.
- [14] Mr. & Mrs. C. were prepared to subdivide a portion of their property in Meadowbrook such that the parties could build their own home. The C. property is located approximately a five-minute drive from the center of Kimberley. Mr. & Mrs. C. effectively gave the property to the parties, although they were responsible for all costs associated with the subdivision approval process. They then commenced building their home which is located across the road from that of Mr. & Mrs. C.
- [15] It took approximately three years for the home to be constructed including obtaining subdivision approval. The parties and their children continued to reside in Mr. & Mrs. C.'s home for that entire period with the exception of the Respondent and P. in 2008 for the reasons I shall describe below.
- [16] The Claimant acted as general contractor for the home. He also performed much of the labour. The Respondent and Mr. C. also contributed greatly to the building of the home.
- [17] R. commenced kindergarten in the fall of 2005. The Respondent was employed at Kelsey's Lounge located at the Kimberley ski hill. Over time she obtained full-time employment. She worked the evening shift since her income was greater.
- [18] The Claimant changed employment from Canal Flats to the Skookumpchuk Pulp mill in September 2006. His workplace was now 25 minutes away from his home. He also received an increase in salary. From January 2007 until August 2012 he has worked three 12-hour day shifts followed by three days off. He then has three 12 hour night shifts. His employer's co-op bus picks him up close to home. For the shift commencing at 7:30 a.m. he leaves between 6:45 and 7:00 a.m. He is home by 8:00 p.m. For the night shift he leaves around 7:00 p.m., returning at 8:00 a.m.
- [19] Until A. was born in December 2006, Mr. & Mrs. C., primarily Mrs. C. would take care of R. and P. on those occasions when both parents had overlapping shifts.
- [20] This arrangement continued during 2007 with the exception of a few weeks when the Respondent did not work outside the home following A.'s birth in December 2006.
- [21] In September 2007, P. commenced kindergarten. She attended the same elementary school as R. in Kimberley.
- [22] R. has been diagnosed with Tourette's Syndrome which manifests itself by a "tick". His parents question the diagnosis. They believe he has a form of autism.

- [23] In late December 2007 P. was hospitalized on an emergency basis. She was air transported to Calgary Children's Hospital where she was diagnosed with leukemia in early 2008. Although treatment at the Edmonton Stollery Children's Hospital's oncology department was an option, the parties decided her treatment should be in Calgary. It was a considerably shorter drive (3 to 4 hours) for the Claimant and the two boys to go to Calgary as opposed to approximately twice that drive to Edmonton.
- [24] P. was an in-patient at Calgary's Children's Hospital for approximately one month. The Claimant was granted a one-month stress leave but then had to return to his employment.
- [25] From February to September 2008 the Respondent and P. resided at Ronald MacDonald House in Calgary with the exception of a brief timeframe when they resided with the Respondent's cousin. There was also a period of several weeks when P. had to be readmitted to the hospital.
- [26] The Claimant frequently travelled to Calgary with R. and A. A. spent considerable periods of time with his mother and sister in Calgary. R. attended school close to Ronald MacDonald House in Calgary in May and June 2008 so he could be close to his mother and siblings. The Claimant continued to work at the pulp mill and would frequently travel to Calgary on his days off.
- [27] Needless to say, 2008 was a most difficult year for the family. The Respondent found it extremely stressful to live at Ronald MacDonald House. As she described it, "one day you'd be around children, the next week you'd be attending their funeral". During this timeframe, particularly when P. was an out-patient, it was her mother who was her primary caregiver, administered medication and took care of her daughter during the period when she experienced the serious side effects of her chemotherapy treatments. For obvious reasons, she and her daughter developed a particularly close relationship.
- [28] In September 2008 during the timeframe when the Claimant started moving the family's possessions into their new home, the Respondent advised him she wanted to transfer P.'s care to Edmonton. She wanted to be closer to her family. The months at Ronald MacDonald House had taken their toll. P. would have access to the pediatric cancer clinic at the Stoller's Children's Hospital. The Respondent also had the opportunity to work in Edmonton.
- [29] In November of 2008 on one of the occasions when the Claimant was visiting his wife and daughter in Edmonton, P. contracted a very serious blood infection. She almost died. She was then hospitalized in Edmonton for several weeks.
- [30] The Respondent and P. returned to Kimberley in early 2009. P. returned to school and the Respondent to her work at Kelsey's. Two times a month they would go to Edmonton for follow-up care.

- [31] Insofar as the parties' relationship was concerned the Respondent had advised the Claimant in the fall of 2008 that she had some "issues". During 2009 the couple grew further apart. By the fall of that year the relationship had declined even more. Counselling was unsuccessful. The relationship continued to deteriorate until the parties separated in October 2010.
- [32] Throughout 2009 until the separation, Mr. & Mrs. C.'s role with the children continued to be what it had been prior to the diagnosis of P.'s cancer. They continued to be actively involved in taking care of their grandchildren, particularly when the Claimant's and Respondent's work shifts overlapped.
- [33] This was the case notwithstanding the fact that since approximately the time of A.'s birth in December 2006 Mr. & Mrs. C. were not on speaking terms with the Respondent. This was the situation even when they were living under the same roof. Mrs. C.'s evidence was to the effect the Respondent stopped talking to her and her husband. She could not understand why. Attempts to obtain an explanation from the Respondent were unsuccessful.
- [34] It was the Respondent's evidence that her parents-in-law did not like her. She believed both she and Mr. & Mrs. C. shared responsibility for the breakdown in their relationship.
- [35] As the relationship between the parties deteriorated their confrontations were not just verbal but also, on occasion, physical on both sides. The children were well aware of what was occurring between their parents and were increasingly upset by what was taking place.
- [36] The Claimant became very suspicious of the Respondent's activities when she was in Edmonton. On one occasion he and Mr. C. surreptitiously installed a GPS in her car to track her whereabouts.
- [37] When the decision was made to separate in the fall of 2010, R. had commenced grade 5 at M. Middle School in Kimberley. P. was eight years old and still in elementary school. A. was not yet in school.
- [38] The Respondent had considered remaining in the Kimberly area but had concluded this was not possible. There were better work opportunities in Edmonton. In addition, she believed her relationship with Mr and Mrs C. meant she could not continue to live in the same community. She considered moving to Cranbrook but did not do so, one of the reasons being she could not pay both rent and contribute to the mortgage payments on the home.
- [39] The Respondent alleges that she and the Claimant agreed the children would stay in Kimberley until R. & P. completed the 2010-2011 school year, being the end of June 2011, with the children then moving to Edmonton to be with her thereafter. She says she never would have moved to Edmonton in the fall of 2010 without that agreement.
- [40] The Claimant, for his part, testified that in the months following the separation he generally avoided talking to the Respondent about where the children would be residing after the school year. "I never flat out said yes or signed a paper that she could have them a year later".

