

CANADA / JUDGMENT

Loberg v. Loberg

2023 BCSC 2283

COURT

Supreme Court of British Columbia

DECIDED

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2023 BCSC 2283 Loberg v. Loberg IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Loberg v. Loberg, 2023 BCSC 2283 Date: 20231229 Docket: E-25023 Registry: Fort St. John Between: Sharon Leanne Loberg Claimant And: Monty Lee Loberg Respondent Before: The Honourable Madam Justice V. Jackson Reasons for Judgment Counsel for the Claimant: A. Sadoska Counsel for the Respondent: N. Bauder Place and Date of Trial/Hearing: Fort St. John, B.C. November 22-24, 2022 March 22-24, August 24-25, 2023 Place and Date of Judgment: Fort St. John, B.C. December 29, 2023 Table of Contents I. INTRODUCTION AND ISSUES. 4 II. WHEN DID THE PARTIES START THEIR MARRIAGE-LIKE RELATIONSHIP?. 5 A. Applicable legal principles. 5 B. Analysis. 6 III. DETERMINATION OF FAMILY PROPERTY AND FAMILY DEBT. 6 A. Applicable legal principles. 6

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- I. INTRODUCTION AND ISSUES

- [1] The parties in this family law case agree their marriage has irrevocably broken down and that there is no possibility of reconciliation. There are no children of the marriage.
- [2] The parties presented the following issues for the Court's determination: I. When did the parties' begin their marriage-like relationship? II. With respect to family property and family debt: A. What property and debts constitute their family property and the family debt? B. Have each of the parties proven their respective excluded property claims? C. What is the value of the family property and family debt? D. Would equal division of the family property and family debt be significantly unfair? E. Is the respondent entitled to spousal support, and if so in what amount and for how long? F. How should the family property and family debt be divided?
- [3] Because the length of the parties' marriage-like relationship impacts many of the issues present in this case, I will begin with a determination of that issue. II. WHEN DID THE PARTIES START THEIR MARRIAGE-LIKE RELATIONSHIP? A. Applicable legal principles
- [4] Section 3 of the Family Law Act, S.B.C. 2011, c. 25 [FLA] provides direction for determining when a spousal relationship begins: 3(1) A person is a spouse for the purposes of this Act if the person
- (a) is married to another person, or
 - (b) has lived with another person in a marriage-like relationship, and
 - (i) has done so for a continuous period of at least 2 years, or (ii) except in Parts 5 [Property Division] and 6 [Pension Division], has a child with the other person.
 - (2) A spouse includes a former spouse.
 - (3) A relationship between spouses begins on the earlier of the following:
 - (a) the date on which they began to live together in a marriage-like relationship;
 - (b) the date of their marriage.
- [5] Whether a relationship is marriage-like at a given time requires a holistic approach and is often analysed by testing the subjective intentions expressed by the individuals against objective evidence about their lifestyle and interactions, including the presence or absence of indicators commonly accepted as behaviour society associates with a marital relationship: *Weber v. Leclerc*, 2015 BCCA 492 at para. 24, leave to appeal ref'd [2016] S.C.C.A. No. 19; *Austin v. Goerz*, 2007 BCCA 586 at paras. 58, 62; *Dey v. Blackett*, 2018 BCSC 244 at paras. 192-196.
- [6] Factors that have been considered in analyzing whether a relationship is marriage-like include shared shelter, sexual involvement, personal behaviour, household services, social activities, economic support, financial integration, attitude and conduct towards children, and how they presented themselves to the outside world: *M. v. H.*, [1999] 2 S.C.R. 3, 1999 CanLII 686 at para. 59; *Molodowich v. Penttinen* (1980), 17 R.F.L. (2d) 376 at 381-382, 1980

CanLII 1537 (O.N.S.C.). These factors are not to be applied as a "checklist" but are helpful in undertaking an overall analysis: Dey at para. 193. B. Analysis

