
CANADA / JUDGMENT

Lahdekorpi v. Lahdekorpi

2016 BCSC 2143

COURT

Supreme Court of British Columbia

DECIDED

17 November 2016

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2016 BCSC 2143 Lahdekorpi v. Lahdekorpi

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Lahdekorpi v. Lahdekorpi,

2016 BCSC 2143

Date: 20161117

Docket: E141097

Registry: Vancouver

Between:

Ari Mikael Lahdekorpi

Claimant

And

Linda Lahdekorpi

Respondent

Corrected Judgment: the text of the judgment was corrected at paragraph 94 on March 16, 2017

Before: The Honourable Madam Justice W.J. Harris

Reasons for Judgment

Counsel for Claimant:

G.C. Tedham

Respondent, Linda Lahdekorpi:

In Person

Place and Date of Trial:

Vancouver, B.C.

December 14-18, 2015

January 25-29, 2016 and

February 1, 2016

Written Submissions of the Claimant:

March 3, May 11, and

June 16, 2016

Written Submissions of the Respondent:

April 12, May 19 and 29, 2016

Place and Date of Judgment:

Vancouver, B.C.

November 17, 2016

I. Overview

- [1] The parties, Ari Lahdekorpi and Linda Lahdekorpi, separated in 2013 after a 36 year marriage. They were granted a divorce by Mr. Justice Leask on November 4, 2015.
- [2] The essential issues between them relate to the division of property and spousal support. Specifically, the issues are:
 - a. What should the parties' incomes be for the purpose of determining spousal support?
 - b. What is the quantum and duration of spousal support to which the respondent is entitled? Should the duration of support be reduced where the claimant plans to retire early?
 - c. Should the family property be divided equally or would an equal division be significantly unfair to the respondent?
- [3] The claimant was represented by counsel at the trial. The respondent had been represented by counsel earlier in the proceedings, but was not represented at trial.

II. Background

- [4] The parties were married on May 21, 1977. The claimant was 20 years of age and the respondent was 19 years of age.

- [5] The claimant was born on February 25, 1957 and is currently 59. The respondent was born on May 8, 1958 and is currently 58. The parties have a son, Stefan, who was born in 1985 and who is now 31.
- [6] The parties lived in Winnipeg at the time of their marriage. They moved to Toronto for a period for the claimant's musical career. They moved back to Winnipeg and then to Thunder Bay in 1985. They returned to live in Winnipeg in 2006 after the claimant sold his Thunder Bay radio and television business interests. In 2009, they moved to Coquitlam so that the claimant could take a position as a managing real estate broker in Vancouver.
- [7] In July of 2012, the parties sold a property they owned on Surprise Lake in Ontario (the "Surprise Lake Property"). They had been renting out since they left Thunder Bay. The respondent has used some of the proceeds from the sale for her living expenses and to pay off family debts.
- [8] The parties disagree on the date of separation. The claimant asserts that they separated in April of 2013; the respondent asserts that it was in July of 2013.
- [9] The parties continued to live at the matrimonial home in Coquitlam after separation. The claimant moved out of the home in May of 2014 but continued to pay related expenses until the end of November 2014. The respondent continued to reside in the home until it was sold in November of 2014.
- [10] The claimant was working as a real estate agent in Surrey, BC at the time of trial. The claimant has a new partner, who is also a real estate agent. She has a son living with them. They live in a relatively new home in South Surrey. They operate a real estate business together.
- [11] The respondent moved to Guelph, Ontario after the sale of the matrimonial home. She was living at her son's home and was unemployed at the time of trial.

III. Position of the Parties

The Claimant

- [12] The claimant seeks an equal division of family property and debts.
- [13] The claimant does not dispute that the respondent is entitled to spousal support, but seeks to limit the duration of spousal support, as he intends to retire at 63 for health reasons. He submits that spousal support should be determined at the "mid-range", based upon an imputed income for him of \$70,000 a year. The claimant contends that, even though his income has been higher in the past and the real estate market is "hot", he is just starting out as a self-employed real estate agent. He submits that this is a different type of work than he did as a managing broker and involves different duties and responsibilities.

- [14] The claimant contends that, although he hopes to sell 12 homes a year, it is unrealistic to assume that he would be able to generate a net income of \$100,000 -- which is the amount of income the respondent suggests the claimant could earn.
- [15] The claimant submits that it was reasonable and prudent for him to become a real estate agent rather than remain a managing broker because he had lost two such positions within one year, there were few positions available, and the positions that did exist did not pay the level of income he had previously earned.
- [16] The claimant asserts that the respondent has been intentionally under-employed since the parties separated. He submits that the respondent's income should be imputed at \$40,000, based upon her previous employment.

The Respondent

- [17] The respondent seeks a reapportionment of the family property in her favour. She asserts that it would be significantly unfair to divide the property equally. She emphasizes the length of their marriage; her limited financial means; and her entitlement to a life style commensurate to the one she had during the marriage and which the claimant still enjoys. She maintains that she should be entitled to keep 100% of the proceeds of the sale of the Surprise Lake Property which was to be their retirement home but which she claims had to be sold because of the claimant's profligate spending. She also maintains that the claimant has not fully disclosed all of his income.
- [18] The respondent submits that the claimant's income should be imputed at \$100,000 for the purpose of spousal support, given that he has earned an income at that level for a number of years as a managing broker for various real estate agencies.

IV. Legal Framework

Spousal Support

- [19] The respondent claims spousal support under the Family Law Act, S.B.C. 2011, c. 25 ("FLA") which allows the court to find an obligation to pay spousal support to relieve against the financial consequences of separation. The relevant sections include:

Duty to provide support for entitled spouse

160 If, after considering the objectives set out in section 161 [objectives of spousal support], a spouse is entitled to spousal support, the other spouse has a duty to provide support for the spouse in accordance with section 162 [determining spousal support].

Objectives of spousal support

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

- (a) to recognize any economic advantages or disadvantages to the spouses arising from the relationship between the spouses or the breakdown of that relationship;
- (b) to apportion between the spouses any financial consequences arising from the care of their child, beyond the duty to provide support for the child;
- (c) to relieve any economic hardship of the spouses arising from the breakdown of the relationship between the spouses;
- (d) as far as practicable, to promote the economic self-sufficiency of each spouse within a reasonable period of time.