- [41] From October 2010 until the end of June 2011 the Respondent made regular visits to Kimberley to see the children. She would stay in the family home when she did so. She never went more than a week or two without being with the children. In addition, they were with her on holidays, including the months of July and August 2011. The Claimant also spent some time with the children during that timeframe.
- [42] In the belief there was an agreement, the Respondent enrolled R. and P. at Madonna Elementary School in Sherwood Park in Edmonton for the 2011-2012 school year. They actually commenced school in the last week of August 2011. By that time the Respondent was living in a house owned by Mr. K. He had formerly been her supervisor at a lounge where she had been employed commencing in the fall of 2008.
- [43] The Respondent did have a romantic relationship with Mr. K. but it was her evidence it was over by the time she moved into his house in Sherwood Park in mid 2011. She testified he vacated the house so she could live there and he moved to a condominium which he owned in Edmonton. Since that time, she has occupied the main floor of the house. There is a renter in the basement, a Mr. B.
- [44] The Claimant clearly holds animosity towards Mr. K. who he believes to be a factor in the deterioration of the relationship between the parties.
- [45] The Respondent testified Mr. K. has remained a very good friend who continues to assist her a great deal. Although she says they are no longer in a relationship, her parents testified they believed she and Mr. K. still lived together. In the Views of the Child report to which I shall refer in greater detail below, the author Gordon Rowe states that when he interviewed R. in July 2012 he indicated the children would be alone for one hour for two days of the week. "Otherwise, one of either S. or her partner would be with the children".
- [46] In late August 2011 the Claimant commenced these proceedings. The Respondent testified she was surprised by this since the agreement at the time of separation was that the parties, "were going to work out things without lawyers". On September 2, 2011, Kloegman J. made an interim order that the children be returned to the primary care of the Claimant. On September 19, 2011 the Respondent consented to an order made by Melnick J. that the primary care of the children remain with the Claimant until the trial of the action. A consent order of joint custody and guardianship was also made. It was the Respondent's evidence that although she wanted the children to be with her in Edmonton, she was advised she would be unsuccessful on an interim application that the primary care be with her. Accordingly, she consented to the order.

- [47] In September 2011 until the end of the school year, being late June 2012, the Respondent would come to Kimberley approximately two times a month. The access would depend on her and the Claimant's work schedules. They were usually able to reach an agreement. On some occasions the Claimant, upon completing his night shift, would arrange to transport the children to a drop-off point in Cochrane, Alberta. One of his parents would accompany him since it was not safe for him to drive without sleep.
- [48] Each party complains about his or her ability to contact the children by telephone when they are with the other parent.
- [49] The children spent Christmas of 2011 with the Respondent in Edmonton. The 2012 summer holidays were also spent in Edmonton.
- [50] One of the main issues insofar as which parent should have primary care of the children is the amount of time they spend with their grandparents as opposed to being with their father in their own home.
- [51] Since the time of separation until the end of June 2012 Mr. & Mrs. C.'s involvement with the children continued as before. As had been the case when the parties were together, the grandparents were there to assist if the Claimant could not be with the children due to his work schedule, or if he went out on his own. Mrs. C. would babysit them or, more frequently, the children would spend the night with their grandparents.
- [52] As of October 2011 the Respondent commenced keeping a record as to the number of occasions the children spent overnight at their grandparents' home. Mr. C. also kept a partial record. The Respondent's summary was based primarily on what R. advised her and what she then confirmed with the Claimant himself. Although there was some dispute with respect to a few of the dates in question, it is clear the children have spent a considerable period of time overnight at Mr. & Mrs. C.'s home since the fall of 2011.
- [53] R.'s Grade 6 teacher for the 2011-2012 school year, Mr. J.M. and P.'s Grade 4 teacher, Ms. D.C., both testified. I found their evidence to be of great assistance. Both were entirely objective in their observations of and their comments about R. and P., their parents and Mr. and Mrs. C.
- [54] Mr. M. has been a teacher in the Rocky Mountain School District for 16 years. He has taught at M. Middle School for several years. There are 250 children at the school.
- [55] It was Mr. M.'s evidence that in the fall of 2011 R. was a shy student. At times he would be frustrated and anxious, and, at times, overwhelmed.
- [56] He noticed R. had "a bit of a tick" but indicated this did not interfere with what occurred in the classroom. He got along well with his peer group who accepted him. His proficiency with art "brought people his way".