- [7] The parties met in the fall of 2009. They became sexually involved a few weeks after they met, and began spending increasing amounts of time together over the next several months. However, other factors that would support a finding that their relationship had progressed from courtship to a marriage-like relationship--such as the sharing of household responsibilities, economic commitment and integration, and presenting themselves as a couple to the outside world--were not present until the parties began living together in July 2010.
- [8] Based on a consideration of all of the evidence I am satisfied the parties began their marriage-like relationship in July 2010.
- [9] The parties were married on September 3, 2011 in Chetwynd, B.C. The parties agree and I find they separated on September 20, 2017. III. DETERMINATION OF FAMILY PROPERTY AND FAMILY DEBT A. Applicable legal principles
1. Family property and debt
- [10] Family property includes all real and personal property a spouse owns or has a beneficial interest in at the date of separation, as well as property derived from family property: FLA, s. 84(1).
- [11] Family debt is debt incurred during the period beginning when the spouses' relationship began and ending when the spouses separated, as well as debt incurred post-separation for the purpose of maintaining family property: FLA, s. 86. A party alleging a debt is a family debt has the onus of demonstrating it was incurred during the parties' relationship or that it was incurred to preserve or maintain the family property: Visser v. Visser, 2019 BCSC 1856 at para.138, citing Chatha v. Uppal, 2018 BCSC 6 at para. 309.
- [12] Generally, the value of family property must be based on its fair market value as of the date of the trial: FLA, s. 87. Fair market value is not defined in the FLA, but is generally understood to mean the highest price between a willing and informed seller and a willing and informed purchaser, acting at arm's length: Maguire v. Maguire, 2016 BCCA 431 at para. 30; Grimes v. The Queen, 2016 TCC 280 at para. 178.
2. Excluded property
- [13] Family property does not include excluded property. Excluded property includes property acquired before the relationship began, inheritances, gifts from third parties, and property derived from excluded property: FLA, s. 85(1). However, the growth in value of excluded property during the marriage is family property: FLA, s. 84(2)(g).

- [14] A spouse who claims property is excluded property has the burden of demonstrating, on a balance of probabilities standard, the basis for, and extent of, the exclusion, based on "clear and cogent evidence": FLA, s. 85(2); *Shih v. Shih*, 2017 BCCA 37 at para. 43.
- [15] To establish an exclusion a party must prove the value of the exclusion and, if property is derived from that exclusion, that the exclusion can be traced into property that existed at the date of separation: FLA, s. 85(1)(g). Inversely, where a spouse seeks a determination that an increase in the value of excluded property is family property, they have the onus of establishing the value of the increase: *J.S.F. v. W.W.F.*, 2015 BCSC 2375 at para. 161; *Kumagai v. Campbell Estate*, 2016 BCSC 450 at para. 70, rev'd on other grounds 2018 BCCA 24. The correct approach involves determining the net fair market value of the property at the time the spouses' relationship began or that it was otherwise acquired, and subtracting its fair market value at the date of trial: *S.L.M.W. v. M.R.G.W.*, 2016 BCSC 272 at paras. 69-71.
- [16] When one spouse has excluded property that is real property, the other spouse has a monetary claim and entitlement to an undivided half interest in the increased value of the property, and not an undivided half interest in the real estate asset itself: *Johnson v. Korol*, 2019 BCSC 111 at paras. 45-46. B. Analysis
1. Determination of family property
 - a) Chattels about which there is agreement
- [17] The parties identified a number of personal property items they agree are family property. The parties also agree on the value of those assets, based on a joint appraisal prepared by Lorne Weaver of Weaver Appraisals dated March 5, 2021 and subsequent updated information he provided (the "Personal Property Appraisal"), and, for the most part, they agree on how those family property assets should be divided. Specifically, the parties agree as follows: Property item Fair market value To be distributed to
- | Property item | Fair market value | To be distributed to |
|---|-------------------|----------------------|
| VEHICLES | | |
| 2013 Ford F350 Crew Cab Pickup Truck | \$33,000 | Claimant |
| [1] 2014 Buick Enclave | \$16,000 | Claimant |
| 1998 Jeep YJ 4WD SUV | \$1,500 | Respondent |
| 2014 Flagstaff V-Lite Travel Trailer | \$17,500 | Claimant |
| [2] 2000 Adventurer Travel Trailer (Slumberqueen) | \$3,000 | Respondent |
| 2017 Forest River Enclosed Trailer | \$4,500 | Respondent |
| [3] 14 foot Aluminum Boat | \$1,500 | Respondent |
| 2003 Honda Goldwing Motorcycle | \$6,500 | Respondent |
| Arctic Cat 4WD ATV | \$1,750 | Claimant |
| Bombardier 650 ATV | \$300 | Respondent |
| S/A Utility Trailer Blue, Tilt Deck | \$300 | Respondent |
| TOOLS | | |
| Bostich Air Compressor c/w Air Hose | \$150 | Respondent |
| 2 Batteries | \$50 | Respondent |
| Dewalt Compound Mitre Saw | \$250 | Respondent |
| TMT Tile Saw | \$125 | Respondent |
| Snap-On Air Compressor | \$150 | Respondent |
| Frame-Pro 701P Air Compressor | \$50 | Respondent |
| Electric Air Compressor Green | \$250 | Respondent |
| Mastercraft 9" Wood Band Saw | \$200 | Respondent |
| Bosch 4000 Table Saw | \$250 | Respondent |
| Dewalt Biscuit Joiner | \$200 | Respondent |
| Mastercraft Table Saw | \$200 | Respondent |
| King Canada 3500W Generator | \$350 | Respondent |
| MUSIC-RELATED ITEMS | | |
| Fender Stratocaster Electric Guitar red with case | \$250 | Respondent |
| Epiphone Acoustic Guitar with case | \$200 | Respondent |
| Fender Stratocaster Electric Guitar black/white with case | \$250 | Respondent |
| G&L Electric Guitar Sunburst with case | \$250 | Respondent |
| Seagull Acoustic | | |