Determining spousal support

162 The amount and duration of spousal support, if any, must be determined on consideration of the conditions, means, needs and other circumstances of each spouse, including the following:

- (a) the length of time the spouses lived together;
- (b) the functions performed by each spouse during the period they lived together;
- (c) an agreement between the spouses, or an order, relating to the support of either spouse

[20] These factors are closely aligned with spousal support under the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.). The principles articulated in cases interpreting the Divorce Act spousal support provisions are applicable, and the Spousal Support Advisory Guidelines ("SSAG") continue to be an appropriate resource to consider when arriving at the amount of an award: *Redpath v. Redpath*, 2006 BCCA 338 at paras. 37-38.

[21] In this case, there are both compensatory and non-compensatory bases for the spousal support claim. Compensatory principles address the contributions of a spouse to the relationship and the spouse's losses upon its breakdown. For example, where one spouse did not pursue employment outside the home in order to care for children, the spouse may be at an economic disadvantage relative to the other spouse, which compensatory support seeks to address: *Moge v. Moge*, [1992] 3 S.C.R. 813 at 861-863.

[22] Non-compensatory principles address the needs of a spouse after the breakdown of a relationship. It is based on the social obligation of a spouse to look after his or her former spouse who is in financial difficulty, rather than letting that burden fall upon the public: *Bracklow v. Bracklow*, [1999] 1 S.C.R. 420 at para. 23.

[23] No one principle or set of objectives dominates the analysis -- a court should balance the various relevant factors and strike the balance "that best achieves justice in the particular case": *Bracklow* at para. 32. This necessitates a fact-specific exercise.

Imputing Income

- [24] Section 6 of the SSAG refers to the Federal Child Support Guidelines, SOR/97-175 framework to determine income. Section 15 of the Federal Child Support Guidelines stipulates that a spouse's annual income should be determined in accordance with ss. 16 to 20 and Schedule III.
- [25] Further, under the Federal Child Support Guidelines, the court has a broad discretion to impute income. Section 19 provides that the court may impute any income it considers appropriate in the circumstances and sets out examples of such circumstances:

Imputing income

19.(1) The court may impute such amount of income to a spouse as it considers appropriate in the circumstances, which circumstances include the following:

- (a) the spouse is intentionally under-employed or unemployed, other than where the under-employment or unemployment is required by the needs of a child of the marriage or any child under the age of majority or by the reasonable educational or health needs of the spouse;
- (b) the spouse is exempt from paying federal or provincial income tax;
- (c) the spouse lives in a country that has effective rates of income tax that are significantly lower than those in Canada
- (d) it appears that income has been diverted which would affect the level of child support to be determined under these Guidelines;
- (e) the spouse's property is not reasonably utilized to generate income;
- (f) the spouse has failed to provide income information when under a legal obligation to do so;
- (g) the spouse unreasonably deducts expenses from income;
- (h) the spouse derives a significant portion of income from dividends, capital gains or other sources that are taxed at a lower rate than employment or business income or that are exempt from tax; and
- (i) the spouse is a beneficiary under a trust and is or will be in receipt of income or other benefits from the trust.

Division of Property

[26] The FLA regulates the division of property and debt between separating spouses. Pursuant to s. 81(b), the starting point is that each spouse "has a right to an undivided half interest in all family property as a tenant in common, and is equally responsible for family debt." Subject to s. 85 which deals with excluded property, family property includes all real and personal property owned by at least one spouse on the date of separation. Relevant portions of s. 84(2) which refine the definition of family property include:

- (2) Without limiting subsection (1), family property includes the following:
 - (a) share or an interest in a corporation;
 - (b) an interests in a partnership, an association, organization, a business or a venture;
 - (c) property owing to a spouse
 - (i) as a refund, including an income tax refund;
 - (ii) in return for the provision of a good or service;
 - (d) money of a spouse in an account with a financial institution;
 - (e) a spouse's entitlement under an annuity, a pension, a retirement savings plan or an income plan;
 - (f) property, other than property to which subsection (3) applies, that a spouse disposes of after the relationship between the spouses began, but over which the spouse retains authority, to be exercised alone or with another person, to require the return or to direct its use for further disposition in any way.
 - (g) the amount by which the value of excluded property has increased since the later of the date
 - (i) the relationship between the spouses began, or
 - (ii) the excluded property was acquired.

[27] Section 85 defines excluded property and includes property brought into the relationship by one spouse which can be traced to other property. Section 85 provides, in part:

- (1) The following is excluded from family property:
 - (a) property acquired by a spouse before the relationship between the spouses began;
 - (b) inheritances to a souse;
 - (b.1) gifts to a spouse from a third party;
 - ...
 - (g) property derived from property or the disposition of property referred to in any of paragraphs (a) to (f).

- (2) A spouse claiming that property is excluded property is responsible for demonstrating that the property is excluded property.
- [28] Pursuant to s. 87, the value of family property is to be determined as of the date of the hearing (unless otherwise agreed between the parties) and must be based on fair market value.
- [29] Section 95 provides the court with a discretion to order an unequal division of family property or debt if it would be "significantly unfair" to divide it equally. Relevant provisions of s. 95 include:
- (1) The Supreme Court may order an unequal division of family property or family debt, or both, if it would be significantly unfair to
- (a) equally divide family property or family debt, or both, or
- ...
- (2) For the purposes of subsection (1), the Supreme Court may consider one or more of the following:
- (a) the duration of the relationship between the spouses;
- ...
- (c) a spouse's contribution to the career or career potential of the other spouse;
- (d) whether the family debt was incurred in the normal course of the relationship between the spouses;
- (f) whether a spouse, after the date of separation, caused a significant decrease or increase in the value of the family property or family debt beyond the market trends;
- (g) the fact that a spouse, other than a spouse acting in good faith,
- (i) substantially reduced the value of the family property, or
- (ii) disposed of, transferred or converted property that is or would have been family property into another form, causing the other spouse's interest in the property or family property to be defeated or adversely affected;
- ...
- (i) any other factor, other than the consideration referred to in subsection (3), that may lead to significant unfairness.

- (3) The Supreme Court may consider also the extent to which the financial means and earning capacity of a spouse have been affected by the responsibilities and other circumstances of the relationship between the spouses if, on making a determination respecting spousal support, the objectives of spousal support under section 161[objectives of spousal support] have not been met.

[30] Section 96 prohibits the court from dividing excluded property unless it would be significantly unfair not to do so:

The Supreme Court must not order a division of excluded property unless

- (a) family property or family debt located outside British Columbia cannot practically be divided, or
- (b) it would be significantly unfair not to divide excluded property on consideration of
 - (i) the duration of the relationship between the spouses, and
 - (ii) a spouse's direct contribution to the preservation, maintenance, improvement, operation or management of excluded property.