- [57] He described R. as a "serious young fellow who worked very hard". He was advised that R. had been on an individual education plan (I.E.P.) before Grade 6 but that was not required this past year.
- [58] Mr. M. coached the volleyball team. Since R. was not a good athlete he encouraged him to join. He did so and enjoyed the activity. "This was an indication he was growing".
- [59] Mr. M.'s assessment was that R. had a very good year. He progressed significantly and got less frustrated.
- [60] Mr. M. was aware the parents did not have a good relationship. He saw the Respondent at school on four or five occasions during the year, the Claimant about the same. He also had e-mail exchanges with the Respondent. He found the involvement of both parents to be adequate. Insofar as Mr. & Mrs. C. were concerned he described them as being very supportive of R. R. could be forgetful and items would be brought to school by one of his grandparents. They would also attend the volleyball games. Mr. M. got e-mails from Mrs. C. indicating how happy she was with R.'s progress. R. arrived at school each day ready to learn, appropriately dressed, etc. At no time during the year did R. express any reservation about his grandparents' involvement in his life. It was also Mr. M.'s view that if something was important to R. he would mean what he said.
- [61] Ms. C. has been a teacher for 17 years. She has taught Grade 4 at M. Middle School for three years. She taught R. in the 2009-2010 year and P. in the 2011-2012 year. She indicated she enjoyed having R. in her class in Grade 4. He was eager to learn, personable and happy at school. She was aware he may have Tourette's. She noticed that if he was struggling with his work he would get agitated and frustrated, but overall he handled things very well. He was on an I.E.P. and had access to an assistant teacher. A real issue for him was being able to focus. She indicated he got along well with his peers. They were very accepting of him.
- [62] Ms. C. got to know Mr. & Mrs. C. the year R. was in her class and more so this past year when she was P.'s teacher.
- [63] During the year she taught R. she spoke to Mrs. C. from time to time about her grandson. She said R. responded very well to his grandmother. She observed R. with his father on a couple of field trips. He appeared to interact very well with him. R. was happy to have his father there.
- [64] Insofar as P. is concerned, Ms. C. described her as a very sweet, generous girl who was open and eager to do well. She had some academic challenges and was below grade level in writing and math. She had missed a great deal of school due to her health issues. She noticed that over the past year P. made great improvement particularly with reading. She was on an I.E.P. this past year. She had some speech issues and had access to a speech therapist.

- [65] It was Ms. C.'s evidence that P. made great progress during the 2011-2012 school year. In addition to her reading, she became much more confident in math.
- [66] The Claimant came in to see her several times during the year and they corresponded by e-mail. He would tell her what he was doing at home to reinforce what was being learned at school. He attended all the field trips. She indicated P. was "thrilled" to have her father on the field trips. Mrs. C. came on some field trips as well. Ms. C. met Mrs. C. and her husband several times during the year. Mrs. C. would communicate with her via e-mail, bringing particular matters pertaining to P. to her attention. Mrs. C. also supplemented P.'s education at home. Ms. C. encouraged this. She was also aware the Claimant and Mrs. C. helped P. with her writing and other aspects of her education. Insofar as school projects were concerned, P. would often arrive with "extras" being artifacts and other items. "The rest of the kids loved seeing these extra things".
- [67] Ms. C. had the opportunity to observe P. with her grandmother both before and after school and on field trips. P. was excited to have her grandmother there.
- [68] Mrs. C. also communicated with Ms. C. regarding difficulties P. was having with some of her peers. Although P.'s difficulties were not unusual for a child her age, she found Mrs. C.'s e-mails a good way to communicate.
- [69] P. did talk to Ms. C. from time to time about her family life. Most of the time it was about living in Kimberley, but occasionally she spoke about Edmonton. She told her about the Make a Wish trip to Disney World with her mother and siblings in May 2012.
- [70] Ms. C. indicated she did have experience teaching children who were troubled by their family situation. Symptoms would include withdrawal, aggression, not being prepared for school, etc. None of this applied to P.
- [71] She viewed P. as a determined girl who would mean what she said.

III THE VIEWS OF THE CHILD REPORT

- [72] The report prepared by Gordon Rowe is based on interviews which he conducted of the children in July 2012. It was marked as an exhibit at the trial. Some of its salient findings include:
- (a) the three children want to live with their mother in Edmonton.
 - (b) R. believes things have changed drastically in the home since his parents' separation. His grandparents have become heavily involved in their care. Their father's schedule requires him to leave home for his day shift before they are up and the night shift has him working when they go to bed. The children often sleep at the home of their grandparents. They frequently eat there even when their father is not working. He is frustrated by the lack of time he spends with his father. He believes his mother is able to take time off work to spend time with the children and cannot understand why his father does not. He has difficulties

communicating with his father. He says he can talk to his mother about anything;

- (c) although R. recognizes he receives good care from his grandparents he believes the only reason his father wants the children to live in Kimberley is so they will be available to his parents. He contrasts that with his life when he is with his mother in Edmonton. His mother takes him on recreational activities and is committed to looking after them. When they are in Edmonton they have regular contact with numerous relatives who live nearby. His mother knows that family is more important than friends. He is sad he is unable to live with his mother but wherever he lives, he wants to be in the same household as his siblings. He would like the Court to know he wants to live with his mother;
- (d) P. believes that prior to her parents' separation one of them was usually at home while the other worked. The children were not often at their grandparents. Since the separation, however, they spend a great deal of time with them at their home. She misses being in her own room in her father's house. She would prefer to live with her father rather than her grandparents. She spends so much time with them that she believes she is not living in a natural family situation;
- (e) P. is particularly concerned about the frustrating relationship she has with her grandmother. She believes her grandmother treats the boys differently than her. She does not believe her grandmother is willing to listen to her about important things;
- (f) P. expresses disappointment with the little contact she has with her father. According to her, he goes out with his friends quite often leaving them with the grandparents. She believes that living in Kimberley would mean she would continue being raised by her grandparents.
- (g) She looks forward to the things she would do if she lived in Edmonton. She is close to several members of her mother's extended family. Because her mother works only a few days each week she has a lot of free time to spend with the children. Although she loves her father she would like the Court to know she wants to live with her mother.
- (h) A. enjoys his relationship with all members of the two homes in Kimberley. As much as he enjoys being with his father and his grandparents he also enjoys the company of his mother. His difficulty is that he misses his father when he is in Edmonton and he misses his mother when he is in Kimberley. He is strongly attached to his brother and sister. He also would like the Court to know he wishes to be with his mother.

