
CANADA / JUDGMENT

Lee v. Starinovich

2013 BCSC 1557

COURT

Supreme Court of British Columbia

DECIDED

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2013 BCSC 1557 Lee v. Starinovich

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Lee v. Starinovich,

2013 BCSC 1557

Date: 20130827

Docket: E035060

Registry: New Westminster

Between:

Tabitha Elizabeth Lee

Claimant

And

Alex Starinovich and Raisa Starinovich

Respondents

Before: The Honourable Madam Justice Humphries

Reasons for Judgment

Counsel for the claimant:

G.K. Thomas

Counsel for the respondent Alex Starinovich:

R. Swartzberg

Counsel for the respondent Raisa Starinovich

U.K. Dhaliwal

Place and Date of Trial:

NewWestminster, B.C.

April 8 - 12, May 6 - 7, 2013

Place and Date of Judgment:

New Westminster, B.C.

August 27, 2013

- [1] This is a claim for unjust enrichment relating to property in the context of a common law relationship. The principal piece of property in dispute is a residence at 925 Delestre Avenue ("Delestre") in Coquitlam B.C., registered upon its purchase in 1997 in the name of the respondent Alex Starinovich. In 2010 his mother, the respondent Raisa Starinovich, was added as a tenant in common. As well, a claim is advanced against bank accounts, Mr. Starinovich's pension, and against some RRSPs cashed in by Mr. Starinovich, as well as some vehicles. Raisa Starinovich has filed a counterclaim in respect of Delestre.
- [2] The Amended Notice of Civil Claim was filed on October 24, 2011, before the Family Law Act SBC 2011 c. 25, came into effect. It seeks child and spousal support; extraordinary expenses; and an express, resulting or constructive trust, or alternatively an order for compensation instead of a property interest in Delestre. Raisa Starinovich's counterclaim seeks a one-half interest in the property as tenant in common, an express, resulting or constructive trust, or in the alternative, compensation on a quantum meruit basis. Counsel agree the common law continues to govern the property claims. The Family Law Act governs the claims for child and spousal support.

Background

- [3] Ms. Lee and Mr. Starinovich lived together during three periods with separations in between: 1988 - 1990; 1992 - 1997, and 2000 - 2009. They have two children, born in 1992 and 1995, now aged 20 and 17. The oldest son is now independent and lives in a basement suite in Delestre and the youngest shares time equally with both parents. He was in Grade 12 at the time of the trial so should have graduated in June of this year.
- [4] The claimant is now 45, the respondent is 46. They met in 1987 when they were in their late teens and lived together in Mr. Starinovich's parents' basement suite from 1988 until 1990. Mr. Starinovich was an apprentice machinist and Ms. Lee worked for a courier company. They shared expenses and household chores.

- [5] Mr. Starinovich was laid off from his apprenticeship in mid-1990 and went to work as a courier. Ms. Lee obtained her G.E.D. in 1990.
- [6] The couple separated in the spring of 1990 but continued to see each other.
- [7] After the separation, Ms. Lee obtained further training and began to work full-time as a lab assistant.
- [8] While the parties were still living separately but seeing each other, Ms. Lee became pregnant. She and Mr. Starinovich rented a house on Beta Avenue in Burnaby and began to live together again. The baby was born in August of 1992. Ms. Lee took maternity leave of 6 months and went back to work. Both grandmothers took care of the baby. The couple continued to share expenses and household chores, but had separate bank accounts.
- [9] In 1993, Mr. Starinovich returned to his machinist apprenticeship with another company. He was injured and received workers' compensation. Ms. Lee was working and Mr. Starinovich stayed at home and looked after the child while he recovered.
- [10] Ms. Lee became pregnant again. The second child was born in April 1995. Ms. Lee took maternity leave and some additional stress leave. She returned to work part-time. She testified that this was a mutual decision. Mr. Starinovich said he agreed it would be beneficial for a time but he hoped Ms. Lee would return to work full-time at some point. Despite the claimant's part-time work, they continued to share household expenses 50-50. They got a babysitter for the children when the claimant was working. The claimant could not recall who paid the babysitter.
- [11] The oldest child had health problems requiring a lot of medical appointments. Ms. Lee testified that she spent weeks in the hospital with him. Mr. Starinovich testified that he also helped with appointments when he could, but he was working. Then the youngest child developed an e-coli infection requiring intensive medical care. Mr. Starinovich said he took time off to stay at the hospital with Ms. Lee and the child. Ms. Lee did not disagree.
- [12] The couple split up again in 1997 after some unfortunate fights. One day in July, while Mr. Starinovich was at work, Ms. Lee took the children and most, if not all, of the household contents, including the washer and dryer, and moved in with her mother down the street.
- [13] Mr. Starinovich begged Ms. Lee to return. She refused and she and her mother moved to Surrey with the children. She asked for \$600 month child support and Mr. Starinovich paid it. There is a difference in the evidence as to how often Mr. Starinovich exercised access with the children. Mr. Starinovich said it was regularly; Ms. Lee said it was not. Mr. Starinovich still lived in the Beta Street apartment but he said there was nothing left in it, so he would take the children to his parents' house or do activities with them.

- [14] Mr. Starinovich testified that he realized their relationship was over when Ms. Lee moved to Surrey with her mother. He decided to move on with his life. His parents wished to buy a piece of property that would allow them to build a duplex. He and his parents began to search for houses two or three months after Ms. Lee moved out of the Beta Street apartment. Ms. Lee said she participated in the search. Mr. Starinovich and his mother said she did not.
- [15] In the fall of 1997, Mr. Starinovich and his parents found the Delestre property in Coquitlam, B.C., which is the main subject of this litigation. Mr. Starinovich's parents put in \$47,500 to the down payment of \$62,500 on a purchase price of \$246,500. Mr. Starinovich testified that he put in \$15,000 from a settlement from a car accident (a statement the claimant disputes but has no evidence to contradict). He began to live in the house in October of 1997. The respondents said the arrangement was that the property would eventually be utilized for the whole Starinovich family.
- [16] According to Mr. Starinovich and his mother, title was put in his name to ensure he got the first time home owners' tax break. The parents were in good health at that time and had their own home to live in. When Mr. Starinovich's father died in the mid-2000's, Raisa Starinovich, whose own health was still good, took care of her mother-in-law and had no need of the duplex at the time. Now her health is deteriorating and she wants the duplex built. She said she intends to proceed with those plans once the litigation is over.
- [17] Mr. Starinovich and his father worked on renovating the basement. Mr. Starinovich hired Ms. Lee's uncle to do the drywall and paid him for the work. Mr. Starinovich and his parents paid for the renovations and he and his father built a retaining wall. Ms. Lee testified that she helped choose some tiles and did some painting. Mr. Starinovich said she had nothing to do with the renovation.
- [18] Mr. Starinovich was laid off shortly after the purchase of the house and had to borrow money from his parents. He testified he would be dispatched by the union to short term jobs and would work right through on those jobs, which interfered with picking up the children. His mother would assist and he would see them after work.
- [19] Ms. Lee continued to work part-time during the three years the couple were not living together.
- [20] The couple continued to see each other, but the frequency is in dispute. Ms. Lee said their romantic attachment continued. Mr. Starinovich said it did not - they saw each other as friends, because they had two children together. He said he was dating other people at this time. He testified that in 1999, he saw Ms. Lee more because the children were involved in more activities. He acknowledged that in the year before Ms. Lee moved in with him she and the children began to stay over at Delestre on weekends.
- [21] Ms. Lee testified that they saw each other regularly during the whole period and she was introduced as Mr. Starinovich's wife. She said Mr. Starinovich bought the house because he hoped it would get the family back together. She testified she was very anxious for them to

live together as a family and did not date anyone else when they were apart. She said by 1999 she and the children stayed at the Delestre home every weekend. She and Mr. Starinovich were taking counselling, and she registered the children to begin school in Coquitlam for the fall of 2000.

- [22] Ms. Lee and her mother had to move from their accommodation in Surrey. Mr. Starinovich said the upcoming eviction is what prompted Ms. Lee to want to move in with him, something he acquiesced to out of concern for the children. He said he was concerned about the living conditions for the children. Ms. Lee's mother smoked and raised dogs and the house was quite smelly.
- [23] Ms. Lee moved into Delestre with the children in July of 2000 after the school year was over. Considerable time was spent on the issue of whether she actually moved in 2000 or 2001, but the preponderance of the evidence is that it was 2000, and in the end it made little difference.
- [24] Mr. Starinovich said even though the claimant moved into the house, they did not live together as a couple until 2004. They slept together occasionally but he usually slept in the basement. Ms. Lee said they lived as a couple from the beginning.
- [25] Ms. Lee called as witnesses her mother, her aunt and a friend to testify to their observations of the relationship, that is, that they were clearly a couple, and to say that Mr. Starinovich was grateful to have Ms. Lee at home half-time.
- [26] One of the witnesses was asked in cross-examination about an altercation at a football game. Mr. Starinovich's lawyer then asked his client about it while directly examining him. An argument ensued which resulted in both counsel agreeing that the evidence was not relevant and should be disregarded in its entirety.
- [27] While the couple lived together at Delestre, they kept their finances separate. Mr. Starinovich paid the mortgage and all housing expenses, furniture, utilities, taxes etc. Ms. Lee, who was still working part-time, took care of the children and the house and contributed money toward groceries, children's clothing, and prescriptions. She said she used all of her money, mainly on groceries, and was unable to save anything. She testified she knew nothing of Mr. Starinovich's finances.
- [28] Ms. Lee raised dogs in the Delestre home. Mr. Starinovich paid for all the expenses, and when the litters were sold, they split the proceeds between the four members of the family after he had first recouped his expenses.
- [29] Mr. Starinovich had a hobby of tinkering with cars and owned a number of vehicles and motorcycles at various times. He took care of vehicle maintenance and repairs for the household. There is an issue as to the value of the cars and whether the claimant has an interest in them.