V. Analysis

- [31] As noted above, the parties separated after a 36 year marriage; they are now in their late 50s; they do not have substantial family property to divide; they have substantial debts; and the parties' earnings are significantly lower than they have been historically. The claimant wishes to retire at 63 due to health concerns and, for that reason, seeks to limit the amount and duration of spousal support. The respondent considers that she cannot obtain work as a result of her age, health and limited skills and seeks an unequal division of property as well as spousal support in order to maintain a standard of living approaching what she had during the marriage.
- [32] The parties' financial circumstances and their respective positions demonstrate the interconnection underlying issues of property division and spousal support. In that regard, it is well settled that a court should make the appropriate division of property before considering spousal support. However, in light of the requirement of s. 95(3) of the FLA, if a spousal support order would not fulfill the objectives of the spousal support, "that fact can be a relevant consideration in deciding whether it would be significantly unfair to divide the property evenly. This recognizes the close connection between the property division and spousal support orders made on dissolution of a marriage": *Parton v. Parton*, 2016 BCSC 1528 at para. 101.
- [33] Therefore, I have considered the parties' positions with respect to spousal support and property division mindful of the interconnection between them. I will first review the arguments concerning support.

Preliminary Issue: Date of Separation

[34] With respect to the date of separation, the claimant's evidence was that in April of 2013, they began living separately under the same roof. The respondent does not dispute that they were living separately but submits that the separation date should be July 1, 2013, as it was then that she agreed to give him a divorce. The claimant acknowledges that he had attempted to reconcile with the claimant and that it was in July that she told him that no reconciliation was possible.

[35] In *Ishebabi v. Temu*, 2015 BCSC 1321, Mr. Justice Jenkins considered the question of when the parties had separated and held that in order to separate there must be an intention of at least one of the parties to bring the relationship to an end. He stated:

[38] In order for a couple to "separate", there must be an intention of at least one of the parties to terminate their relationship as a married couple. Couples can separate but still live under the same roof but there must be an intention to bring the relationship to an end.

[Emphasis added.]

[36] In this case, I consider that the evidence supports that April 1, 2013 was the date of separation as it was then that the claimant intended to bring the relationship to an end and was living separate and apart from the respondent.

Circumstances of the Parties Prior to Separation

Claimant's Work History

[37] The determination of the claimant's income is complicated by a number of changes in his career path, the number of businesses he operated, and by his paying himself through the numbered company he established and maintained until December of 2013. The claimant arranged for income splitting as a means of minimizing tax liabilities throughout their marriage.

[38] The claimant started working in a recording studio in 1978 and then at a radio station in Winnipeg. The claimant and respondent decided to move to Thunder Bay in late 1984, with the idea that it would be a good place to raise a family. Their son, Stefan, was born shortly thereafter. The claimant and respondent decided that the respondent would stay at home while Stefan was young.

[39] The claimant obtained work at a radio and television company in Thunder Bay. His work selling advertising for the station led to him establishing his own business, Real TV Realty Inc., which involved selling real estate through television advertising. He obtained his real estate licence for this venture in 1992. He also acquired a number of radio licences for stations he operated under the name of Northwest Broadcasting. He operated these businesses until they moved to Winnipeg. The respondent provided some assistance to him with these business ventures.

- [40] When they moved back to Winnipeg in 2006, the claimant was employed by a real estate company as its managing broker. He testified his annual income from this employment was approximately \$80,000.
- [41] The claimant was subsequently recruited to work in a similar capacity at the Vancouver office of Remax Select, a "high end" realty firm, in 2009. In this position, he supervised approximately 100 agents. His position involved him reviewing the contracts prepared by agents and advising them of potential issues.
- [42] He was engaged as an independent contractor when he worked at Remax Select, initially through his numbered company. His annual income was approximately \$96,000. He testified that his annual base income was \$80,000 with a bonus of 15 to 20% based on profits. The claimant's evidence was that he did not receive a bonus in the first year; that his bonus in 2011 was \$7,000-\$8,000; his bonus in 2012 was approximately \$8,000; in 2013 it was approximately \$14,000; and in 2014, it was approximately \$20,000.
- [43] His contract at Remax Select was terminated in May of 2014, with a severance package. He sought other employment and received a number of job offers as a managing broker, but they were not at the same income and would necessitate him selling real estate as well as managing the transactions.
- [44] He ultimately took a position as a managing broker at Sutton West Coast Realty where he earned an annual income of approximately \$75,000. He was an employee at Sutton and, therefore, did not have the same ability to minimize his tax liability. He was terminated from Sutton within a year.
- [45] The claimant considered taking another managing broker position but decided it would be better to be an agent. He believed that the number of managing broker positions was diminishing and paid substantially less than what he earned at Remax Select. He considered that working as an agent would be better suited to his health concerns, and he would be able to work with his new partner, who is an experienced agent in the Fraser Valley area. They both work under the Remax banner and market themselves as a real estate team. They share promotional expenses and he testified that he benefits from her contacts and knowledge of the market area.
- [46] The claimant's income tax returns and notices of assessment reflect the following line 150 income from 2011 to 2014:
- 2011 \$66,078 2012 \$85,157
- 2013 \$90,766 2014 \$93,566
- [47] However, these figures are net of business deductions. The gross income for the respondent for the years in which he was working at Remax Select and being paid as an independent contractor are: \$131,000 for 2013 and \$100,765 for 2014.

[48] There were no tax returns submitted in evidence by either party for 2015.

Respondent's Work History

- [49] The respondent did not work when Stefan was young. She was the primary care giver for her son throughout the marriage. After Stefan was in school, the respondent worked part-time cleaning at Real TV Realty's offices and obtained a part-time job as a custodian at a local school district, with an annual income of approximately \$23,000. In 1996, she started a cleaning business for residential and commercial properties. This business involved her hiring and supervising cleaning staff. She operated that business until 2006.
- [50] While she was living in Thunder Bay, the respondent also assisted the claimant with his company by performing janitorial work and some clerical work as required. She obtained her real estate licence in 2007 and worked for two years as a realtor with Royal LePage.
- [51] When she moved with the respondent to Winnipeg, she obtained employment selling cars at a Honda dealership. She earned approximately \$40,000 a year at Honda. She held that position for approximately one year and then obtained an administrative position with Brookfield Global Relocation, where she assisted with the relocation of police, military and government employees. Her annual income at Brookfield was approximately \$35,000. She held this position from February 2009 to January of 2010.
- [52] She was unable to retain the Brookfield job when she moved to Vancouver and obtained work at: Open Road Toyota with an annual salary of approximately \$40,000; CMI Moving Systems with an annual salary of approximately \$45,600; and at BMW dealership as a leasing agent with an annual salary of approximately \$31,000. She held the latter positions for only a few months and there were months of unemployment between jobs.
- [53] After moving to Guelph, she obtained employment at a Kia and Olympic Honda dealerships, where she had been earning between \$20,000 and \$28,000 plus commissions. However, at the time of trial, the respondent was not working, as she had lost these jobs.