IV THE CLAIMANT'S POSITION AND PLAN IF PRIMARY CARE REMAINS WITH HIM

- [73] This essentially involves a continuation of the status quo. The children are extremely well taken care of by the Claimant's parents when he cannot be with them due to his work. He is actively involved with them both at school and when they are at home. There are numerous family activities which they do together. These include organized activities, visits from family friends and their children, skidooring and bonfires.

- [74] The children are doing very well in Kimberley and its community. He believes a more rural lifestyle is in their best interests.
- [75] Contrary to what is stated in the Rowe report, the Claimant testified he does many activities with his children. He believes he spends a lot of time with them. R. has an attention problem which can cause difficulties and P. is a "tenacious happy girl". He notes she was a bit spoiled, understandably, when she was being treated for her cancer and now will not take no for an answer. He was involved with many activities with A. before he commenced school. Now they do things as a family including outdoor activities. A. wants to get involved in hockey this fall which he will fully support.
- [76] If the children's primary care remains with him he would stay at his current job and would attempt to secure the home by purchasing the Respondent's interest. His mother is retired and he is still able to obtain the necessary assistance from her. His father is employed as a professional driver but only on a part time basis. He believes he has the ability to move to a permanent day shift. Although this would involve his leaving for work before the children went to school his mother would help by coming over. An alternative would be to rent the basement home, perhaps to a single mother who could help the children in getting ready and on the bus in the morning.
- [77] Insofar as the Respondent's access is concerned, he does not anticipate the arrangement changing from what it has been until now. She has been able to see the children as much as she wants as long as some notice is provided. The home is big enough for her to stay there. In fact, it is better for the children if the Respondent's access occurs at the family home. He would continue to drive the children half way to Edmonton to facilitate access if required.
- [78] As for holidays he would like to have some holiday time with the children. Since the separation the "fun time" is primarily with the Respondent. He has to be the disciplinarian.
- [79] If the Respondent were to be awarded primary care then his current work schedule would likely result in him being able to see the children only once a month. He would have to stay at a hotel in Edmonton or with friends and see the children there.
- [80] If the Claimant did go to an all-day shift schedule his gross annual income would be reduced from approximately \$102,000 to \$87,000. He has been working extra shifts over the past two years in order to keep the household finances "out of the red".
- [81] The Claimant's position is that it is in the best interests for the children that they remain under his primary care with the support of his parents as needed. They are thriving at home and in the community. When they are with him or his parents they show their happiness. It is not in their interests to have their environment changed. They are known in Kimberley, receive individual attention, and there are smaller class sizes and good programs available to them.

[82] The children have told him they want to be with their mother. When he asked R. for an explanation, he could not give one. He told R. that was not good enough. Although the children have recently told Mr. Rowe they want to be with their mother, the Claimant believes this is a reflection of the fact they obviously miss her a great deal. Furthermore, when they are with her in Edmonton they are on holiday which does not involve the necessary schedule when they are at school. He wants to provide his children with a stable environment in which they make good decisions and conduct themselves appropriately "which I show them for the most part".

V THE RESPONDENT'S POSITION AND PLAN IF AWARDED PRIMARY CARE

[83] The Respondent currently occupies one floor of a house owned by Mr. K. in Sherwood Park. It is located approximately a 45-minute drive from her parents' respective residences in Morinville. Both Mr. & Mrs. L. are employed full time. They are both prepared to assist the Respondent to the extent they can with the care of their grandchildren. This was confirmed by them in their evidence.

[84] In February 2012 the Respondent commenced employment as the Food & Beverage Manager at the River Creek Resort and Casino in Edmonton. Her duties include looking after the needs of celebrities, including rock groups who provide entertainment at the casino. She is currently given the responsibility of one entertainment group a month, although her employer ultimately wants her to be responsible for all groups. She also intends to upgrade her education since it is her goal to branch into the marketing department.

[85] The Respondent's current work schedule is as follows:

Tuesday - 5:00 p.m. to 1:00 a.m.

Wednesday to Friday - 10:00 a.m. to 5:00 p.m.

Saturday - 9:00 a.m. to 4:00 or 5:00 p.m.

If the group she is responsible for is performing then she may have to stay later.

[86] The Respondent testified her employer is very supportive and is prepared to assist as required to fit the children's needs if they move to Edmonton. Her schedule would be changed from 9:30 a.m. to 4:30 p.m. Monday through Thursday. On Friday which is her "office day" she has remote access from her home. Her employer supports her not coming to the casino that day as long as her work is accomplished.

[87] The Respondent currently does not work on Sundays and Mondays. This has worked well over the summer of 2012 when the children have been with her. Due to her work schedule, however, she has only been able to take two additional days off to be with them together with one vacation week planned for the end of August.

- [88] The Respondent described the way in which she spends most of her time with the children. Sunday is the "responsibility day". The children clean their room, do laundry, wash the floors, etc. As a family they prepare the meals for the upcoming week which are then frozen. She and the children also do yard work, cut the grass, tend to vegetables, etc.
- [89] Monday is when they go out as a family. The children enjoy swimming. They will go to splash parks, swimming pools, the West Edmonton Mall, etc.
- [90] If the Respondent has the primary care, the children would be at Madonna Elementary School in Sherwood Park. It is part of the Catholic school system. She has made inquiries of the school. To the extent any of her children required assistance, that would be available. Both the elementary school and the junior high school where R. would attend a year from now are close by.
- [91] The Respondent's modified work schedule should she obtain primary care would allow her to be with the children every morning and be able to see them off to school. She would be home by approximately 5:00 p.m. The after-school care would be provided by the renter of the basement suite, D.B. He manages a bar and would not leave for work until after she was home. She trusts him with her children. His nickname is "Magic" since being a magician is a hobby of his. She says the children enjoy being with him. She also has several relatives who live in Sherwood Park. This includes an aunt who lives close by. Her aunt has advised her that she would be prepared to assist in driving the children to activities, etc.
- [92] The Respondent has also made inquiries with respect to the ability of the children to continue with the activities in which they have been involved. R. has been in cadets. He could join the Edmonton squadron which is a seven-minute drive away. There are two ice arenas in Sherwood Park which are close to her house.
- [93] P. has a particular interest in horses. In fact, she has a pony on her grandparents' property in Kimberley. There is an equestrian facility in Edmonton which would accept P. The Respondent appreciates there would be significant costs involved. Accordingly, her plan is that for the first year P. would have access to a horse provided to her by this facility. If she showed the requisite passion and seriousness the Respondent would then make arrangements to provide her with her own horse. It would be boarded either at the stable or looked after by her brother on his acreage outside of Edmonton.
- [94] The Respondent's belief is that it is in the children's best interests that they reside with her in Edmonton. Some of the main reasons include:
- (a) they would spend considerably more time with her both before and after school than with their father;