- [30] The couple bought a Ford Explorer together in 2003. Ms. Lee contributed about \$7,000 from an inheritance she received that year. They eventually sold the vehicle because gas was so expensive. They split the proceeds. Ms. Lee said she used her share for daily living. She used the remainder of her inheritance, about \$3,000, to take the family to Disneyland.
- [31] In 2001, Mr. Starinovich bought a 1965 Mustang for \$10,500. He bought a Harley Davidson motorcycle in 2006 for \$14,625, and sold it in 2011, replacing it with a 2008 motorcycle for \$13,500. He had an old Ford Ranger which he sold in 2007. That same year he bought a Ford F150 for \$30,000 using a loan from his mother and sold it, buying a Toyota 4Runner and another older Mustang.
- [32] Both paid for their own car insurance, but at one point, Ms. Lee insured one of Mr. Starinovich's cars because she had a better insurance record and got a lower rate.
- [33] In 2003, Mr. Starinovich was injured and was off work for 18 months. During this time, he took care of the children when Ms. Lee was at work. Ms. Lee denied that Mr. Starinovich did any housework, despite being at home during this period. Mr. Starinovich testified that he always helped with the house, inside and out, and did much more while he was off work.
- [34] Ms. Lee's working pattern is far from clear, despite efforts from the court to clarify it while she was in the witness box. She has been employed by Fraser Health since 1992. She testified she worked .5, .7, and .3 of a job at various times. In late 2004, Ms. Lee was injured while jumping on a trampoline at a party while intoxicated. Her work was reduced to .3 from .7 to accommodate her injury, but it appears that this occurred in late 2007, meaning she was off work for a period of between two and three years. There was conflicting evidence from Ms. Lee as to whether she returned to work in 2007 or 2009, and whether and when she was full-time. She gave both answers at different times, and on discovery had said 2010. When the court requested clarification, Ms. Lee said it was 2007, but also said she was then bumped from her full-time position, and made it up with overtime. At the end of the evidence, her working pattern was still far from clear.
- [35] In 2005 Ms. Lee was the subject of an audit by Revenue Canada for 2001 - 2004. She had been recording herself on her returns as single. She testified that this was to get the child tax credit. She sent a letter to Revenue Canada saying she and Mr. Starinovich did not really live together as a couple, although they shared accommodation. Revenue Canada decided they were living common-law and she was required to pay back taxes. Mr. Starinovich was also required to re-file his tax returns listing himself as "common law" but was not required to pay any back taxes.
- [36] In 2007, Raisa Starinovich provided her son with \$160,000 to pay off the mortgage. He used \$131,000 to pay off the balance of the mortgage and used the rest to buy a truck, the Ford F150 already referred to.
- [37] Mr. Starinovich was laid off in 2009 for 9 months and collected employment insurance.

- [38] In early January of 2010, the couple separated and remain separated. This action was commenced in April of that year.
- [39] Mr. Starinovich was hired as an apprentice at CN in February of 2010, which has now become a permanent job. In September of 2010 he cashed in his RRSPs of about \$48,000. He said he used this money to pay legal fees and to help get by with his lower income as he had started another new job as an apprentice. He said the RRSPs had been accumulated from contributions made between 1996 or 1997 and 2000.
- [40] The parties shared the children alternate weeks until the oldest moved in permanently with his father.
- [41] Following the separation, Mr. Starinovich paid Ms. Lee \$2,400 "to help her out". Ms. Lee was allowed to take a Corolla which had been given to them by Raisa Starinovich, and which has since been returned Mr. Starinovich. According to Mr. Starinovich, Ms. Lee took her furnishings. Ms. Lee testified she took only a few things with her - a kitchen table and a dresser. She seeks compensation for half the household furnishings in this action.
- [42] The oldest son went to university after the separation, paid for by Raisa Starinovich. The evidence was unclear as to whether Alex Starinovich and Ms. Lee's mother contributed. Ms. Lee did not.
- [43] Mr. Starinovich transferred a half interest in the home to his mother in 2010. He testified this was to preserve his mother's loan in case something happened to him. He also changed his will to protect his mother's interest.

Raisa Starinovich's evidence

- [44] Mrs. Starinovich said she did not share her personal life with Ms. Lee. She said she and her husband worked hard all their lives and were comfortably off, although not rich. She was not happy with the conduct of her son or Ms. Lee and felt they did not have a good relationship while living at the Beta Avenue home.
- [45] She testified that, along with the money for the down payment, she and her husband provided at least \$20,000 of the basement renovations. Her husband and son did the renovations themselves. They also built a retaining wall. Ms. Lee was not living there then and Mrs. Starinovich testified that she did not see Ms. Lee help with anything.
- [46] Mrs. Starinovich said she provided two other amounts of \$5,000 each to her son at various times, along with other financial contributions through the years. She testified that they also made the mortgage payments perhaps three times, and paid the property taxes until 2007.
- [47] She said she and her husband put money into Delestre as an investment, not as a gift. However, she did buy furniture and a carpet for the house as a gift.

- [48] Mrs. Starinovich said that after Ms. Lee and the children moved to Delestre, Mrs. Starinovich would clean and do the laundry and assist with picking up the children on the days Ms. Lee worked.
- [49] She said she would tell Ms. Lee she should clean the house, and Ms. Lee would reply, "Why should I, it's not my house." Mr. Starinovich testified to the same effect.
- [50] Mrs. Starinovich set up accounts for the two grandchildren and made regular deposits. She testified that her son would also give her money to put in the accounts.
- [51] A hand-written agreement dated Sept 2, 2007 was presented in evidence, written by Raisa Starinovich:

I, Raisa Starinovich, lend my son Alex Starinovich, the amount of \$200,000 in order to pay of the mortgage on 925 Delester Ave Coquitlam B.C. to be repaid to me in full upon the sale of this property, including the amount of \$47,500.00 that was lend to Alex in October 1997 for the down payment of the said property, for a total of \$247,500.00. Until such time my name will be put on this property as 50% owner in Trust.

- [52] The document is signed by "Raisa Starinovich", and followed by the sentence:

I Alex Starinovich agree to these terms. 09 02 2007

- [53] Mrs. Starinovich testified that she created this document when she decided to pay off her son's mortgage because she did not see a future for him and Ms. Lee. She had to protect her property and ensure her money would be hers or the house would be hers. At that time the house was valued at \$500,000 and she considered half of it to be hers. She was in her son's will, but she knew a will could be disputed, so when Ms. Lee left in 2010, she felt she had to put her name on title to protect herself. Also, her son had already had two work-related accidents which concerned her and prompted her to protect herself.
- [54] Mrs. Starinovich said she and her husband did not expect Mr. Starinovich to repay them for the down payment on the house. She said they invested in their son, and in any event, he would not have been able to make payments. They had to help him out with the mortgage, property taxes, and, for a period of time, child support.
- [55] Mrs. Starinovich agreed in cross-examination that she is making a claim in accordance with the September 2, 2007 note, but the claim advanced at trial is somewhat different - at trial she asserts that she did not loan her son any money; she is an investor in the property, owns half of it, and wants to retain her title to it.
- [56] Ms. Lee acknowledged that she has no knowledge of Raisa Starinovich's financial affairs. She did not know until the action was commenced that any of the money for the house had come from Raisa Starinovich. She also acknowledged that Mrs. Starinovich is generous to her grandchildren and was also generous to her during her relationship with Mr. Starinovich.

Mr. Starinovich's financial status

- [57] Mr. Starinovich's income has been in the range of \$56,000 to \$67,000, with some years higher and some lower. His most recent tax return shows income of about \$63,000.
- [58] On his Form 8 for 2010, the respondent listed the value of Delestre at \$537,900. He estimated the value of the vehicles at \$31,000, a value the claimant disputes but has not been allowed to substantiate through appraisals. He listed a bank account of \$10,000, and his Steelworkers' Pension Plan (no value given). His only debt was to his mother - \$247,500.
- [59] On his Form 8 for 2011, the house was valued at \$615,100. The rest of the values are about the same. For 2012, his bank account increased to \$15,000 with no other changes. For 2013, the house value was set at \$713,700; he recorded a Mustang written off for \$10,700, the money given to his son (although he admitted in evidence the money is still in his bedroom); bank accounts of \$13,000, and a few other miscellaneous debts of about \$5,000.
- [60] By order of a Master dated August 22, 2012, interim child support was set at \$200 per month and arrears were calculated as of August 22, 2012, at \$6300. Mr. Starinovich has paid the arrears at the rate of \$50/month, although no provision was made in the order for periodic payment.

Ms. Lee's financial status

- [61] Ms. Lee now works full-time at Fraser Health. During the period of cohabitation, she made between \$24,000 and \$26,000 per year. In 2009, she made \$30,000, and in 2010, \$41,000; in 2011, she made almost \$45,000. According to her most recent financial statement filed in March of 2013, she makes about \$38,000. She worked at times for a private individual to supplement her income, but that opportunity is no longer available.
- [62] She has about \$2,000 in various bank accounts, a pension worth \$32,700 as of 2010, no RRSPs, and no assets except an old car worth about \$1,000. On her Form 8 for 2010, which was following the separation, she listed considerable credit card debt - over \$8,000, and about \$1,500 on a Brick credit card. Her mother testified she has lent her \$32,000 for legal fees, and this is claimed as a debt. Credit card debt on her Form 8 for 2013 is now about \$2,000. Her debt to Canada Revenue Agency was most recently listed as \$1,748 as of the end of 2012.