Entitlement to Spousal Support

- [54] The claimant has not been paying the respondent spousal support of any kind since 2014, although he paid the mortgage and household bills for a period after the marriage ended. As noted above, the claimant does not dispute the respondent's entitlement to spousal support. However, he disagrees with the income which the respondent seeks to attribute to him and also seeks to limit the duration of support to his retirement at 63 years of age.
- [55] I find that the respondent is entitled to spousal support on both a compensatory and non-compensatory bases. When the respondent's circumstances are examined on the basis of compensatory entitlement, I find that it was a mutual decision to put aside her career in order to raise their child; that when Stefan was in school she took evening custodial work as a means of supplementing the family's income; and that she set aside her own career in

order to facilitate the claimant's career path by leaving Thunder Bay and moving to Winnipeg and then Vancouver. Although she worked in various jobs, and earned approximately \$40,000 in some jobs, she was not able to maintain an income at this level on a sustained basis.

- [56] I find that the consequence of their preferring the claimant's career over the respondent's has resulted in her not having the same earning potential as she would reasonably have been capable of achieving. His annual income from employment has been over \$100,000 for most of the last fifteen years, while her income has generally been modest - generally less than \$30,000 per year. There is, therefore, a significant disparity in their income over the course of their marriage.
- [57] Further, when the respondent's circumstances are examined on the basis of non-compensatory principles, I find that the respondent is in financial need. While the respondent has demonstrated that she can obtain employment, she has not established herself in a career and has limited employment skills. When she was living in Vancouver, she had difficulty maintaining employment. Since moving back to Ontario in 2014 she has only worked a few months, and has been living with family members.
- [58] I conclude that the claimant has an obligation to provide spousal support to the respondent.
- [59] As noted above, the claimant paid certain expenses from the date of separation until December 1, 2014 in relation to the ongoing maintenance of the matrimonial home in which the respondent was living. While there has been a delay in the claim for spousal support, the court retains discretion to order retroactive spousal support from a date earlier than the commencement of proceedings: *Wilson v. Wilson*, 2016 BCSC 1315. Therefore, I find that the respondent is entitled to spousal support beginning on December 1, 2014. This date reflects the time at which the respondent required assistance and was subject to the actual cost of the marital breakdown.

Quantum of Spousal Support

- [60] Having determined that the respondent is entitled to spousal support from the date of December 1, 2014, I now turn to the question of quantum of the spousal support payable.
- [61] In *Yemchuk v. Yemchuk*, 2005 BCCA 406 at para. 64, the Court of Appeal accepted that the SSAG, despite lacking legislative status, are a useful tool to assist judges in assessing quantum and duration of spousal support. In this case, I find it appropriate to apply the SSAG in determining the amount of support and must therefore assign an income to each party at or near the time of the separation. As noted, the Federal Child Support Guidelines provide a basic approach to calculating income.

- [62] At the time of the separation, the claimant's line 150 employment income was \$90,766. However, the claimant argues that this is not representative of his earning capacity due to the variable nature of his earnings in the past and that it will not be representative of what he will be able to continue to earn due to his recent change in employment. The respondent argues that this amount is too low and that he is purposefully under-employed and that his income should be imputed to \$100,000 for the purposes of support.
- [63] The claimant's pattern of earnings since 2011 has fluctuated. The claimant's line 150 employment income over the last four years in which income tax returns were available reflected a high of \$93,566 in 2014 to a low of \$66,078 in 2011 -- although, I note these amounts are net of the business expenses he claimed. For example, his gross income in 2014 from Remax Select was \$100,765 and was \$131,000 for 2013. I do not have evidence from which I could infer that his business expenses were not legitimate deductions. I also note that, until 2012 when the Surprise Lake Property was sold, there was approximately \$13,800 in revenue from that property.
- [64] With regard to his change of employment, I observe that the evidence of the claimant's work history does not support his contention that he has "very limited, prior experience as a real estate agent". He obtained his real estate licence in 1992 and became the owner of a real estate company, Real TV Realty. He subsequently became a managing broker in Winnipeg and Vancouver. Although he was not engaged directly selling real estate, as a managing broker he was responsible for the management of the real estate brokerage, including supervision of the associate brokers and licenced representatives. This is an important and responsible position, as is evident from the duties for a managing broker prescribed in s. 6 of the Real Estate Services Act, S.B.C. 2004, c. 42 and from the responsibilities for the position set out in his offers of employment. I am satisfied that the position of managing a brokerage would have required him to be familiar with all aspects of real estate transactions.
- [65] In my view, it was disingenuous for the claimant, in his submission, to minimize the depth of his experience in the real estate industry. I find that the claimant is very knowledgeable about the real estate industry. He has the necessary skills and business acumen to establish his own real estate business. He also has the benefit of working with his partner, who is an experienced agent in the particular area of the Lower Mainland the claimant has elected to focus on. They have co-branded and marketed themselves as a team.
- [66] That said, I do not accept that the claimant's decision to become a self-employed realtor was unreasonable or that he has been intentionally under-employed. I find that the claimant's termination from two positions as a managing broker within a year would likely negatively affect his ability to obtain further positions as a managing broker in the Lower Mainland. I accept his evidence that there are limited positions as managing brokers and that they do not pay what he had earned at Remax Select. I note that his income at Sutton as a managing broker was significantly less than what he had earned at Remax Select. I also accept that in annualizing his pay stubs from Sutton, his income would likely have been approximately \$70,000 to \$75,000. His evidence that if he had been able to obtain a managing broker

position that paid near to what he earned at Remax Select, he would have taken it is, I find, compelling.