Guitar with case \$400 Respondent Alabama Mandolin with case \$200 Respondent Good Time Banjo 5 String, Deerling Company \$600 No agreement Winter Piano with bench \$250 Claimant Lark Violin with case \$125 Claimant Beringer Speaker System Subwoofer \$600 Respondent Europower PMX5000 Sound Mixer \$550 Respondent Yamaha MG124CX Analog Mixer 8 Channel \$250 Respondent JEWELRY Diamond Ring 1/4 carat \$250 Claimant Diamond Ring 1/4 carat (2nd one) \$250 Claimant

b) Areas of disagreement with respect to the personal property

i. Distribution of the Deerling Company Good Time 5 String Banjo

[18] Both parties expressed an interest in receiving the Deerling Company Good Time 5 String Banjo. After hearing the evidence I am left with the impression that it is the respondent who has the greatest interest in, and receives the most joy from, the musical instruments. The respondent has agreed the claimant can keep the piano. I order that the banjo be distributed to the respondent. ii. Ovation 12 String Acoustic Guitar with case

[19] The parties disagree on whether the Ovation 12 String Acoustic Guitar with case (valued at \$500) is family property. The claimant says that it is. The respondent claims it is his excluded property.

[20] I find the Ovation guitar and case are the respondent's excluded property. The respondent articulated a clear memory of when and why the claimant purchased the guitar as a gift for him (as a Christmas gift in 2009). I accept his evidence on that point. Since I have found the parties' marriage-like relationship did not begin until 2010, these were not gifts received during the relationship.

[21] There is no evidence to support a finding there was any increase in the value of the Ovation guitar over the course of the parties' relationship that would have been family property. iii. The parties' dog Chum

[22] The parties had a dog named Chum during their relationship. There was no evidence to support a finding there was a particular monetary value associated with Chum, but both parties seek to receive Chum in the division of property.

[23] The recent amendments to the FLA dealing with companion animals introduced by Bill 17, Family Law Amendment Act, 4th Sess., 42nd Parliament, British Columbia, 2023 (assented to 11 May 2023), are not applicable because they have not yet come into force by regulation: OIC 544/2023, 2023 BC Gaz II, 215 (Family Law Amendment Act).

[24] When the parties separated the respondent had no place to keep Chum and so Chum stayed with the claimant and has remained with her ever since. She has paid all expenses associated with Chum since the separation. Given the passage of time, the claimant's willingness to pay for past expenses, and her ability to pay for future expenses, Chum will remain with the claimant.

c) Accounts

i. TD DISA RSP

[25] The claimant contributed \$12,000 to a TD DISA RSP account ending in 2653 in 2009, prior to the start of the parties' relationship. At the time of separation she continued to hold that asset.

[26] The account had increased in value to \$18,168.38 when the claimant closed the account in June 2019. The respondent did not receive any benefit from the account at the time it was closed.

[27] The \$6,168 increase in value was family property and the respondent was presumptively entitled to an equal share of that increase.