POSITIONS OF THE PARTIES

- [63] According to the claimant, she is entitled to:

-fifty percent of Delestre

-fifty percent of all bank accounts, RRSPs, and pensions

-fifty percent of home furnishings and vehicles

- compensatory and needs based spousal support
- retroactive child support
- future special expenses (past expenses are agreed)

- [64] The claimant says she was explicitly offered a half interest in the home Mr. Starinovich intended to purchase because he wanted to get his family back. Their relationship continued during the three years they lived apart, and once Ms. Lee moved in with Mr. Starinovich, they were financially interdependent. She worked part-time and gave up part of her income, which she says resulted in a loss of \$25,000 per year. She says she made direct and indirect contributions to the family venture and is entitled to half of everything Mr. Starinovich owns. Ms. Lee takes the position that Mr. Starinovich transferred half the interest in the house to his mother in order to defeat his claim.
- [65] The respondent says any contributions Ms. Lee made to Delestre started some years after the asset was acquired. She received a high amount of reciprocal benefits. There was no integration of their finances. She should receive a small percentage of the respondent's share of the house - 10-15%. He says Ms. Lee is not entitled to share in the RRSPs which were accumulated before they lived together. There has been no increase in savings, demonstrated by production of extensive bank records from Mr. Starinovich back to 2001, while the claimant produced records from 2007 on, with a few from 2006, but nothing before that. The money that allowed Mr. Starinovich to buy cars came from his mother.
- [66] Raisa Starinovich says she was the beneficial owner of half of Delestre on the basis of a resulting trust until 2010 when she was put on title as a tenant in common. She put money into the purchase, but title was put only in her son's name for tax reasons. Once she was put on title, that is conclusive evidence of title, pursuant to the Land Title Act, unless fraud is alleged, which it is not. Thus she is now the legal owner of half of Delestre.

THE LAW

- [67] The law respecting property interests arising from unmarried domestic relationships was considered by the Supreme Court of Canada in *Kerr v. Baranow* 2011 SCC 10, decided with the case of *Vanesse v. Seguin*. The court stated that the law of common intention resulting trust is no longer applicable to family law, and it is appropriate to use the law of unjust enrichment in determining property interests on the breakdown of a domestic relationship.
- [68] The three elements of unjust enrichment are well known: enrichment of one party, deprivation of the other, and the absence of a juristic reason for the enrichment. The enrichment spoken of is economic, and includes the provision of domestic services. The remedy will usually be monetary but can be proprietary - that is, the imposition of a constructive trust.

- [69] At para. 57 - 60, the court rejected the approach taken by the Ontario Court of Appeal in *Vanesse*, that unjust enrichment consists only of either the provision of unpaid services, or contribution linked to a specific piece of property (such as is required for a proprietary remedy through a constructive trust). The court added the "joint family venture/accumulation of wealth" approach to assessing a remedy, in which the joint efforts of the parties over time are linked to the accumulation of wealth, and one party upon separation retains a disproportionate share of the jointly earned assets. While there may not be a link between contributions and specific property, there may be a link between the joint efforts of the parties and the accumulation of wealth.
- [70] The provision of mutual benefits is generally relevant when assessing a remedy, not during the deprivation/enrichment stage of the analysis.
- [71] There is no presumption of equal sharing, nor does the mere fact of cohabitation entitle one party to share in the other's property (see *Kerr* at para. 85). The claimant must establish that there was a joint family venture, and that there is a link between her contribution and the accumulation of wealth. If the claimant does establish these factors, then the monetary remedy should be calculated according to the share of the accumulated wealth proportionate to the claimant's contributions in order to reflect the true nature of the enrichment and the corresponding deprivation.
- [72] Before moving to an analysis of Ms. Lee's claim under *Kerr v. Baranow*, it is convenient, in the context of *Raisa Starinovich's* claim, to mention the recent case of *Mishi v. Rascal Trucking Ltd.* 2013 SCC 33, which clarifies that the purchase money resulting trust (where a person advances a contribution to the purchase price of property without taking legal title) still exists. According to *Rascal Trucking*, the presumption of such a trust arises when the persons involved in the transfer are unrelated, and can be rebutted by proving that the money was intended at the time to be a gift. Evidence of a contrary intention by the transferor, proven on the balance of probabilities, will rebut the presumption.
- [73] *Pecore v. Pecore* 2007 SCC 17 draws a distinction between transfers between parents and adult children versus transfers between parents and minor children. Where minor children are involved, the presumption of advancement presumes a gift. With adult children, there is no such presumption. It would appear that, despite the broad statement in *Rascal Trucking* that the presumption of resulting trust applies to unrelated parties, the presumption of a resulting trust should arise with adult children and parents as well, since there is no presumption of advancement in that circumstance.

DISCUSSION

- [74] I will deal first with some issues of fact that underlie the various positions advanced by the parties before going on to consider the merits of the claims.

- [75] Both Ms. Lee and Mr. Starinovich were difficult witnesses. Ms. Lee was argumentative and inconsistent in her testimony; Mr. Starinovich was stubborn and refused to acknowledge the obvious. He would not give Ms. Lee credit for anything and downplayed the nature of their relationship.
- [76] Ms. Lee says she helped with the house hunting for Delestre, something that is denied by Mr. Starinovich and his mother. The house was purchased in October of 1997, shortly after the separation in July. Ms. Lee's mother claims the separation was due to violence by Mr. Starinovich against Ms. Lee, although Ms. Lee herself did not raise any allegations of violence in her direct testimony. However, she said in cross-examination that Mr. Starinovich was violent and that this caused her to leave.
- [77] Ms. Lee and her mother moved away from the Beta Street area to Surrey shortly after Ms. Lee moved out of the Beta Street home. Ms. Lee's own testimony is that Mr. Starinovich had little involvement with the children during this time. She said they spoke on the phone, saw each other from time to time, and also had periods of time when they did not see each other. Ms. Lee testified to other occasions when the couple, while still together, considered buying a house. It may be she has confused looking at homes on those other occasions with the purchase of Delestre, but I am not persuaded that she had any role in the selection or purchase of Delestre. It makes no sense that, shortly after a separation which she says was caused by violence, and after moving to Surrey with her mother, she would agree to search for houses with Mr. Starinovich.
- [78] The claimant's own evidence does not support her contention that the couple maintained a close relationship during the three years of separation that was the equivalent of living together, unlike the situation in *Roach v. Dutra* 2009 BCSC 229, where the parties, after living together for some time, each had separate residences but continued all aspects of their relationship. Ms. Lee testified that Mr. Starinovich did not see the children often (although he says he did). If they were still carrying on the equivalent of a common law relationship, it does not make sense that he would not see the children. Ms. Lee's own mother, with whom she lived, was not aware of any continuing relationship, explaining this by saying she was sure her daughter kept it from her. It appears that the couple did see each other with increasing frequency in the year before they moved back in together. For the purposes of the present action respecting the property, although the relationship was on and off for twenty years, the relevant period is 2000 to the end 2009. I do not view the three years of separation as a continuation of the relationship, but I recognize that during this separation, Ms. Lee still had the primary responsibility for the two children of the relationship during this period, while receiving child support from Mr. Starinovich.
- [79] Despite Mr. Starinovich's efforts to downplay the nature of their relationship after 2000, I accept Ms. Lee's evidence that, once she moved into Delestre, they lived together as a couple, regardless of how often they slept together. They raised their children together as a couple and operated as a family unit. She took care of the children and did the housework. She took care of some of the outside yard work and Mr. Starinovich did the heavy work. Mr.

Starinovich paid for all the expenses, with contribution by Ms. Lee to groceries, school expenses, children's clothing, prescriptions, and miscellaneous household expenses.

- [80] Both parties led evidence as to their expectations or understanding about the nature of their relationship in the context of entitlement to an interest in property. Ms. Lee testified that she raised the issue of why she was not on title to the Delestre house. She says Mr. Starinovich told her he planned to buy another house in her name. By putting her name on title, they would get the first owner's homeowner's grant. She said she did not discuss having her name put on Delestre because her name would go on the other house.
- [81] Mr. Starinovich denies any such conversation and says they could never have afforded another house. He says he raised the possibility of a pre-nuptial agreement with the claimant who told him she had no interest in his house so he did not pursue it.
- [82] I have difficulty seeing how this couple could think of buying another house. They did not have much income, had periods of unemployment, employment insurance, and workers compensation benefits, and were periodically relying on Raisa Starinovich to get along. They were both off work at various times due to injuries. I am not satisfied the conversation alleged by Ms. Lee actually occurred, nor am I satisfied that Mr. Starinovich raised the issue of a pre-nuptial agreement. I doubt either turned their minds to the topic of entitlement to property in any formal sense.
- [83] Ms. Lee says Mr. Starinovich explicitly offered her a half interest in the Delestre home because he begged her to return after she left the Beta Street address with the children and suggested they get a house together. Mr. Starinovich acknowledges that he begged Ms. Lee to come back with the children when she left the Beta Avenue rental home. However, he says he gave up this hope when she moved to Surrey with her mother and instead turned to his parents to assist in buying a home. Ms. Lee argues that Mr. Starinovich's wish that she return and his suggestion that they get a house together translates into an explicit offer to give her a half interest in Delestre.
- [84] Ms. Lee admitted she knew nothing of Raisa Starinovich's interest in the home until the litigation started and I do not accept that she assisted in looking for the house at the time of its purchase. The separation from Beta Street was very acrimonious and was apparently accompanied by physical contact. It was three years later that she and the children moved into Delestre with Mr. Starinovich. I do not accept the claimant's contention that Mr. Starinovich, by urging her to return right after she left in 1997 and suggesting he would buy a house if she did, was explicitly offering her a half interest in Delestre, purchased some months later with the assistance of his parents.