- [67] A person is not entitled to abandon a career to avoid paying support: *Koch v. Koch*, [1999] B.C.J. No. 1339 (S.C.). However, the claimant's decision to become a real estate agent was a reasonable choice in the circumstances and took advantage of his considerable experience in the real estate industry. Indeed, in the long run, he has the capacity to earn more than he was earning as a managing broker. To that end, I am satisfied that the claimant has been diligent in working to establish himself as a real estate agent. He has not acted in a manner which suggests that he is seeking to avoid his responsibility to earn as much as he reasonably can. A person is allowed to change careers to increase security or job satisfaction even if he or she would suffer a reduction in income: *Dennis v. Wilson* (1997), 104 O.A.C. 250.
- [68] Given his decision to establish himself as a real estate agent, I accept the evidence of the claimant that he is not likely to immediately earn \$100,000 at the start of his real estate business. Although the respondent submits that an income should be imputed to the claimant at the level of \$100,000, I must have regard to the level of income that he is reasonably capable of earning. As noted, the courts have a great deal of discretion to impute income to a party for the purposes of determining support. In *Marques v. Zapiola*, 2013 BCCA 433, the Court of Appeal explained the test for imputing income:
- [37] The test for imputing income for intentional under-employment or unemployment is one of reasonableness, having regard to the parties' capacity to earn income in light of their age, education, health, work history and work availability. A spouse's capacity to earn income will include that person's ability to work or to be trained to work. See *Van Gool v. Van Gool* (1998), 113 B.C.A.C. 200, 44 R.F.L. (4th) 314 at paras. 28-31, *Barker v. Barker*, 2005 BCCA 177, 45 B.C.L.R. (4th) 43 at para. 19, and *McCaffrey v. Paleolog*, 2011 BCCA 378, 24 B.C.L.R. (5th) 62 at para. 46.
- [69] I conclude that it is not appropriate to use the claimant's past income where he is no longer employed as a managing broker, where he is establishing himself as a new real estate agent, and where he no longer has income from the Surprise Lake Property. As noted above, I accept that it was a reasonable decision on the claimant's part to establish himself as a real estate agent.
- [70] Given the variable nature of his past earnings and the recent career change, I find that, for the purposes of spousal support it is appropriate to impute an income of \$80,000 a year for the claimant. This level of income accounts for the need to deduct reasonable business expenses. I see no reason that he will not be able to continue to earn at or above this level and, given that this was close to his earnings at the time of separation, I consider that it is fair to impute this amount for the purposes of spousal support.
- [71] In that regard, in considering his anticipated income as a realtor, I have considered his evidence that he could sell "at least" 10 to 12 properties a year which, on a hypothetical mix of sale prices, would allow him to earn \$123,740 in commissions. From this amount, it is

necessary and appropriate to deduct reasonable business expenses. The claimant's estimate of expenses was \$55,000 based upon expenditures to the time of trial. While most of the expenditures were directly related to sales and promotion, in my view the amount of expenses claimed by the claimant did not adequately take into account the sharing of marketing and office expenses with his partner. I consider \$45,000 to be a more reasonable amount of expenses.

- [72] Although it is difficult, due to the unpredictable nature of real estate sales, to determine what he will earn as a real estate agent, I conclude that an income of \$80,000 a year is a realistic estimate of what the claimant could earn as a self-employed real estate agent given the experience he brings to real estate and the benefit of working as a team with a realtor experienced in the focus market.
- [73] With respect to the respondent's income, I do not accept the claimant's contention that her income should be imputed at \$40,000 per year. Although she has experience in administration and sales, she has not earned that level of income on a sustained basis in the past. I find that this was due to a number of reasons including the parties' decisions to relocate to Vancouver; the respondent's subsequent decision to relocate to Guelph; changes in management at some of the work places, and the competitive nature of some sales positions.
- [74] I also do not accept the claimant's contention that she could earn that level of income from working in the real estate field. She no longer has a real estate licence and has been out of real estate work since 2006. Indeed her only employment as a licenced real estate agent was for two years in Thunder Bay. Most of the positions she held were only for a few months, with periods of unemployment in between jobs.
- [75] The claimant suggests that when the respondent decided to take the job with Open Road Toyota, she had turned down a more lucrative and stable offer with the Land Title Office. However, I find that there was no substance to the claimant's criticism of the respondent's decision as her decision to take the job with Open Road Toyota was much more in keeping with her skill set and had the same or more potential for earning a greater income in the long run.
- [76] With respect to the claimant's submission that the respondent has been intentionally under-employed, I find that there was a period of disruption to her earnings due to her preparing the matrimonial home for sale and relocating to Guelph. However, it is not disputed that during this period she took courses to update her skills.
- [77] Upon relocating to Guelph, I accept the respondent's evidence that she actively and diligently sought other employment. Although she was disheartened by the job search and believed that her age and health militated against her obtaining employment, I find that she does have the ability to secure employment as is evident by her ultimately working in 2015 at Kia and at Olympic Honda in Guelph. While she was unable to remain with those employers due to a change in management at the dealerships, her obtaining positions with these and

other employers in the past leads me to conclude that she has marketable skills and experience. There was no evidence to substantiate that the respondent's health concerns affected her ability to work.

[78] Accordingly, while I do not accept that she was intentionally under-employed, like the claimant contends, the respondent continues to have a duty to seek employment: *Hanson v. Hanson*, 1999 CanLII 6307 (B.C. S.C.).

[79] Since 2011, the respondent's line 150 income has been :

2011: \$26,787 2012: \$32,106

2013: \$3,013 2014: \$6,127

[80] She also received a share in the income from the Surprise Lake Property until it was sold, which should also be accounted for.

[81] The respondent's evidence is that her income at Kia in 2015 was approximately \$20,000, with \$8,000 in commissions. At Olympic Honda, the respondent's evidence was that she earned \$20,000 plus commissions. In these circumstances, I consider that it is reasonable to impute her income at the approximate salary level she received working in her most recent positions, which are also positions within her skill set. I, therefore, impute her income at \$30,000 for the purposes of support.

[82] With respect to the level of support, the claimant submits that spousal support should be calculated at the mid-range under the SSAG. However I observe that a strong compensatory claim will be a factor that favours a support award at the higher end of the ranges: *D.P.R. v. L.L.R.*, 2015 BCSC 2317. A spouse who has suffered significant economic disadvantage as a result of the marital roles and whose claims are based on both compensatory and non-compensatory grounds should have a stronger support claim and this should be reflected in the choice of range selected.

[83] Here, I find that the respondent is significantly disadvantaged as her and her former husband move into retirement. There is relatively little in way of net savings to be divided and the respondent has relatively low earning capacity. I find that given these factors, a support award in the high-range is more appropriate. The primary factor driving the amount towards the higher end of the range is the strength of the respondent's compensatory claim, coupled with a strong needs-based claim. Further, I find no evidence to suggest that awarding the respondent support at the high-range of SSAG would cause the claimant undue hardship.

[84] In summary, the claimant will make spousal support as calculated under the SSAG under the "high-range" with an income of \$80,000 attributable to the claimant and \$30,000 to the respondent. This results in a monthly payment of \$2,008 to be paid on the first of each month for an indefinite duration. Concerning retroactive spousal support, the claimant is liable to the respondent for payments of \$2,008 beginning December 1, 2014. This is to be

paid out of the proceeds of the claimant's remaining share of the divided assets after the family debt has been paid off.