- (b) she has an extended family in the Edmonton area including children of the same approximate age. Her children are very attached to certain of their cousins and other children with whom they have had a great deal of contact over the years. They have also started to form friendships in Sherwood Park;
 - (c) her children are very close to her parents. R. and Mr. L. have formed a particularly close relationship;
 - (d) the Catholic school system provides more funding than the regular public school system. A speech pathologist would be available for P. The Respondent has also arranged for an educational assessment for R. which is scheduled for November of 2012;
 - (e) she is extremely close to all her children. They are able to talk to her about everything. Recently R. wanted to have a discussion with her about sexual education matters. She suggested he talk to his father but he insisted on having the conversation with her. Insofar as P. is concerned they are especially close. When A. is with her he is "glued" to her at all times, sleeps with her, etc.
- [95] Reduced to its essentials, the Respondent's position is that all her children's needs, including those which are emotional, are best served by her.

VI DISCUSSION AND ANALYSIS

[96] Section 16(1) of the Divorce Act, R.S.C. 1985, c. 3 provides, in part:

- 16. (1) A court of competent jurisdiction may, on application by either or both spouses or by any other person, make an order respecting the custody of or the access to, or the custody of and access to, any or all children of the marriage.
- (6) The court may make an order under this section for a definite or indefinite period or until the happening of a specified event and may impose such other terms, conditions or restrictions in connection therewith as it thinks fit and just.
- (8) In making an order under this section, the court shall take into consideration only the best interests of the child of the marriage as determined by reference to the condition, means, needs and other circumstances of the child.
- (9) In making an order under this section, the court shall not take into consideration the past conduct of any person unless the conduct is relevant to the ability of that person to act as a parent of a child.
- (10) In making an order under this section, the court shall give effect to the principle that a child of the marriage should have as much contact with each spouse as is consistent with the best interests of the child and, for that purpose, shall take into consideration the willingness of the person for whom custody is sought to facilitate such contact.

[97] Section 24 of the Family Relations Act, R.S.B.C. 1996 c. 128 provides:

24 (1) When making, varying or rescinding an order under this Part, a court must give paramount consideration to the best interests of the child and, in assessing those interests, must consider the following factors and give emphasis to each factor according to the child's needs and circumstances:

- (a) the health and emotional well being of the child including any special needs for care and treatment;
- (b) if appropriate, the views of the child;
- (c) the love, affection and similar ties that exist between the child and other persons;
- (d) education and training for the child;
- (e) the capacity of each person to whom guardianship, custody or access rights and duties may be granted to exercise those rights and duties adequately.

[98] In *M.A.C. v. K.B.*, [2002] B.C.J. No. 1880, Burnyeat J. stated:

34. In dealing with the question of the appropriate primary residence of a child, the question to be asked is the same as would be asked if the application dealt with custody or access - what is in the best interests of the child. In *Gordon v. Goertz*, [1996] 2 S.C.R. 27 (S.C.C.), McLachlin, J., as she then was, addressed the test applicable to an application to vary custody and stated that, once a material change in circumstances was demonstrated, custody and access was to be considered afresh in light of all of the present circumstances and after a consideration of the child's best interests. McLachlin, J. summarized the law that was applicable to a case that was before the Court including the requirement of showing a material change in circumstances and a request by one parent to relocate. After removing the principles which do not apply to the case at bar, the following principles laid out by McLachlin, J. apply to the case at bar:

2.... the judge on the application must embark on a fresh inquiry into what is in the best interests of the child, having regard to all the relevant circumstances relating to the child's needs and the ability of the respective parents to satisfy them. ...

- 4. The inquiry does not begin with a legal presumption in favour of the custodial parent, although the custodial parent's views are entitled to great respect.
- 5. Each case turns on its own unique circumstances. The only issue is the best interest of the child in the particular circumstances of the case.
- 6. The focus is on the best interests of the child, not the interests and rights of the parents.
- 7. More particularly the judge should consider, inter alia:
 - (a) the existing custody arrangement and relationship between the child and the custodial parent;

- (b) the existing access arrangement and the relationship between the child and the access parent;
- (c) the desirability of maximizing contact between the child and both parents; ...
- (f) disruption to the child of a change in custody;
- (g) disruption to the child consequent on removal from family, schools, and the community he or she has come to know. (at pp. 60-61)

(Emphasis added)

[99] In *One v. One*, 2000 BCSC 1584, Burnyeat J. stated:

[24] When reviewing requests for changes in custody and access and in reviewing the question of whether the children should be moved where such a move may make access more difficult, courts in British Columbia have looked at a multitude of issues in determining what is in the best interests of the children. A review of those decisions produces the following 12 factors which have been reviewed in deciding what is in the best interests of the children:

(A) PARENTING CAPABILITIES OF AND CHILDREN'S RELATIONSHIP WITH PARENTS AND NEW PARTNERS:

(B) EMPLOYMENT SECURITY AND PROSPECTS OF EACH SPOUSE AND, WHERE APPROPRIATE, THEIR PARTNER:

(C) ACCESS TO AND SUPPORT OF EXTENDED FAMILY:

(D) DIFFICULTY OF EXERCISING PROPOSED ACCESS AND QUALITY OF PROPOSED ACCESS IF MOVE IS ALLOWED:

(E) EFFECT UPON CHILDREN'S ACADEMIC SITUATION:

(F) PSYCHOLOGICAL/EMOTIONAL WELL-BEING OF CHILDREN:

(G) DISRUPTION OF CHILDREN'S EXISTING SOCIAL AND COMMUNITY SUPPORT AND ROUTINES:

(H) DESIRABILITY OF PROPOSED NEW FAMILY UNIT FOR CHILDREN:

(I) RELATIVE PARENTING CAPABILITIES OF EITHER PARENT AND RESPECTIVE ABILITY TO DISCHARGE THEIR PARENTING RESPONSIBILITIES:

(J) CHILD'S RELATIONSHIP WITH BOTH PARENTS:

(K) SEPARATION OF SIBLINGS:

(L) RETRAINING/EDUCATIONAL OPPORTUNITIES FOR MOVING PARENT:

(Authorities referred to in paragraph 24 omitted)

- [100] The applicable legal principles were also recently reviewed by the Court of Appeal for British Columbia in *R.E.Q. v. G.J.K.*, 2012 BCCA 146. After considering a number of appellate decisions in this province, Newbury J.A. concluded:

Gordon v. Goertz in British Columbia

- [57] The untrained reader of the foregoing appellate decisions might be forgiven for concluding that the Court of Appeal came dangerously close to reweighing the evidence and substituting its own discretion for that of the court below (a process that might be permitted by the standard of review enunciated in *Oldman River*, but not by that enunciated in *Van de Perre* and *Hickey*, *supra.*). Indeed, trial counsel for Mr. K. suggested as much in his closing submissions at trial. The reader might also be forgiven for questioning whether the complex and convoluted reasoning now required of a trial judge in cases of this kind is in fact consistent with the overarching principle that as stated in *Gordon v. Goertz*, the best interests of the child are not merely "paramount" in mobility cases but are "the only consideration." (Para. 28.) In my respectful view, the reasoning in *Gordon v. Goertz* is in danger of being distorted into a set of 'rules' that undermine this principle. The Court's statement that the views of the custodial parent are "entitled to great respect" has evolved into a *de facto* presumption in favour of the wishes of the custodial parent - notwithstanding the fact that the majority of the Court in *Gordon v. Goertz* rejected the imposition of a presumption. (Professor R. Thompson has referred to this as the unspoken "primary caregiver presumption": see *Ten Years After Gordon: No Law, Nowhere* (2007), 35 R.F.L. (6th) 307 at 315 and "Where is B.C. Law Going? The New Mobility", prepared for the Continuing Legal Education Society of British Columbia's Family Law - 2011 Update, at 8.2.7.) As seen above, the *de facto* presumption has been reflected in suggestions that the "rights" of custodial parents are inconsistent with restrictions on their mobility with the children, and that such restrictions should exist only in the "rarest of cases".
- [58] Like *Gordon v. Goertz* itself, the *de facto* presumption has been extended from variation applications to cases where an initial determination of custody is being made (*Nunweiler*), and more recently, to cases in which the parents are sharing custody and are in fact co-parenting (*S.S.L.*). It is not clear how the "great respect" principle should work where both parents are custodial parents. Further, the prohibition in this province and elsewhere (see *S.S.L.*, para. 28; *D.P. v. R.B.* 2009 PECA 12 at para. 32; *Spencer v. Spencer* 2005 ABCA 262 at para. 18) against placing the custodial parent in a 'double-bind' by inquiring at trial whether he or she will move without the children, seems to have made consideration of the status quo impermissible as a possible outcome - even though this court has also said that the best interests of the child must be considered "in the round" (*Hejzlar*) or in the context of all four possible scenarios (*S.S.L.*). Finally, the stricture (from *Gordon v. Goertz*) against considering the relocating parent's reasons for wishing to move except where they are relevant to his or her "ability to meet the needs of the child" has proven unworkable, as trial judges are reluctant to approve the disruption of children from familiar surroundings and relationships for reasons that, while not improper, may be selfish or trivial. As Professor Thompson notes,

the prohibition is either simply ignored altogether or is circumvented by invoking the bromide that 'what is good for the custodial parent is good for the children.' (See Thompson, Ten Years After Gordon, *supra*, at 316.)

- [59] It may, with deference, be time for the Supreme Court of Canada to reconsider whether cases of this kind are to be determined with reference only to the children's best interests or whether what I suggest is an unspoken factor in mobility cases – the "mobility rights" of custodial parents – are also a proper consideration. It is not for me to suggest that such rights should or should not be considered; but if they are, it seems to me that Canadian courts require guidance as to how such rights, if rights they be, are to be weighed against other factors relating to children's best interests.
- [101] In the case before me an interim consent order was made on September 19, 2011. It provided for joint custody and guardianship with the Claimant having primary care of the children until the trial of the proceedings. Accordingly, this is not a mobility case in the strict sense in that it is the Respondent who seeks primary care in order for the children to then relocate to be with her in Edmonton where she has been since the Fall of 2010. Notwithstanding this, the authorities to which I have referred and in particular their consideration of what is in the best interests of the children should, in my view, guide my decision with respect to the primary care of R., P. and A. In my analysis, maintaining the status quo is but one of many considerations.
- [102] In applying the principles to which I have referred, I do so within the framework of the following findings of fact and conclusions I have reached:
- (a) it is clear that both parties and their respective families love the children and are willing to do what is needed to provide them with the most positive environment possible that will be in their best interests. The children are very fortunate in that regard;
 - (b) although the children understandably miss their mother, they have and continue to thrive living in Kimberley with their father assisted by the support of Mr. & Mrs. C. This is shown, in part, by the evidence of Mr. M. and Ms. C. which I accept without any qualification or reservation;
 - (c) the children have been quite clear in their wishes to relocate to Edmonton to be with their mother. I accept their views are genuinely held. Notwithstanding both R. and P.'s apparent maturity for their age, the fact remains they are 12 and 10 years old;
 - (d) I also conclude that many of the perceptions which they have expressed with respect to their father and Mr. & Mrs. C. are, to a certain extent, misplaced. That is because they are made within the context of children who have already decided what they seek to have the Court order, that is, their relocation to Edmonton to be with their mother. Some examples include:
 - (i) R.'s perception he does not spend much time with his father. That is not in accordance with the Claimant's evidence, nor that of Mr. & Mrs. C. or Mr. M.;