Raisa Starinovich's claim

- [85] I will deal first with Raisa Starinovich's claims because the claimant does not dispute, and could hardly be seen to do so, that Mrs. Starinovich's interest, whatever it is, entitled to be considered before she asserts her interest against Mr. Starinovich's property. Ms. Lee does dispute, however, that Mrs. Starinovich holds a half interest in the property, and says that no deductions should be made for any alleged contributions made by Raisa Starinovich because of inadequate document production.
- [86] I accept that Raisa Starinovich contributed \$47,500 to the purchase price of the house, and gave her son an additional \$160,000 in 2007 which was used to pay off the remaining \$131,000 on the mortgage. The remaining almost \$30,000 cannot be counted towards her contributions to the property.
- [87] I also accept that she made occasional contributions to ongoing expenses for the house, as well as being generous to the family as a whole. She paid for furniture, a new door, landscaping, and painting. She gave Mr. Starinovich \$5,000 on two separate occasions, and paid the insurance and occasionally the mortgage. She paid the property taxes until 2007. She also contributed about \$20,000 to the renovations. The total she contributed is not capable of precise calculation. On the information put before the court, I set it at \$230,000.
- [88] Mr. Starinovich was asked if he put his mother on title to defeat any claim by Ms. Lee. He denied this and said he could not see how he could defeat Ms. Lee's claim by such a move in any event. However, he insisted his mother has an interest in Delestre to half the value of the property. He also provided for his mother in his will.
- [89] Ms. Lee's counsel advanced the proposition that Mrs. Starinovich is statute barred in respect of any loan. Mrs. Starinovich says if this is a loan, rather than an investment, the debt has been acknowledged by her son and it is not limitation barred. I agree that the fact that Mrs. Starinovich provided considerable sums of money to her son, however that provision is characterized, has been acknowledged and would not dismiss Mrs. Starinovich's claim on a limitation defence asserted by a person not privy to the contract.
- [90] Mrs. Starinovich submits that under the law of resulting trusts, the important issue is intention at the time of purchase, and her intention was to have an interest in the property. This is supported by her continued financial contributions, which were steady and large. She would not have done this if she did not have an interest in the property. In any event, she is currently registered as tenant in common of the property. Her counsel says this is conclusive evidence of title under s. 23(2) of the Land Title Act, RSBC 1996 c. 250, which provides:
- (2) An indefeasible title, as long as it remains in force and uncanceled, is conclusive evidence at law and in equity, as against the Crown and all other person, that the person named in the title as registered owner is indefeasibly entitled to an estate in fee simple to the land described in the indefeasible title [subject to certain provisos that do not apply here].

- [91] Mrs. Starinovich testified that she gave her son these sums of money, not as gifts, but as an investment in the property on which she eventually intended to build a duplex. That is not consistent with the document she produced in 2007, which states that the money was a loan to her son, not an investment, and that she expected to be paid back when the property was sold. She stated in writing that, in the meantime, she wanted the security of her name on title, and this eventually occurred in 2010.
- [92] Notwithstanding the use of the word "loan" in the September 2007 document, I am satisfied that Mr. Starinovich held the property until 2010 subject to a resulting trust in favour of his mother. She paid much more money than he did towards the down payment and she eventually paid off the mortgage. She and her husband not only paid for the renovations, but the labour was done by her husband and her son. I accept that she was concerned about the money she had invested in the property and wanted to recoup it if the house were sold, or in the alternative, if Mr. Starinovich kept the house, she wanted to be acknowledged on title as a legal owner. Putting Mrs. Starinovich on title cannot be seen as an underhanded way of affecting any interest Ms. Lee may have, given her large contributions of which Ms. Lee was unaware. Mrs. Starinovich is now on title with her son, and is the legal owner of half the property, which in fact is a smaller interest than she has actually funded. Taking all of the money Mrs. Starinovich has contributed to the property, she has been responsible for more than half the purchase price, as well as some ongoing expenses.
- [93] Mrs. Starinovich is entitled to a half interest in Delestre, in keeping with her legal title.

Tabitha Lee's claim

- [94] Turning now to the claims advanced by Ms. Lee, she alleges that she has been part of a joint family venture, and on its breakdown, Mr. Starinovich has unfairly retained all of the assets and she has none. She seeks an equal division of all of the assets Mr. Starinovich holds.
- [95] In order to be successful in her claim for unjust enrichment based on the mutual accumulation of wealth through a joint family venture, Ms. Lee must first establish that there was a joint family venture. Then she must establish that her contributions to the joint family venture are clearly linked to the accumulation of wealth, and that Mr. Starinovich has retained a disproportionate share of that wealth, considering her contributions. That is, he has been unjustly enriched, she has been deprived, and there is no juristic reason for it.
- [96] If she succeeds in that, she is entitled to an award that reflects the accumulation of wealth proportionate to her contributions.

Joint Venture

- [97] The first question is, was there a joint family venture? According to Kerr, this will be assessed having regard to all the relevant circumstances, including mutual effort, economic integration, actual intent, and priority of the family. The decision to have and raise children together and the length of the relationship are important factors. Also a relevant factor is the

assumption of the greater part of domestic duties by one spouse, which might include leaving the workforce to raise children, or foregoing career advancement for the benefit of the family, thus freeing the other to pursue activities in the paid workforce.

Mutual effort

[98] First, Ms. Lee has established that the parties put in mutual effort to the establishment of a household, once she and the children moved into Delestre. Each contributed financially. Mr. Starinovich's financial contributions greatly outweighed Ms. Lee's, but Ms. Lee worked part-time, thus freeing her to concentrate on duties connected with the children and the home.

Integration of finances

[99] The couple did not integrate their finances, other than through their mutual contributions to maintaining the household and the children. They did not keep a joint bank account, nor, with rare exceptions, account to each other for expenditures. The claimant says the efforts of both of them to "hoodwink" both ICBC through the use of her lower insurance rate, and also the Canada Revenue Agency, show that they integrated their finances. As well, they divided tax refunds and Ms. Lee used her inheritance to assist in paying for a vehicle and to take the family on a trip. These isolated incidents, as unfortunate as some of them are, do show some mutuality of approach to finances, despite the lack of integration.

Actual intent

[100] The parties differ on their actual intent - Mr. Starinovich resists the idea that they were in a mutually dependent relationship, at least until 2004; Ms. Lee says they were living as a couple all along, even through their separation. For the reasons already stated I do not view the period of their separation as an indication of the stability or continuation of their relationship pre-2000, but once Ms. Lee moved into Delestre, I accept that they lived together as a couple, raised their children, and held themselves out to the public as a family.

[101] Insofar as the treatment of property is an indicator of an actual intent to share the wealth (see para. 96 of Kerr), that factor tells against Ms. Lee. Mr. Starinovich paid all expenses associated with the house, and it was not registered in their joint names. Although Ms. Lee worked in and around the house, there is no evidence that it was considered a joint asset. I have found that I do not accept her evidence that she participated in its selection, nor that Mr. Starinovich intended to buy another house and put it in her name.

Priority of the family

- [102] What priority was given to the family in joint decision making? Ms. Lee worked part-time, as she had done prior to the separation and through the separation. She maintained her job, but says she contributed to the ongoing family good by working part-time, to her detriment. She says this was with Mr. Starinovich's agreement. Mr. Starinovich says he agreed at first, but hoped she would soon return to work full-time.
- [103] I am inclined to accept that Ms. Lee's working pattern, at least up to the date of her injury in late 2004, was with Mr. Starinovich's agreement. Having Ms. Lee at home part-time was convenient to the whole family. However, Mr. Starinovich was also home for 18 months because of his injury, and Ms. Lee was off work from 2004 to 2007 because of the accident at the party. The reduced work accommodation and change in her job after she returned to work was due to the injury, not to domestic requirements. She now works full-time at her regular career. What can be said is that she did not have the advantage of working full-time for several years as a result of assuming the primary responsibility for the care of the household and the children.

Conclusion

- [104] A consideration of all of these factors leads me to conclude that there was a joint family venture between 2000 and the end of 2009. The word "venture" is slightly misleading in this context as there was no money-making project, business, or process of accumulation of wealth that benefitted from their joint efforts. However, I accept that they did live as a fully integrated family. Despite the separation of finances and property, the two lived together as a couple, raised their children as a couple, and held each other out publicly as such. While Mr. Starinovich assumed the large majority of the financial burden, Ms. Lee assumed the majority of the care of the home and the children while working part-time, and also contributed financially to the family's daily living expenses.

Is there a link between contributions and accumulation of wealth?