- [85] While the claimant currently has expressed a desire to retire at 63 years of age, given the flexible nature of his position as a real estate agent, his inability to forecast the impacts on his health and his financial situation, and his obligation to pay support in the circumstances of 36 year marriage, it is premature to place an end date on spousal support. I observe that there was no medical evidence to support the claimant's contention that his diagnosis of diabetes makes it necessary for him to retire early at 63 years of age. Indeed, as he acknowledged, as a self-employed real estate agent, he will have considerable flexibility in terms of how he manages his work. That said, I accept that retirement justifies a review of spousal support if the parties cannot agree.
- [86] The parties must provide financial information to each other for 2015 and every year thereafter until the claimant's support obligation comes to an end, including income tax returns, notices of assessment and re-assessment, as well as financial statements pertaining to any business operated by either party.

Division of Property

- [87] In this case, the parties made closing oral and written submissions. As noted above, the respondent did not have the benefit of counsel at trial. Her written submissions to the court on the property issues included her feelings of anger and resentment towards the claimant for having left her with limited financial resources after 36 years of marriage. Her submissions were, at times, difficult to follow and included a number of factual assertions not in evidence. I have read her submissions carefully and have endeavoured to address the issues she has raised and make my decision on the best evidence available.
- [88] The claimant testified that the family property at the date of trial includes:
- i. \$46,708.45 of the \$70,325 left from the sale of the matrimonial home on Panorama Drive in Coquitlam after certain family debts were paid off;
 - ii. \$15,000 household contents;
 - iii. \$9,745 musical instruments;
 - iv. a BMO RRSP account in the claimant's name with an estimated value of \$138,268.52;
 - v. a Bay Credit Union RRSP account with an estimated value of \$1,092.79;
 - vi. a Manulife RRSP account with an estimated value of \$7,249.33.
 - vii. a 2004 Lexus RX330 with an estimated value of \$10,000;
 - viii. a 2005 Honda Accord with an estimated value of \$6,000; and

ix. \$109,626.31 in proceeds from the sale of the Surprise Lake Property held in various RBC accounts. However, at the date of separation, this asset had a value of \$206,251.24 and this is the value I will use for the notional property division.

[89] In addition, the parties are entitled to pensions under the Canada Pension Plan. The claimant is not making a claim in respect of the respondent's small C.U.P.E. pension for the period she worked as a custodian for the school district in Thunder Bay.

[90] The claimant testified that the family debt at the date of trial includes:

- i. a CIBC chequing account with an amount owing of \$1,353.73;
- ii. a CIBC line of credit with an amount owing of \$9,393.42;
- iii. a BMO line of credit with an amount owing of \$22,327.87;
- iv. a BMO Mastercard with an amount owing of \$21,946.19;
- v. a BMO Readiline RRSP Loan with an amount owing of \$14,767.15;
- vi. a Canadian Tire Mastercard with an amount owing of \$10,177.07;
- vii. a TD Business Travel Visa for Real TV Realty with an amount owing of \$10,355.33; and
- viii. a Scotia Gold Visa with an amount owing of \$9,027.01.

[91] Other of the parties' debt was paid off when the Surprise Lake Property and the matrimonial home were sold.

[92] The respondent does not generally dispute that the above noted assets were family property at the time of separation, although she disputes the estimated value of certain property, which I address below. The respondent did not provide a comprehensive list of what, in her opinion, constituted the family debts. While she disputed a number of items as being expenses she incurred, I note that the value of these items was, cumulatively, relatively small. I am satisfied that the claimant has provided a reliable accounting of the parties' assets and debts.

Inheritance as Excluded Property

[93] At trial the claimant expressly conceded that \$30,000 of the parties' property was excluded property under s. 85(1)(b) of the FLA as the respondent derived this amount from an inheritance from her mother. Subsequently, after the trial concluded and as a result of the decision of the Court of Appeal in *V.J.F. v. S.K.W.*, 2016 BCCA 186, the claimant sought to retract this concession on the basis that the inheritance was used to purchase a previous matrimonial home (on Shirley Road in Thunder Bay) and, therefore, lost its character as excluded property. He contends that the \$30,000 inheritance is subject to equal division between the parties, along with other family property.

[94] The case before the court in V.J.F. involved an inheritance. More significantly, in that case the Court found that there was a gift of property to the wife where the husband intentionally transferred title to her. The property was registered solely in the wife's name. In the instant case, the Shirley Road property was purchased, in part, with the respondent's \$30,000 inheritance and the property was registered jointly in both their names. In my view, the joint tenancy effectively preserved her contribution to the property, which was purchased for approximately \$130,000. In these circumstances, I am not persuaded that the respondent could reasonably be said to have intended to gift her inheritance to the claimant. I note that, although the parties purchased subsequent properties using, in part, income derived from the Shirley Road property, the properties were either held jointly or in the sole name of the respondent. In my view, the \$30,000 used in the purchase of the Shirley Road property can be traced back to the inheritance, such that it does not lose its character as an inheritance.

Concealment of Family Property

- [95] A focal point of the respondent's submission was that there are funds which are unaccounted from the sale of Real TV and Northwest Broadcasting, the businesses which the claimant operated while they lived in Thunder Bay. The respondent was also a director and shareholder of the businesses, but testified that she was unaware until the time of the trial of the revenue received from the sale of the businesses as the claimant handled all of the family's finances.
- [96] The respondent testified that they had always intended to use the Surprise Lake Property as their retirement home but was told by the claimant prior to separation that they did not have the funds necessary to retain the property. The property was sold in July of 2012. She suggests that, as they rented out the Surprise Lake Property when they left Thunder Bay and, given the proceeds of the sale of the business, there should have been more than enough money to keep the property.
- [97] The respondent questions what the claimant did with the income from the businesses. She posed the following question in her submission: "What did Ari Lahdekorpi do with all of those funds and why did he decide to further cheat his family by forcing Linda Lahdekorpi to sell the family retirement home". The respondent asserts that the claimant has failed to account for \$108,000 received from the sale of Northwest Broadcasting and \$47,000 from the Sale of Real TV.
- [98] However, while the respondent expressed anger and suspicion about what the claimant did with the proceeds, I note that the businesses were sold in 2005 and 2006 when the parties were still living in Thunder Bay and well before the parties separated. Although the respondent was a director and shareholder of the companies and received various financial reports, I accept that she largely left the financial affairs of the businesses to her husband. However, the consequence of her not having been actively involved in the claimant's business dealings was that she did not have a good understanding of the complexity of the family's financial affairs.