- (ii) although R. has a strong bond with his grandfather, Mr. C., as shown by their hunting activities, which R. has discussed with Mr. M., no mention of this was made to Mr. Rowe;
 - (iii) P's perception that prior to the separation one of her parents was home most of the time and the children were not very much at the home of their grandparents is also inaccurate to a significant degree. Until the time of separation the children were often at their grandparents' home when their parents' work schedules overlapped;
 - (iv) R's and P's perceptions that their mother only works a few days in Edmonton and, contrary to their father, can take time off to be with them is also inaccurate. The Respondent works five days a week and has only been able to take two additional days off all summer to be with them, with the exception of the vacation week which has just occurred.
 - (v) although P. may perceive that Mrs. C. treats her differently from her brothers and she finds it difficult to talk to her grandmother, the reality appears to be that she has a strong relationship with Mrs. C. P., for example, told Mr Rowe of her grandmother's unwillingness to talk to her about things she considered important. This must be contrasted with Ms. C.'s evidence that Mrs. C. contacted her after a conversation with her granddaughter concerning peer problems at school;
 - (vi) it is clear the children love being with their mother and her extended family in Edmonton. But this must be viewed in light of the fact that the children's time with their mother is vacation time, whereas time spent with their father occurs when they are in school;
 - (e) It is to be expected that A. is glued to his mother when they are together. He is a five year old boy who misses her a great deal. R. and P., like A., are in a conflicted position. When they are with their father they miss their mother and vice versa;
 - (f) I recognize that over the past number of months R. and P. have attempted to put some distance between themselves and their father and parental grandparents. They appear, to a certain extent, to believe their relocation to Edmonton is a fait accompli. Mrs. C.'s evidence was she noticed the children withdrawing as of about April of this year. She stated the "older two kids were pretty much convinced they were done with us". On one occasion A. said, "I'm only here for a couple of days. You're not going to get us you know".
- [103] While there is much which is positive in what the Respondent proposes, there are some significant concerns and uncertainties which remain. These include:
- (a) the role of Mr. K. The Respondent's parents testified they understood their daughter lived with Mr. K. This is apparently what R. communicated to Mr. Rowe. The Respondent, who I viewed as generally being a forthright and credible witness, became very defensive when testifying about her relationship with Mr. K. This included, but was not restricted to the fact he was in Florida at the same time as the Make a Wish trip in May of this year and spent some time with the Respondent and the children. She was clear there is no on-going romantic relationship. She acknowledged, however, he remains a very good friend who had assisted her. She had no concerns relating to him interacting with her children. If Mr. K. is

in fact the Respondent's partner then his role and influence in the children's lives in Edmonton needs to be more fully explored in order to properly consider whether it is in their best interests to be with him and their mother;

- (b) while I accept that the Respondent's employment with the River Resort and Casino over the past six months may lead to an excellent career opportunity, it is still very much in its early stages. There was no independent confirmation by the employer as to the accommodations it is prepared to make should the children be with the Respondent. There is also uncertainty as to the evening hours which the Respondent may have to work if, as anticipated, she becomes responsible for taking care of the needs of all entertainers and groups at the resort and casino;
- (c) it may well be that the Respondent, with the assistance of her parents and extended family, will be able to have a plan in place such that the children's needs are properly addressed in order to accommodate her working hours. The fact remains, however, that both her parents are employed full time and live approximately 45 minutes away. The only specific details provided with respect to after-school care is Mr. B.'s proposed involvement and, perhaps, the unnamed aunt who lives close by.

[104] The Court has a broad discretion with respect to the type of custody or primary residence or care order it chooses to make. This is seen, in part, by s. 16(6) of the Divorce Act and sections 35(4) and 24 of the Family Relations Act. Section 35(4) provides:

- (4) An order for custody or access may include terms and conditions the court considers necessary and reasonable in the best interests of the child.

[105] Orders of this kind can also be reviewed or varied after a specific period of time. See *Sahrmann v. Otto*, [1994] B.C.J. No. 1711 (S.C.) and *Johal v. Johal*, [2009] B.C.J. No. 195, affirmed 2009 BCCA 368.

[106] I have found my decision pertaining to the primary care of the children to be a very difficult one to make. That is because the children have two loving and supportive parents and extended families. In addition to the legal principles referred to above, I have also taken into account that if all things are equal it is not in the best interests of a child to substitute an uncertain situation for a certain one. Furthermore, the weight to be given to the status quo on an initial application cannot supercede the balancing of other relevant factors. See *Lundell v. Beach*, 2009 BCSC 170 at paras. 46 & 47.

[107] The authorities which have considered similar issues are all highly fact specific. In applying the legal principles to which I have referred to my findings of fact and the conclusions I have reached on the whole of the evidence, I am of the view it is to the children's advantage and in their best interests that they remain in their current environment with the Claimant having primary care.