- [105] The more vexing question is whether Ms. Lee can prove a clear link between her contributions to the joint family venture and the accumulation of wealth, because there was no accumulation of wealth during this relationship, aside from some miscellaneous vehicles and household furnishings. There is only the house which Ms. Lee did not assist in buying or paying for directly, and which has increased in value through market forces, not through her direct or indirect contributions.
- [106] At para. 7, Kerr sets out the philosophical basis for compensation for unjust enrichment:

where both parties have worked together for the common good, with each making extensive, but different, contributions to the welfare of the other and, as a result, have accumulated assets, the money remedy for unjust enrichment should reflect that reality. The money remedy in those circumstances should not be based on a minute totting up of the give and take of daily domestic life, but rather should treat the claimant as a co-venturer, not as the hired help. [emphasis added]

- [107] It is useful to examine briefly the facts in Vanesse and Kerr to show the kinds of circumstances that have given rise to a consideration of unjust enrichment in the context of joint family ventures.
- [108] Vanesse: The parties lived together for 12 years, starting in 1997, and had two children. While they each pursued their own careers for 4 of those years, in 2000, Ms. Vanesse agreed to move to Halifax with Mr. Seguin for reasons related to his business, which was a computer business he had developed. She stayed at home with the children for 3 ½ years; he pursued his business and eventually sold it for \$11 million. He then assumed equal responsibilities at home. They separated in 2005, and Mr. Seguin gave Ms. Vanesse half the value of the house and RRSPs. The trial judge held that Mr. Seguin had been unjustly enriched during the period in which Ms. Vanesse stayed at home, allowing him to develop the business. Her efforts were directly linked to his business success because he was able to devote all his energies to it, leaving all the domestic and child caring responsibilities to Ms. Vanesse. Ms. Vanesse was entitled to half of the increased value of the business during the 3 ½ years she had assumed all of those responsibilities, less the value of her interest in the house and RRSPs. The Supreme Court of Canada approved of the trial judge's approach.
- [109] Kerr: The Supreme Court of Canada ordered a new trial on the issue of unjust enrichment, so I will refer to the judgment which followed the subsequent trial in 2012 (2012 BCSC 1222).
- [110] The parties lived together for 25 years: 1981 to 2006. Ms. Kerr had debts left from her previous marriage. Their former matrimonial home on Coleman Street was subject to foreclosure. She transferred that home to Mr. Baranow without consideration, although she had equity of \$40,000 in it, and he paid the mortgage on that home and on a home he owned on Wall Street, remortgaging both pieces of property when interest rates went down. Kerr guaranteed those mortgages.
- [111] Baranow rented out the Wall Street property and kept the rents himself. The Wall Street home was torn down and reconstructed, and the couple moved into it in 1986. Baranow netted \$130,000 from the sale of the Coleman Street residence.
- [112] In 1991, Kerr had a stroke. She ceased work and collected a disability pension. Baranow retired early and took care of her, although she continued to do some light household duties, until she eventually moved into a care home and they subsequently separated. Both had savings and RRSPs at the time of separation.

- [113] The court found that Kerr had contributed financially to the acquisition of the Wall Street property and also paid for a number of ongoing expenses - food, furnishings, insurance, and utilities, and had guaranteed the earlier mortgages. The court found that Baranow used most of his income to pay off the mortgages and could not have done so if Kerr had not been contributing to other living expenses. The court also found that Kerr worked on the construction site and took care of other responsibilities so Baranow could deal with construction management. Baranow took advantage of her disability exemption on his municipal taxes.
- [114] The court found an enrichment and corresponding deprivation in favour of Kerr, with no juristic reason for it, based on Kerr's contributions which were directly linked to the Wall Street property, but also found Baranow had been deprived and Kerr enriched by his early retirement and his care for her. After weighing the respective contributions and all the circumstances, she awarded Kerr 25% of the appraised value of the Wall Street home as of the date of the first trial in 2007.
- [115] Counsel for Ms. Lee submitted numerous cases and a lengthy written argument of well over 100 pages. Almost all of the cases either pre-date Kerr v. Baranow or were not analyzed within that structure. In each case, there was either direct financial contribution to the subject property or business, (*Pickelein v. Gillmore* [1997] 5 WWR 595; *Shannon v. Gidden* 1999 BCCA 539, *Ferreira v. Oullet* [1999] BCJ No. 856; *Jackson v. McNee* 2011 ONSC 4651; *Campbell v. Campbell* 2011 BCSC 1491; *Roach v. Dutra* 2009 BCSC 229) or the parties worked as a family unit through the years to accumulate assets (*Wong v. Wong* 1999 BCCA 344; *Fuscaldo v. Stewart* 2010 BCSC 1585; *Rawluk v. Rawluk* [1990] 1 S.C.R. 70; *Domisiewicz v. Lampart* 2010 BCSC 6280). *J.J.S. v. M.S.W.* 2013 BCSC 287 did refer to Kerr, but in that case the common law husband was able to develop a business and accumulate assets because the common law wife took care of the home and children, thus freeing him up to do so.
- [116] Turning to the case now before the court, this family did not accumulate wealth during the period of their "joint family venture". At times they struggled to get by, with the assistance of Mrs. Starinovich, with some periods better than others. Mr. Starinovich's "wealth", such as it is, is the result of the market increase in the value of the house he bought with his parents in 1997, three years before the couple resumed their cohabitation and at a time when resumption of cohabitation was not in reasonable contemplation.
- [117] There were very few other assets (cars and some furnishings) acquired during the period of cohabitation, and only a small amount of savings to the credit of Mr. Starinovich. His bank accounts are almost the same at the commencement of cohabitation as they were at the separation.
- [118] Mr. Starinovich and his parents paid for all ongoing expenses associated with Delestre. They paid for and did the renovations. When Ms. Lee moved in with the children three years after the house was purchased, she did the usual housework and garden work, and was available to care for the children more than Mr. Starinovich was, although Mr.

Starinovich also had 18 months off work when he also cared for them. She was then off work for two to three years due to her injury. Nevertheless she contributed to groceries and miscellaneous household expenses throughout the period of cohabitation.

- [119] I have considered whether Mr. Lee was already in an advantageous position at the commencement of the 2000-2009 relationship as a result of the deprivation of Ms. Lee. Mr. Starinovich paid Ms. Lee \$600 per month in child support during the three years that they were separated and while Ms. Lee continued to work part-time. That is the amount Ms. Lee requested, although that may have been less than provided for in the Guidelines. The exact figures were not provided.
- [120] Prior to that, while renting accommodation on Beta Avenue between 1992 and 1997, the couple had shared expenses equally although Ms. Lee was only working part-time. Mr. Starinovich testified that he began to contribute to RRSPs once he got full-time work, which was late 1997 or early 1998. At another point in his testimony he said contributions were made between 1996 and 2000.
- [121] His work during this period was not steady and seemed to be subject to continual setbacks, but once he began to work full-time, he was able to save some money. However, there is no evidence that Mr. Starinovich was able, because of contributions from Ms. Lee, to accumulate savings that related to the acquisition of the house during this period which predates the recommencement of the relationship. The RRSPs will be dealt with separately.
- [122] Ms. Lee advances various arguments in support of her claim that Mr. Starinovich experienced an enrichment at her expense. She says she has suffered a deprivation through losing a considerable amount of money and pension credits because she worked part-time. I accept that Ms. Lee worked part-time for some period with Mr. Starinovich's concurrence and that this was an advantage to the entire family. She estimates the amount of money she has lost through not working full-time to be about \$350,000. The respondent disputes that amount on the basis that Ms. Lee, now working full-time at the career she has always had, only makes about \$40,000. Much of her part-time work during the relationship was due to her injury, and not to family requirements. She had a considerable period of time off work because of her injury, beginning when the children were about 9 and 12, and her work was affected thereafter by accommodation for her injury.
- [123] While mutual benefits are generally not relevant at the enrichment/deprivation stage, according to Kerr, simply multiplying alleged potential full-time earnings and subtracting part-time earnings as a basis for assessing an alleged capital loss does not take into account living expenses Ms. Lee would have been responsible for during the ten years of the cohabitation, and that Mr. Starinovich assumed. It is unlikely that, even if she had been able to work full-time, Ms. Lee would have amassed significant savings or accumulated assets.

- [124] Ms. Lee says she sacrificed her own career so Mr. Starinovich could build a lucrative career as a machinist. I am unable to accept that contention. Mr. Starinovich has not had an enhanced career at the expense of Ms. Lee. He has been laid off from time to time and has had to start over as an apprentice more than once. He has been off work due to injuries. He describes the machinist industry as feast or famine, and he has followed its ups and downs. This is not a situation like those in many of the cases where the respondent has been able to put his time and energy into building a successful business because the claimant has assumed all or most of the home responsibilities. From his work history, it appears that Mr. Starinovich's work as a machinist has been most steady in the periods when he was not living with Ms. Lee.
- [125] Ms. Lee produced some of her bank records (far fewer than Mr. Starinovich has) and a schedule she compiled to show that she used all of her money for the family during the period of cohabitation. Much of the expenditures are indeed groceries; others are obviously personal amounts. She says Mr. Starinovich was thus able to work full-time and use his money for other family assets - that is the house and the vehicles. These were, of course, assets that largely benefitted her as well. She lived in the house and she used several of the vehicles. This is the area of shared benefits which Kerr notes makes a "notional ledger" difficult to construct. Even if one were to accept that Ms. Lee's contributions to the household were a benefit to Mr. Starinovich and a detriment to her, with no juristic reason for it, it would be difficult for Ms. Lee to establish that she contributed more to the household than Mr. Starinovich did and thus is entitled to a remedy on a quantum meruit basis.
- [126] It is important to remember that equal sharing of assets is not a presumption, and cohabitation in and of itself does not entitle a party to share in property (para. 85, Kerr). The provision of domestic services in themselves can be offset by mutual contributions from the other partner. As well, if Ms. Lee was disadvantaged through working half-time, that can be dealt with through spousal support. It does not automatically convert into a right to half of everything Mr. Starinovich owns. The principles of unjust enrichment are triggered when wealth is accumulated by joint effort during the relationship and one party retains a disproportional share.
- [127] This claim is advanced under the common law, but even under s. 85(1)(a) of the Family Law Act, Delestre would be excluded property as it existed prior to date the relationship began. However, s. 84(2)(g) would bring the enhanced value of the property since the date the relationship between the spouses began back into consideration. Thus, enhancement in the value of property, even if solely through market forces, is a legitimate consideration under the Act, and it is reasonable to consider it within the context of the present claim as well. For the purposes of this action, for reasons already stated, I consider the relationship to have begun when Ms. Lee moved into Delestre in 2000 after the parties had lived separately for three years.