- [99] The claimant denies that he has concealed any money. He contends they lived well over the years and that their financial situation can be explained by their joint decision to retain the Surprise Lake Property while buying two properties when they moved to Winnipeg: the large home in Winnipeg in which they resided and a condominium in Barrie for their son. After they purchased these properties in 2006, the claimant's income substantially declined (i.e. from \$191,700 to \$59,042). When they sold the property in Winnipeg and bought a townhome in Coquitlam, the claimant asserts that they went deeper into debt. The claimant's evidence was that the monies from the sale of the businesses were originally to be used to pay down the remaining amount owing on the Surprise Lake Property but ended up being used to buy the property in Barrie for the son.
- [100] While the respondent disputes this, she acknowledges she was not involved in the financial affairs of the family at the time of these transactions. She adduced only skeletal documentation regarding the sale of the businesses, which documentation, I find, does not support any impropriety on the part of the claimant. A 2005 agreement with H.F. Dougall Company, Limited and Northwest Broadcasting provided for the sale of Northwest Broadcasting shares in exchange for a consulting contract for the claimant and television advertising for Real TV. A 2006 agreement between Real TV Realty Inc. and Royal LePage Lannon Realty provided for the sale of assets of Real TV and for the employment of the claimant and respondent as agents for Royal LePage.
- [101] The proposition advanced by the respondent would require me to conclude that the claimant has acted in a fraudulent manner by concealing monies from her six to seven years before they separated. I did not find that the claimant's evidence regarding the transactions to be dishonest or incredible. He was not evasive in his responses in cross examination regarding the sale of the businesses and he provided reasonable explanation to the questions asked regarding these businesses. The evidence adduced at trial was not sufficient to establish that the claimant improperly concealed monies earned from these businesses.
- [102] I find that, when the sale of the businesses is considered in the context of the parties buying shortly thereafter two additional properties, the large home for themselves as well as the home for their son, without selling the Surprise Lake Property, it is likely that the funds were primarily used for the purchase of the additional properties. I accept the claimant's explanation that dividends from the business and the sale proceeds were used for family purposes.
- [103] It is perhaps understandable that the respondent feels that she is not in the financial position she should be at this point in life and is suspicious about why there are not more funds left to be divided than there are. However, I cannot conclude from her suspicions that the claimant has concealed funds. The evidence before me does not allow me to reasonably infer that the claimant has concealed or otherwise failed to disclose funds derived from the sale of the businesses operated by the claimant.

Family Property and Debts

- [104] The respondent also takes issue with the claimant's expenditures over the years, contrasting what she described as her frugal lifestyle with his "extravagant" spending. She testified that he has not been honest about the value of the custom guitars and related items which he purchased during the marriage and submits that they are worth more than he asserts. She also suggests that the claimant has squandered family money by constantly going out for expensive meals.
- [105] Further, she takes issue with the characterization of the parties' furniture as "antiques" and the value attributed to it. Additionally, the respondent disputes the value attributed to the vehicles, noting the extensive repairs which her vehicle requires.
- [106] The claimant responds that the expense of his guitars reflects his long standing interest in music, which has been an important part of his life since the beginning of their marriage. He testified that he continually bought and sold guitars, such that he was using the funds received from sales to buy new guitars.
- [107] The claimant values his custom guitars at \$9,745, which he testified was based upon his knowledge of the value of guitars and what they would be worth based upon Craig's List prices. The respondent challenges the value and number of guitars he has and gave evidence that her inquiries of guitar makers demonstrated that they had a higher value than the claimant represented. I find that the evidence of the claimant is not sufficient to establish the value of his guitar collection and accept the submission of the respondent that there should be an independent certified appraisal of their value -- the cost of which is to be shared by the parties. Should the parties be unable to agree on a certified appraiser located in the Lower Mainland within 10 days of the date of the decision, the court will appoint the appraiser.
- [108] With respect to the value of the household goods, the parties both estimated the value of the furniture. I prefer the respondent's estimate over the claimant's as the claimant's estimate was predicated on the furniture having greater value as antiques. I accept the respondent's position that the furniture was not of a quality that would substantially increase its value and find that \$3,000 is a reasonable estimate of the value of the household goods.
- [109] With respect to the respondent's contention that the claimant depleted their finances by spending unnecessary expenditures on meals, I accept that such expenses are an ordinary expense associated with conducting business.
- [110] With respect to the value of their vehicles, I note that they are approximately of the same vintage. Although according to the evidence, the book value of the 2005 Honda which was driven by the claimant at the time of separation was approximately \$6,000 and the book value of the 2006 Lexus driven by the respondent was approximately \$12,000, I accept the evidence of the respondent that the Lexus is in need of approximately \$6,000 in repairs. The

evidence of the claimant was that he is no longer driving the Honda and has purchased a new vehicle -- without selling the Honda. In these circumstances, I find that there is no appreciable difference between the values of the two vehicles. Each party will, therefore, retain their vehicles.

- [111] With respect to family debts, although the respondent asserts that the debts are not verifiable and the claimant has provided false information, I accept the claimant's evidence that these were debts owed by the parties at the time of trial.

Insurance

- [112] The respondent submits that she should be reinstated as the beneficiary of the life insurance policy of the claimant. The claimant's evidence was that it was term insurance which he cancelled after separation as it was too expensive.
- [113] The Canada Life Term Insurance Summary in evidence is dated October 28, 2012. It provides a death benefit of \$400,000, with an annual premium of \$2,797. Both parties were named as the persons insured under the policy. I accept the respondent's evidence that the insurance policy provided her a measure of security.
- [114] Section 170(e) of the FLA allows the court to order a party with life insurance to designate his or her spouse as a beneficiary. Where, as in this case, a party cancels a policy of term insurance after separation without regard to the impact of doing so on his spouse, I am satisfied that it is in keeping with the object of this provision that the party reinstate the term insurance with the former spouse designated as beneficiary: *D.P.R. v. L.L.R.*, 2015 BCSC 2317; *Kooner v. Kooner*, 2015 BCSC 1880; and *Ashak v. Ashak*, 2016 BCSC 941.
- [115] Mindful of the increasing cost of term life insurance, I conclude that the claimant must reinstate the term life insurance with Canada Life or provide comparable term life insurance of \$200,000 and pay the premiums for such a policy for a period six years from the date of this decision, with the respondent designated as beneficiary.