- [108] I appreciate this is contrary to the children's views and they will likely be, initially, very disappointed with this decision. A year ago, however, they actually started school in Edmonton before they were returned to their father's primary care. Notwithstanding this, they went on to have a very successful year.
- [109] I have also concluded that the views of the children, particularly R. and P. although important at this stage of their lives, will become even more so as they grow older. Furthermore, the Respondent with the additional passage of time may be in a better position to provide further evidence to the Court that the relocation of the children to Edmonton is in their best interests.
- [110] Accordingly, as was the case in *M.E.C. v. K.B.*, and *Johal v. Johal*, I order that the children's primary care with their father be reviewed. This should take place after the conclusion of the 2012-2013 school year, being June 30, 2013. The intervening timeframe should permit a number of things to occur including:
- (a) the Respondent receiving payment for her interest in the family home. This may then provide a source of funds such that she is able to secure permanent accommodation in Edmonton;
 - (b) the Claimant, should he desire to do so, can make arrangements to change his schedule such that he only works day shifts. This would significantly increase the time he spends with his children;
 - (c) the Respondent will be in a better position to put evidence before the Court as to her career development, her time commitments in the evening, and whether with these increased responsibilities her employer is prepared to accommodate her work schedule in the event she becomes the children's primary caregiver;
 - (d) R. will complete middle school.
- [111] I wish to make it clear that the fact a review will take place does not mean there will in fact be a change in primary parental care a year from now. It will be the circumstances which exist at that time which will determine the issue. As was the case in *Johal* a review of this decision does not necessarily require a finding of a change in circumstances. As in *Johal*, I will consider myself seized of any such application.
- [112] I also order that an updated Views of the Child Report be prepared, preferably by Mr. Rowe, prior to the review occurring. The children are not to be interviewed for the preparation of that report prior to June 30, 2013. The cost of that report is to be shared equally by the parties.
- [113] I also order that the parties have joint custody of the children together with joint guardianship on the Joyce model.

VII CHILD SUPPORT

- [114] The evidence before me is that the Claimant's guideline income is \$100,387.00, that of the Respondent is \$48,000.00.
- [115] I order that the Respondent pay child support in the amount of \$904 per month commencing September 1, 2012 up to and including June 1, 2013. I do so on the assumption the children will continue to spend most of their vacation time with the Respondent, including July and August of 2013.
- [116] Special expenses shall be shared in the proportion of 68% with the Claimant and 32% with the Respondent.

VIII PROPERTY DIVISION

- [117] Insofar as the home is concerned, the parties were in agreement I should fix a process whereby the Respondent be paid fair market value for her 50 percent interest.
- [118] Accordingly, I make the following orders:
- (a) on or before September 30, 2013 the parties will exchange residential appraisal reports pertaining to the home. If the Claimant intends to rely on the report prepared by Rea Jarrett as of July 17, 2012, he shall advise the Respondent accordingly. In addition the Claimant shall provide to the Respondent copies of any other appraisals which he has obtained. The Claimant will also make the home available to the appraiser selected by the Respondent;
 - (b) on or before October 15, 2012 or such other date as may be agreed upon between the parties, the Claimant, should he desire to do so, shall present a formal offer in writing to purchase the Respondent's interest in the home, which offer shall include the date of anticipated completion;
 - (c) if the parties are unable to agree on the terms of the purchase of the Respondent's interest, then the home will be listed for sale with a real estate agent agreed to by the parties at a listing price recommended in writing by that agent. If the parties are unable to agree on a real estate agent, then they have liberty to apply to the Court for directions;
 - (d) the Claimant will have the right to match any bona fide offer made for the home. Should he do so, the Claimant and Respondent will share equally the amount of any real estate commission payable;
 - (e) the parties have liberty to apply for further directions pertaining to the sale of the home should that be required;
 - (f) the Claimant shall be provided with a credit for any reduction in the principal of the mortgage registered against the home from September 1, 2012 until the date of his purchase of the Respondent's interest or completion of the sale to a third party.

- [119] With respect to the family debt the Respondent shall be responsible for the Canadian Tire MasterCard debt of \$5,400.00. The sum of \$1,000 which the Respondent inadvertently obtained for her own use from the parties' joint line of credit shall be repaid by her to the Claimant at the time her interest in the family home is purchased either by the Claimant or a third party.
- [120] Insofar as the 2006 Ford pickup truck, the 2001 Yamaha YZ250 dirt bike and 2004 Yamaha R6 motorcycle are concerned, there is a dispute between the parties as to whether the Respondent has an interest in those assets and, if so, their values as at the date of the s. 57 declaration, being October 3, 2011.
- [121] I conclude the Respondent does have an interest in those assets. The value of her interest is to be calculated by taking the average of the amounts identified by the parties on their respective financial statements. Insofar as the Ford Focus which the Respondent transferred to a third party for no consideration is concerned, I fix that asset's value at \$3,000.00. The Claimant's interest, valued at \$1,500, shall be deducted from the amount the Claimant owes the Respondent for the Ford pickup truck and the motorcycles. All adjustments as between the parties are to occur on the date the Claimant purchases the Respondent's interest in the home or the date of the completion of its sale to a third party.
- [122] The parties' respective CPP credits and interest in the Claimant's Pulp, Paper and Woodworkers' Union pension is to be divided equally in accordance with Part 6 of the Family Relations Act.

IX DIVORCE

- [123] There has apparently been some delay in obtaining the marriage and clearance certificates. Upon those being filed together with the Registrar's Certificate, there shall be an order, subject to section 12 of the Divorce Act, that the parties are divorced.

X COSTS

- [124] Insofar as the principal issue is concerned I have decided the children's primary care should remain with the Claimant. There is, however, a considerable discretion which I have in dealing with costs. Both the Claimant and his extended family, and the Respondent with hers, should have learned a great deal from this trial as to what is in the children's best interests and the concerns they have. The adjustments which they choose to make between now and June 30, 2013 may play an important role as to what occurs when the review takes place. Under the circumstances, I order each party be responsible for their own costs to date with the exception that the Claimant shall reimburse the Respondent for 50% of the costs of Mr. Rowe's report.

"Abrioux J."

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