- [128] Accepting that enhancement in property value through market forces is an "accumulation of wealth", it is therefore necessary to consider whether Ms. Lee's contributions to the household expenses assisted Mr. Starinovich in maintaining Delestre, which has substantially increased in value since it was purchased. If they did, it is an enrichment to him and a detriment to her, with no juristic reason for it.
- [129] Mr. Starinovich says the money for the down payment on Delestre came from him and his parents. His portion came from an ICBC settlement from several years before which he had put into an RRSP. The claimant disagrees, submitting that it would make no sense to deposit a tax free damage award into an RRSP. Mr. Starinovich said he understood he would gain a tax advantage by doing so. On the evidence available to the court, I accept Mr. Starinovich's testimony, as well as the evidence of his mother, as to the source of the money used for the down payment.
- [130] The renovations were done and paid for by Mr. Starinovich and his parents, prior to Ms. Lee moving into the house. Mr. Starinovich provided and paid for the house and all the amenities. Ms. Lee did routine housework (but not enough cleaning, according to Mrs. Starinovich), and some yard work. While not directly linked to the economics of maintaining ownership of the house, she assumed the majority of the child care responsibilities and contributed to groceries, child care expenses, and prescriptions.
- [131] The mortgage records produced by Mr. Starinovich show that, although he was able to retire the principal of the mortgage by about \$12,700 in 2000 (the principal by December 2000 was \$161,818), and \$7,500 in 2001, thereafter he never paid more than \$5,000 - \$6,000 per year towards the principle. By 2007, the principal was \$125,845, with interest of \$5,561, making a total of \$131,406 which was paid off in its entirety by the loan from his mother.
- [132] It appears from the evidence that the mortgage payments were a little over \$1,000 a month, and then Mr. Starinovich began to pay \$350 a week in order to accelerate the payments a year or two before he paid it all off with a loan from his mother in the fall of 2007.
- [133] During and shortly after the period of cohabitation, Mr. Starinovich's income was as follows:
- 1999 - \$57,928 (some EI)
 - 2000 - \$72,400
 - 2001 - \$62,000
 - 2002 - \$56,300
 - 2003 - \$50,403 (some WCB)
 - 2004 - \$42,700 (WCB)
 - 2005 - \$79,400 (some WCB)

2006 - \$70,200

2007 - \$71,300

2008 - \$67,253

2009 - \$42,600 (some EI)

2010 - \$92,700 (\$48,500 in RRSP; \$35,200 in employment income, EI)

2011 - \$62,343

2012 - \$65,000

[134] Mr. Starinovich was not making a great deal of money. At times he had to borrow from his mother, and she would help out with the mortgage and taxes. He was unable to set aside savings. During 2003 and 2004 he made much less than his average earnings.

[135] Ms. Lee's income did not vary much despite the time off work due to her injury - she made between \$24,000 and \$26,000 per year in this period, although in 2006 it went down to about \$20,000.

[136] I conclude that Ms. Lee's sharing of expenses and her general contributions to the household and the maintenance of the property facilitated to some extent Mr. Starinovich's ability to make mortgage payments during some of the period of cohabitation, and to accelerate the payments, thus allowing him to obtain clear title to the house earlier than he would have without her contributions. Thus there is a link between Ms. Lee's ongoing contributions and Mr. Starinovich's clear title at the time of separation, which is the only "accumulation of wealth" that remains at the dissolution of this joint family venture (with the exception of the miscellaneous items, which will be dealt with separately).

[137] There are qualifications to that supposition: part of Mr. Starinovich's ability to make accelerated payments was the increase in his own income in the mid 2000's. As well, with Mrs. Starinovich to help him out when needed, Mr. Starinovich would have owned this house now regardless of whether Ms. Lee and the children lived there or not, and regardless of her contributions. When Mrs. Starinovich did lend her son money in 2007, she lent him far more than he needed to pay off the mortgage, so she was obviously in a position to assist him in paying off the house earlier if she had chosen to.

[138] Notwithstanding these qualifications, I conclude that Ms. Lee has established that there was an unjust enrichment arising from the joint family venture from which Mr. Starinovich emerged with a disproportionate share of the assets. There was an enrichment of Mr. Starinovich, through his ability to pay down the mortgage as a result of Ms. Lee's contributions, a deprivation to Ms. Lee in that her contributions allowed him to some extent to pay down the mortgage on a house she had no title to, and there was no juristic reason for this enrichment and deprivation.

Remedy

- [139] It is difficult, if not impossible, to calculate precisely the effect of Ms. Lee's contributions. In these circumstances, the court must paint with a broad brush. Ms. Lee is entitled to a portion of the enhancement in value to the house pro-rated for the time she contributed to it indirectly, and taking into account Raisa Starinovich's interest.
- [140] Ms. Lee also seeks compensation for half the furnishings. Little evidence was devoted to the furnishings, but in ten years of living together, I conclude that the parties each contributed to furnishings, and Mr. Starinovich kept most of them. Ms. Lee's high credit card debt in the year after separation is an indication that she had to spend money to set up her own household once she moved out of Delestre.
- [141] The house was purchased in 1997 and paid off in 2007. Ms. Lee contributed to the household in ways that can be linked to the mortgage from the last half of 2000 to 2007.
- [142] Evidence of mutual contributions is to be considered at the remedy stage of the analysis. In the context of a joint family venture, this is reflected in assessing the proportionate contributions.

[143] In Kerr, the court said at para. 102:

Once the claimant has established his or her contribution to a joint family venture, and a link between that contribution and the accumulation of wealth, the respective contributions of the parties are taken into account in determine the claimant's proportionate share. While determine the proportionate contributions of the parties is not an exact science, it generally does not call for a minute examination of the give and take of daily life. It calls, rather for the reasoned exercise of judgment in light of all the evidence.

- [144] During the relationship, the parties provided mutual benefits to each other. Ms. Lee contributed more than her share of child care, and provided most if not all of the housekeeping and garden work. Mr. Starinovich provided the house and utilities and took care of car maintenance and heavy yard work. If there were no assets to consider, these mutually provided benefits would be fairly even.
- [145] There must be a link between the claimant's contributions and the accumulation of wealth. As I have mentioned, this is not a situation where Mr. Starinovich has been able to develop a business or a lucrative source of income because of sacrifices made by Ms. Lee. Both of them have the careers they have always had, and Mr. Starinovich has the house. The provision of domestic services in themselves has no link to Mr. Starinovich's ability to acquire the house or make the mortgage payments in the circumstances of this case, so actual financial contributions to the joint family venture are of importance. In its discussion of proprietary remedy, the court in Kerr said, at para. 53, that the extent of the interest should be proportionate to the contributions. Where the contributions are unequal, the share will be unequal. This statement must also apply to a monetary remedy as well - it does not make sense that shares would be equal where contributions are

unequal, simply because a different form of compensation is chosen.

- [146] Evidence and argument did not focus on the mortgage payments, nor on the application of the principles set out in Kerr insofar as they pertain to assessing a remedy, as the claimant simply seeks a 50% interest of everything Mr. Starinovich owns, and the respondent took the position it should be a small share, perhaps 10%-15% of Mr. Starinovich's interest in Delestre.
- [147] The house was purchased for \$246,500. A joint appraisal was ordered in January of 2012. It was appraised at \$750,000. The value has increased by \$503,500.
- [148] Insofar as either counsel suggested an actual method of arriving at a figure, the claimant suggested that if the equity in the house at the time Ms. Lee moved in is relevant, it is \$47,500. However, it is obviously more than that. The down payment was \$60,000 and three years of payments had been made by that time. In any event, the claimant agrees that if the court accepts that Mrs. Starinovich lent Mr. Starinovich any money in 2007, only the money that went to the mortgage, \$131,000, should be deducted. The claimant would then divide the remainder equally, which would result in a payment to her of \$285,000.
- [149] Mr. Starinovich did not offer a figure, but said Ms. Lee's interest, if any, should be 10%-15% of his half interest. That would mean an amount in the range of \$25,000 - \$38,000: that is, 10%-15% of $\$750,000 - \$246,500 = \$503,500/2 = \$252,750$.
- [150] Both methods undermine the contributions of Mrs. Starinovich, which were more than half of the interest in the house, but I proceed on the basis of her legal interest, as that is the declaration she sought, and she does not purport to own a larger proportion than half.
- [151] Mr. Lee's portion of the enhanced value is \$252,750. Ms. Lee contributed to the household expenses for 7 of the 10 years the mortgage was outstanding. 7/10 of \$252,750 is approximately \$177,000.
- [152] Valuing the mutual contributions to the retirement of the mortgage proportionately, I am of the view that 50% is too high a percentage to attribute to the effect of Ms. Lee's contributions, especially in view of the qualifications mentioned above. An interest of around 25% is appropriate. I also consider an allowance for the furnishings. I set her interest at \$50,000.

Vehicles

- [153] It is a sustainable position that Mr. Starinovich would not have been able to acquire some of his vehicles if not for Ms. Lee's contributions to the household finances for groceries and various expenses relating to the children. With the advantage of her ongoing contributions, he would have more cash available. Mr. Starinovich cannot argue that he could have acquired the vehicles easily if Ms. Lee and the children had not moved in to Delestre. If they had not, he would have had to pay child maintenance, and possibly spousal maintenance. He might well have been in the position of being unable to afford expensive toys, although

the extra money from his mother in 2007 allowed him to buy the Ford truck. Ms. Lee also assisted him by paying for insurance for one year on one of the vehicles.