[28] Since the account is now closed I will take that increase in value into account in considering the final division and distribution of family property and family debt. ii. TD Canada Trust RRSP

[29] The claimant and the respondent agree the claimant's TD Canada Trust RRSP Plan ending in 6774 is excluded property. The claimant's pre-relationship contribution to that asset was \$12,000. At the time of trial the value of the TD Canada Trust RRSP was \$20,349.63. I find the \$8,349.63 increase in the value of the claimant's TD Canada Trust RRSP ending in 6774 is family property. iii. Credential RRSP

[30] The respondent contributed approximately \$46,000 of the proceeds to a Credential RRSP in February 2011. I find that contribution can be traced to the sale of a house he owned prior to the start of the parties' relationship and remains his excluded property.

[31] The asset has decreased in value over the course of the parties' relationship. At the time of separation it was valued at just over \$6,000. I find there was no increase in the value of that property over the course of the parties' relationship that would constitute family property.

d) Real Property

i. Higgins Lake Property

[32] The parties purchased[4] a property legally described as Lot 54, Plan KAP21149, District Lot 3717, Land District 27, PID: 007-599-790, and having a civic address of 6159 Higgins Lake Road, Lone Butte, B.C. in 2015 for \$68,000 (the "Higgins Lake Property"). I find both parties contributed to the Higgins Lake Property financially and in its maintenance and improvement.

[33] After the parties separated, the claimant made the unilateral decision to sell, and in October 2018, sold the Higgins Lake Property for \$92,000. The net proceeds of the sale of Higgins Lake Property were \$85,433.44 (the "Higgins Lake Proceeds"), which the claimant received. Those proceeds were family property.

- [34] None of the Higgins Lake Proceeds were ever distributed to the respondent. Based on the parties' submissions, including the Scott Schedule presented by the claimant, it does not appear to me any of the Higgins Lake Proceeds remain in any of the claimant's bank accounts. Thus, there is no family property left to divide.
- [35] I will consider this issue again when I consider whether it is significantly unfair to divide the family property and debt equally in this case. ii. Campbell Road Property
- [36] The claimant purchased a property legally described as Lot A, District Lot 2206, Peace River District Plan 29714, PID: 005-576-814 and having a civic address of 6340 Campbell Road (the "Campbell Road Property") in 2005 with her previous husband. When her previous husband died the claimant acquired full legal title and she continued to hold sole legal title to the Campbell Road Property when the parties' relationship began. At the start of the parties' relationship the Campbell Road Property was valued at \$290,000 and encumbered with a \$152,040.41 mortgage with the Bank of Montreal (the "BMO Mortgage"), resulting in \$137,959.59 of equity as at July 2010.
- [37] The respondent agrees that, vis-à-vis the respondent, the Campbell Road Property is the claimant's excluded property. I have no evidence about the value of the claimant's current shared interest in the Campbell Road Property. The parties approached their submissions on the assumption the fair market value of the claimant's interest was half of the total appraised value, so I will do likewise. The best evidence available regarding the fair market value of the Campbell Road Property at the time of trial is the September 14, 2022 appraisal, which sets the value at \$365,500, resulting in a \$75,500 increase in value since the parties' relationship began. Presumptively under the FLA, the amount by which the value of excluded property has increased since, in this case, the date the spouses' relationship began, is family property. However, I will return to this issue when I consider whether it would be significantly unfair to divide family property and family debt equally.
2. Determination of family debt
- a) Campbell Road Property mortgage
- [38] At the time of separation there was a mortgage owing (the "New Mortgage"). The best evidence with respect to the value of the debt is that the balance of the mortgage secured against the property as of June 1, 2022 was \$152,598.
- [39] The New Mortgage is family debt. I will return to the New Mortgage debt when I consider whether it would be significantly unfair to divide family property and family debt equally.
- b) CRA debts
- [40] The claimant argues her debts to CRA associated with late filing of her personal income tax returns for 2014 through to 2017, all filed in 2019, are family debts. She argues she could not file because she needed information from the respondent in order to do so. I am not satisfied that is the case.