Reapportionment

- [116] As noted above the respondent seeks reapportionment of 100% of the proceeds of the sale of the Surprise Lake Property prior to any expenses having been paid out of the proceed in her favour. The parties did not refer to any case law specifically on reapportionment, although certain of the cases to which I was referred touch on this topic. I note that there must be compelling reasons under s. 95 of the FLA to justify departing from equal division of property. There is a high bar to establishing that it would be "significantly unfair" not to divide property equally: *Remmem v. Remmem*, 2014 BCSC 1552.
- [117] In *Remmem*, Mr. Justice Butler discussed the meaning to be given to significantly unfair:

- [44] The FLA provisions granting the court a discretion to order other than an equal division are very different from the provisions in the previous legislative scheme. Pursuant to s. 65(1) of the Family Relations Act, R.S.B.C. 1996, c. 128 (the "FRA"), courts had a discretion to divide family property in unequal shares if the court found that the division of property (pursuant to agreement or the provisions of the FRA) would be unfair having regard to the factors set out in that section. The first and obvious difference between the discretion given under the FRA and the discretion given in Part 5 of the FLA is that in order to exercise the discretion, it is no longer sufficient to find that a division of property is merely "unfair". There must be a finding that the division of property pursuant to the statutory scheme is "significantly" unfair. The Concise Oxford English Dictionary defines "significant" as "extensive or important enough to merit attention." Significantly is understood to mean more than a regular impact - something weighty, meaningful, or compelling. In other words, the legislature has raised the bar for a finding of unfairness to justify an unequal distribution. It is necessary to find that the unfairness is compelling or meaningful having regard to the factors set out in s. 95(2).
- [118] In considering whether it would be significantly unfair not to divide the property equally, I have notionally divided the family property equally in accordance with the provisions of the FLA.
- [119] Having regard to the factors set out in s.95 of the FLA, I have considered the duration of the marriage and other factors which may lead to significant unfairness, as well as whether the objectives of spousal support can be met by the spousal support order alone. In that regard, I have considered the decision in *Parton v. Parton*, 2016 BCSC 1528 where Mr. Justice Butler, at para 80, concluded that reapportionment was necessary to remedy significant unfairness in a case where the parties had a 33 year marriage in which they had engaged in the joint enterprise of raising children and supporting a family business. In the decision, Justice Butler emphasised that the parties, given their circumstances, should not be facing retirement with starkly different financial positions.
- [120] Similarly, in this case, after a 36 year marriage, I consider that an equal division of the proceeds would be significantly unfair to the respondent in that it would not allow the respondent sufficient funds to be able to support herself in her retirement and would not allow her to have a comparable financial position to that of the claimant.
- [121] The claimant has been a successful businessman. He has a wealth of business experience, including experience in the real estate industry. He has the capacity of earning, as noted above, at least \$80,000 a year in the short term and a reasonable prospect of earning more than that over time. The respondent has limited employment skills and has had difficulty retaining employment. I imputed an income to her of \$30,000 and she has little likelihood of earning significantly more than that.

- [122] The claimant has been living in a comfortable home and has been paying the majority of the expenses to maintain the household he shares with his new spouse and her son. He has recently purchased a new car. The respondent has been living with relatives and Stefan. She does not have a home of her own and has not been able to sustain steady employment.
- [123] In my view, there should not be such a disparity in the parties' financial circumstances and standard of living after such a long marriage, particularly where it is clear on the evidence that it was a joint decision that she would stay at home to care for their child to enable the claimant to pursue his career and where they operated as an 'economic unit' during the marriage: she was a director and shareholder of businesses he operated, she worked in the businesses, and they used his businesses to minimize tax liability through income splitting.
- [124] I have also taken into account the age of the parties and, in particular, the claimant's assertion that he intends to retire early at 63 years of age. Should the claimant voluntarily retire at or near that age or is forced to retire because of ill-health, this will further impair the respondent's financial circumstances, as she would not have the benefit of the continued spousal support. As noted above, the respondent has both a compensatory and non-compensatory claim for spousal support, which could not be achieved by only a few years of spousal support payments.
- [125] That said, I do not accept the respondent's position that she should be entitled to the entire proceeds from the sale of the Surprise Lake Property. I consider that this would not have sufficient regard to the claimant's contribution to the family property over the years.
- [126] I conclude that there should be a 60% reapportionment of the proceeds of the Surprise Lake Property in the respondent's favour. In coming to this conclusion I have also considered the respondent's \$30,000 inheritance. Even though I have concluded it is excluded property, it is still property that maybe considered in reapportionment: *Hefti v. Hefti*, (1998), 57 B.C.L.R. (3d) 171 (C.A.).
- [127] For clarity, the value of the Surprise Lake property that should be subject to reapportionment is the original sale price of the home, which was \$206,251 before any subsequent deductions. The \$59,940.45 that was paid towards debt is to be divided equally and applied towards each party's entitlement. As noted, the respondent's share has been reduced by the \$36,684.48 she paid for her living expenses and she will be compensated for this through retroactive spousal support.
- [128] The remaining family property and debts noted above will be divided equally.
- [129] I note that the claimant does not contest equal division of the RRSPs. The parties are to complete the necessary forms for a spousal rollover of RRSPs.
- [130] Pension plans to which the parties are entitled (with the exception of the respondents C.U.P.E. pension) should be divided in accordance with Part 6 of the FLA.

VI. Summary

[131] In summary, the following relief is granted:

- i. Spousal support shall be paid by the claimant to the respondent in the amount of \$2,008 for an indefinite duration. This is based on the "high-range" under the Spousal Support Advisory Guidelines, using an income of \$80,000 for the claimant and \$30,000 for the respondent. The obligation to pay support began on December 1, 2014 and any retroactive payments will be offset against the claimant's half of the division;
- ii. The respondent's \$30,000 inheritance is excluded family property;
- iii. There will be a 60% reapportionment of the proceeds of the sale of the Surprise Lake Property in the respondent's favour;
- iv. The remaining family property and debts will be divided equally.
- v. The RRSPs shall be divided equally and the parties shall complete any necessary forms for spousal rollover of RRSPs;
- vi. The pension amounts to which the parties are entitled shall be allocated between the parties pursuant to Part 6 of the Family Law Act;
- vii. The parties shall retain their respective vehicles;
- viii. The claimant's guitar collection will be valued by a certified appraiser; and
- ix. The claimant shall provide a term insurance policy in the amount of \$200,000 with the respondent designated as beneficiary and shall pay the premiums for such a policy for a period of six years from the date of this decision.

[132] Should the parties be unable to agree on the matter of costs, they may make written submissions through Supreme Court Scheduling.

"Madam Justice W.J. Harris"

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