[154] Mr. Starinovich sets the value of the vehicles at \$28,000, but did not allow Ms. Lee to appraise them, with the exception of the Mustang. He listed the vehicles and provided values for them (2004 Toyota 4Runner - \$8,000; 2003 Toyota Corolla - \$3,000; 1965 Mustang (engine damaged) - \$5,000, 2008 Harley Davidson Fatbob - \$10,000, 2003 Mustang (given to son) - \$5,000). Ms. Lee disputes Mr. Starinovich's values and says the total value is \$44,225. She claims the 4Runner is worth over \$18,000 and the Harley Davidson is worth \$13,000.

[155] It may be that Mr. Starinovich has undervalued some of the vehicles; on the other hand, some of Ms. Lee's values seem high. However, Mr. Starinovich said he paid about \$30,000 for the Ford F150, but then sold it and bought two vehicles, the 4Runner and one of the Mustangs - that he now values together at about \$13,000. That does not make sense, but the F150 was obtained with the money his mother provided and was thus not obtained as a result of direct or indirect contributions from Ms. Lee. Therefore, to give Ms. Lee 50% of the vehicles is not appropriate. As well, she has already received credit for the value of her contributions to Mr. Starinovich's ability to pay off the mortgage, so the effect of her contributions to the ability to acquire vehicles should not be overstated. She is entitled to \$10,000 for the vehicles.

Bank accounts

[156] Mr. Starinovich lists savings of about \$10,000. Ms. Lee's financial statement shows about \$2,000 in various accounts.

[157] Ms. Lee is suspicious of another bank account that Mr. Starinovich once had because there is no reference to the deposit of Raisa Starinovich's cheque into his regular account. Instead there is another number endorsed on a cheque. The respondent says he did have that account several years ago but it has been closed for some time and offered, during his testimony, to get a print out. The claimant's lawyer rejected his offer of further documentation, and this issue remained unresolved. The claimant says there are some sums of money unaccounted for - for instance, the extra money from Mr. Starinovich's mother in 2007 that was not used to pay off the mortgage (about \$30,000, which Mr. Starinovich testified was used to buy a Ford F150, which he then sold to buy the Toyota 4Runner and the 2003 Mustang). Also, counsel points to Mr. Starinovich's evidence that he did not deposit the RRSP money into his usual account, and claims to have kept money from the insurance money paid out when his son damaged one of the vehicles. The court is asked to draw the inference allowed for in *Cunha v. Cunha* [1994] BCJ No. 2573, regarding undisclosed assets, and to double Mr. Starinovich's assets, or at least his bank accounts.

[158] While I did not find Mr. Starinovich's evidence particularly persuasive about where he put the extra money from his mother or the RRSPs, I am not prepared to draw an inference that there are hidden sources of money stashed away by Mr. Starinovich that should be accounted for. This family lived on their pay cheques and on the help they received from

Mrs. Starinovich. The existence of the RRSPs and the fact that they were cashed in was not hidden. The cheque from Mrs. Starinovich and the payment of the mortgage were all documented. There was no attempt, at least on the evidence available to the court, to hide the fact that there was money left over from Mrs. Starinovich's loan.

- [159] Mr. Starinovich's bank accounts did not grow during the period of cohabitation. There is no accumulation of wealth in the form of bank accounts to divide.

RRSPs

- [160] The respondent says he collapsed some RRSPs in September of 2010 when he was unemployed and put them in a safety deposit box. He produced a document to show that he received about \$34,000 after \$14,500 of tax was withheld, and his tax return for 2010 reflects the RRSP income. He says he needed the money for legal fees, bills, and living expenses. He says the claimant is not entitled to an interest in the RRSPs because he contributed to them prior to their resumed cohabitation from 1996 or 1997 until 2000.
- [161] The claimant says the respondent would have had to have deposited his RRSP funds into a bank account after they were cashed in and they do not show up on his account. As well his VISA bills remained the same after he cashed in the RRSPs so they must still be available, and she claims half of them. The respondent says he got a cheque for the funds, cashed it, and did not deposit the cash. He points out that his credit card statement does show payments beginning to be made on VISA some time later, including a large payment of \$4,500.
- [162] Ms. Lee says income for child support for 2010 should take into account the RRSPs, and that the RRSPs are relevant to spousal support. She says the case law allows for child support and spousal support to be set on the basis of the RRSP income even though she claims half of it. She cites *Kolman v. Kolman* 2013 B.C.J. No. 743. That case recognizes that a continuing income stream from property that was divided between the spouses is still counted as income for purposes of child support. Here there was no continuing income stream generated from the RRSP cash out, but the amount is properly considered as income on a one-time basis for child support.
- [163] There is no evidence to contradict Mr. Starinovich's assertion that the RRSPs were accumulated prior to 2000, despite, as I understand it, many chambers applications and much document production. Money was always tight for this family as they raised two children, and I am not prepared to find that Mr. Starinovich accumulated these RRSPs at a time other than his own testimony reflects. The main contention is with what happened to the money when he cashed out the RRSPs. Since there is no possibility he could hide the fact he cashed them out, I do not view this as overly suspicious. Ms. Lee says he must be hiding them in another account and thus I should double his assets to account for this. While Mr. Starinovich's testimony about the safety deposit box is unlikely, there is no evidence to support the supposition that he has a hidden source of income. He seems to

like to squirrel away cash, but I am not prepared to hold that he has hidden assets, nor am I prepared to hold that he amassed these RRSPs due to contributions from Ms. Lee.

[164] There might be an argument that some of the RRSP contribution was possible because the child support requested by Ms. Lee and paid by Mr. Starinovich during the three years of separation from 1997 to 2000 was low, and no spousal support was sought or paid, thus allowing some accumulation of savings. This would likely have allowed him to contribute more generously to RRSPs than he would otherwise have been able to. \$600 for two children is appropriate for an income of about \$42,000. For an income of \$55,000 to \$60,000, child support would be in the range of \$830 - \$900.

[165] This would more appropriately be considered in the context of arrears of child support, but arrears are not sought, and could not be properly sought, for this period so many years ago. Since that time, the parties lived together in a joint family venture for almost ten years. It is not possible to do perfect justice in this situation. The collapsed RRSPs should form part of child support for 2010, and that is the end of their relevance.

Child support

[166] The parties shared time with the children equally after separation.

[167] I have listed Mr. Starinovich's income above. Mr. Starinovich makes about \$62,000, although some years have been better than others. As mentioned, in 2010 he cashed in RRSPs of about \$48,000 and as a result, his income is listed at \$92,699, and this is the amount that should be used for child support. His income for 2012 was expected to be about \$65,500.

[168] Arrears for 2010, 2011 and 2012 were set by a Master in August of 2012 on a without prejudice basis. The total owing as of that date was \$6,300.

[169] Given the information now available, the claimant calculated the amount for 2010 (the year in which the respondent's income was very high due to cashing in his RRSPs) at \$1,381 per month, less the claimant's obligation of \$631 per month, leaving \$750. The respondent would not include the collapsed RRSPs but I have held that they should be included in income for the purposes of child support for that year. Mr. Starinovich paid Ms. Lee \$1,000 in December of 2010. This leaves \$8,000 owing for 2010. I accept those figures.

[170] For 2011, I accept the claimant's calculations, which result in \$3,144 owing for that year. For 2012, when the oldest child became independent and began to rent the respondent's basement suite mid-year, the claimant's calculations, which I accept, result in \$1,554 owing for that year. The respondent does not disagree with those figures.

[171] The arrears of child support are thus \$14,051, which subsumes and includes the amount ordered by the Master in 2012. The respondent has been paying that amount at the rate of \$50 per month so should have credit for the amounts already paid. The present arrears should be paid at the rate of \$100 per month until child support ceases to be owing, at which time the arrears, if not already paid off, will be paid at \$200 per month.

[172] Ongoing child support for the one child whom the parties still share equal time with will be \$222 per month, reviewable after the exchange of income information in 2013, and assuming he remains a child within the definition in s. 146 of the Family Law Act.

[173] Section 7 expenses should be shared 1/3 by Ms. Lee and 2/3 by Mr. Starinovich.

Spousal support

[174] Sections 160 - 169 of the Family Law Act govern spousal support.

[175] Section 160 provides:

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

[176] The objectives of spousal support are set out in s. 161:

161. In determining entitlement to spousal support, the parties to an agreement of 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.

[177] Section 162 is also relevant:

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 either spouse.

[178] According to s. 166, conduct is not relevant unless it arbitrarily or unreasonably causes, prolongs or aggravates the need for spousal support or affects the ability to provide spousal support.

[179] The factors in s. 161 are very similar to those set out in s. 15.2(6) of the Divorce Act, with changes necessary to account for relationships other than marriage. Section 161 is not directly modelled on s. 89 of the previous Family Relations Act, although many of the same principles appear in the new Act. Section 89 provided:

- (1) A spouse is responsible and liable for the support and maintenance of the other spouse having regard to the following:
 - (a) the role of each spouse in their family
 - (b) an express or implied agreement between the spouses that one has the responsibility to support and maintain the other
 - (c) custodial obligations respecting a child
 - (d) the ability and capacity of, and the reasonable efforts made by, either or both spouses to support themselves
 - (e) economic circumstances
- (2) Except as provided in subsection (1), a spouse or former spouse is required to be self sufficient in relation to the other spouse or former spouse.

[180] The claimant says she is entitled to spousal support retroactive to the date the action was commenced, April of 2010, and it should be set at the high end of the range provided for in the Spousal Support Advisory Guidelines. The amounts provided by the claimant vary (\$1,102 per month for 2010, based on the collapsed RRSPs; \$184 per month for 2011, \$280 per month for the first five months of 2012 before the oldest child moved out and \$462 from thereon). The claimant says the high end is warranted because the respondent failed to provide for her at all upon separation, he kept the furnishings, he collapsed his RRSPs, and has not been forthcoming on document production.

[181] Mr. Starinovich does not dispute Ms. Lee's entitlement to spousal support in the abstract because she worked part-time for some years during the relationship, but says she does not meet the criteria for compensatory support nor has she shown that she has a need for spousal support. She has a career and a pension. She has not been disadvantaged by the relationship. Mr. Starinovich came out of the relationship with a career as a machinist, which is what he started with. He did not build up an income producing asset as a result of disadvantages assumed by Ms. Lee.

[182] Mr. Starinovich says the claimant has worked part-time primarily for her own purposes. Even when they separated for three years and he was paying child support while she lived with her mother, she did not return to work full-time (of course, she was raising two small children on her own during this period). Then in 2004, while intoxicated at a party he did not attend, she injured herself on a trampoline, resulting in a period of three years away from work followed by a reduced schedule. As well, although she claims she worked .5 of the time, the only documents before the court show her working .7.

- [183] The respondent says the only part-time employment that could be attributed to child care was up to 2004. Time off work after that to 2007 was due to her accident, as the children were older and not requiring her attendance at home. By 2007 the children were 12 and 15. Although the claimant downplays Mr. Starinovich's help around the home, he points out he was off work himself for 18 months in 2003 and 2004 and took care of the children during that time as well as doing house and yard work.
- [184] According to the respondent, the facts do not justify the high end of spousal support on a compensatory or needs based analysis. If there is any award to be made, it should be low to medium, considering the length of the relationship and her continuing career.
- [185] In response to the bases put forward by the claimant to support a high award, the respondent says the RRSPs are irrelevant as they were all accumulated before the relevant period of the relationship began, that is before 2000. He says the claimant did take her own furnishings with her when she left Delestre, and document production has proper, even though the claimant continued to make unsuccessful motions for more documents.
- [186] In addition to spousal support, Ms. Lee seeks 50% of Mr. Starinovich's pension for the period of their cohabitation. In *Thibert v. Thibert* (1992) 12 BCAC 48, relied on by the claimant, the common law wife of a serviceman had never worked, and at the conclusion of the relationship, his pension was the only asset they had. The common law wife was given an interest of 35% in his pension, because she worked in the home to the benefit of Mr. Thibert and her employment skills had atrophied to her detriment.
- [187] The same cannot be said here, as Ms. Lee now works full-time at the career she trained for and has always been employed at, but it is true her pension credits were reduced by part-time work and Mr. Starinovich's were not. However, there is only a short period of time when this half-time work can be characterized as contributing to an unjust gain on Mr. Starinovich's part at the expense of Ms. Lee - that is 2000 - 2004. It is not at all clear that Ms. Lee could not have worked full-time after 2004 if she had not been injured, an injury that was unconnected to Mr. Starinovich. The children were older by that time and it cannot be said that they prevented her from returning to work full-time if she wanted to. It will be many years before Mr. Starinovich is eligible to receive his pension, and even if it could be said that Ms. Lee has established an unjust enrichment in this regard, 50% of four years is not significant. In my view, it is more appropriate and practical to take this consideration into account when considering the various factors that go into assessing an appropriate level for and duration of spousal support.
- [188] In *Bracklow v. Bracklow* [1999] 1 S.C.R. 420, the Supreme Court of Canada said support obligations can arise on three different bases - contractual, compensatory, and non-compensatory, and any or all may factor into any particular case. There is no contractual basis in the circumstances here. The compensatory basis requires the consideration of a reduced ability to support oneself, either through foregone opportunities or the effects of the breakdown of the relationship. Even if there is no disadvantage arising from the

relationship or its breakdown, the court must consider the spouse's actual ability to fend for herself once the relationship is over.

- [189] Bracklow deals with divorce, but as the wording in the Divorce Act respecting spousal support is reflected in the Family Law Act, the case is of some assistance. However, it is predicated on the societal significance of a marital relationship, a distinction the Family Law Act does not make.
- [190] Ms. Lee is now employed in the same career she trained for and worked at all along. A good part of her work history during the period of cohabitation was governed by her injury, rather than by child care. She has made \$40,000 - \$45,000 per year since she returned to work full-time. She made some extra income working privately for an individual but that opportunity is no longer available, so her latest income figure is \$38,000.
- [191] However, prior to 2004, she worked part-time for some years, since the second child was born. She assumed primary responsibility for the children during the period of cohabitation and also during the three year period of separation. While she still has the same career, and did not call any evidence of missed opportunities for advancement, it only makes sense that part-time work would be to her disadvantage. I agree that Ms. Lee is entitled to spousal support, but I bear in mind that any diminution of her career prospects during the period after 2004 when she was off work due to her injury is not relevant to family duties and responsibilities. Also, both parties have come out of the relationship with the career they started with, including pensions.
- [192] I heard little of Ms. Lee's present living circumstances, but she had to set up a home after leaving the house she had lived in with Mr. Starinovich and their children for almost ten years. She continues to work at the career she has always had, and there is no evidence that she cannot advance in that career. Ms. Lee's income is less than Mr. Starinovich's, sometimes, almost half of what he makes. I am of the view that the mid-range of spousal support is appropriate - \$280/month.
- [193] Ms. Lee seeks retroactive spousal support, depending on whether she recovers half the RRSPs or not. She claims the RRSPs were collapsed "for no good reason" and thus she is entitled to half their value. I have held that she is not entitled to half their value, and I do not view them as relevant to the considerations here.
- [194] Section 170(b) of the Family Law Act allows for an order for support to be made retroactively:
- respecting any period of time before the date the application for the order is made.

- [195] The Supreme Court of Canada in Kerr set out the considerations for setting the date for commencement of spousal support. In that case, the need was agreed to exist since the date of commencing the proceedings. Ms. Kerr was disabled and not capable of earning income, and living at a lower standard than she had been during the relationship. Her need was, and had been since the proceedings commenced, high. Her failure to bring an interim application was understandable, given her limited resources.
- [196] The court considered the needs of the recipient (found by the trial judge to be high), the conduct of the payor (e.g. concealing assets or failing to make disclosure), the reason for delay in seeking support, and hardship to the payor. Notice of the intent to claim spousal support was sufficient to allow a payor to plan for the eventuality.
- [197] The court noted that there is no presumptive entitlement to spousal support, unlike child support, and the spouse is not under any obligation to look out for the separated spouse's legal interests. A flexible and "holistic" approach is warranted.
- [198] Ms. Lee is apparently self-sufficient and works full-time at her previous job. She has done so since before the separation (I have noted how unsatisfactory her evidence was about when she returned to full-time work, but it was clearly before separation). She has had to borrow money from her mother for legal fees, but otherwise her debt load, as reflected on her current Form 8, is small. The children are taken care of by both parents and neither suffers from the assumption of custodial responsibilities. There is no evidence to show that Ms. Lee's career has suffered by the relationship or its breakdown.
- [199] When she left the relationship, she was required to set up a new household with minimal assistance (\$2,400) from Mr. Starinovich. I see no reason why spousal support should not commence from the date of effective notice, that is, the filing of the writ in April of 2010. However, using the flexible approach mandated by the Supreme Court of Canada with respect to retroactive awards, and considering all the circumstances, I will use a mid-range of \$280 per month for the entire period, and the lower figure of \$184 per month put forward by the claimant for 2011.
- [200] That means that arrears of spousal support are \$10,048, to be paid at the rate of \$100 per month until child support ceases to be paid, at which time it will increase to \$150 per month. The \$2,400 already paid by Mr. Starinovich should be deducted from this amount.
- [201] Ms. Lee is young, healthy, and gainfully employed. She has been separated from Mr. Starinovich for three years and will receive retroactive support for that period; her ability to advance in her career is no longer affected by family responsibilities. Taking that into account, as well as the pension factor mentioned above, prospective spousal support should continue at that same level for two further years.

RESULT

- [202] This is a summary only. Reference should be made to the reasons.

- [203] Ms. Lee is entitled to \$50,000 to compensate her for her contributions to Delestre.
- [204] She is entitled to \$10,000 for the vehicles.
- [205] She is not entitled to an interest in the bank accounts or the RRSPs.
- [206] Arrears of child support are set at \$14,051, payable at \$100 per month, increased to \$200 per month when child support ceases to be owing. Ongoing child support is set at \$222, until the youngest child is independent. Special expenses are to be shared, 1/3 payable by Ms. Lee and 2/3 by Mr. Starinovich.
- [207] Arrears of spousal support are set at \$10,048, less \$2,400, leaving \$7,648 owing. This includes an accommodation for pension loss. Arrears of spousal support are to be paid at \$100 per month, increasing to \$150 per month when child support ceases to be owing. Ongoing spousal support is set at \$280 per month for two years.
- [208] Raisa Starinovich remains on title to Delestre, and she is entitled to a declaration that she owns a half interest in the property.
- [209] If there is a reason to address costs, counsel may arrange to do so through the registry. Otherwise, Ms. Lee will have her costs against Mr. Starinovich at Scale B. Mrs. Starinovich will have costs against Ms. Lee at Scale B.
- [210] Counsel have liberty to apply to clarify terms or calculations, if necessary, failing agreement.

"M.A. Humphries J."

The Honourable Madam Justice M.A. Humphries

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