- [41] The respondent argues the claimant could have filed her income tax returns on time, and that he is not responsible for debts associated with penalties incurred by the claimant.
- [42] I agree with the respondent. Assessments for penalties and interest arising from late filing, or a failure to file, income tax returns are not family debt: J.A. v. M.-P., 2023 BCSC 1874 at para. 135; Gaita v. Gaita, 2008 BCSC 1111 at para. 165. I conclude the claimant's CRA debts are not family debt.
- [43] There is insufficient evidence for me to determine the basis of the respondent's CRA debt for 2017 or when it was incurred. Therefore, I also find it is not a family debt.
- c) TD Auto Finance 2014 Flagstaff V-Lite Travel Trailer loan
- [44] This loan is a family debt. The best evidence of the value of this loan is that \$35,989 remains outstanding. The fair market value of the 2014 Flagstaff V-Lite Travel Trailer is only \$17,500.
- d) Claimant's BMO LOC (ending in 631)
- [45] This debt had a balance of \$44,572.72 when the parties separated. Some of the balance owing as at the date of separation was attributable to purchases for the Higgins Lake Property. A further amount was attributable to satisfying a judgment made against the respondent during the parties' relationship for child support owing with respect to his children.
- [46] The claimant testified the parties verbally agreed the respondent would pay her an amount equal to his child support judgment obligation when he received certain funds he was anticipating. The parties agree that respondent did give the claimant \$6,000 when he received his Treaty 8 settlement benefits, which the parties referred to as "Cow and Plow" benefits, through the Saulteaux First Nation ("SFN"). The claimant argues that by providing some money to the claimant at a later date, the respondent acknowledged the loan agreement.
- [47] The evidence does not satisfy me there was an agreement between the parties that the funds used to fulfil the respondent's child support obligations, which were added to the BMO LOC during their relationship, were to be treated as a loan from the claimant which the respondent was obliged to repay, on specific terms or at all. Although the claimant presented the respondent with a loan document, it was never signed. This supports a conclusion that there was no meeting of the minds about the creation of any loan obligation or its terms.
- [48] The claimant's BMO LOC is a family debt. I will consider the circumstances surrounding its use, including the respondent's child support order, in determining whether equal division of family property and debt would be significantly unfair.
- e) Claimant's Capital One Mastercard (ending in 4051)

- [49] As at the time of separation the balance on this account was \$10,851.08. This was a family debt.
- [50] There is no balance owing at time of trial as the claimant used some of the Higgins Lake Proceeds to pay it off. I will consider the circumstances surrounding this family debt in determining whether equal division of family property and debt would be significantly unfair.
- f) BMO MC (ending in 2254, previously 0853 and 3702)
- [51] There was \$187.87 at the date of separation on this account. The balance increased post-separation as a result of the claimant's transactions. The claimant does not suggest any debt associated with this credit account should be treated as family debt.
- g) Respondent's TD LOC
- [52] There was \$9,593.91 owing on this LOC at the time of separation. This was a family debt. Since separation the respondent has reduced that debt and the balance at the time of trial was \$466.88. I will consider the circumstances surrounding this family debt in determining whether equal division of family property and debt would be significantly unfair.
- h) Respondent's RBC LOC
- [53] There was \$4,501.81 owing on this LOC at the time of separation. This debt is a family debt. Since separation the respondent has reduced that debt and the balance at the time of trial was \$2,755.62. I will consider the circumstances surrounding this family debt in determining whether equal division of family property and debt would be significantly unfair. IV. DIVISION OF FAMILY PROPERTY AND DEBT A. Applicable legal principles
- [54] Upon separation, each spouse is presumptively entitled to an undivided half interest in all family property as a tenant in common and is equally responsible for family debt: FLA, s. 81.
- [55] However, in this case each party seeks an unequal division of family property and debt in their favour.
- [56] Despite the presumption of equal division, the Court may order an unequal division of family property if it would be significantly unfair to divide family property equally: FLA, s. 95(1). Significant unfairness requires something objectively unjust, unreasonable, or unfair in some important or substantial sense having regard to the factors set out in s. 95(2) of the FLA: Jaszczewska v. Kostanski, 2016 BCCA 286 at paras. 41-42. Those factors are:
- (a) the duration of the relationship between the spouses;
 - (b) the terms of any agreement between the spouses, other than an agreement described in section 93 (1) [setting aside agreements respecting property division];
 - (c) a spouse's contribution to the career or career potential of the other spouse;

- (d) whether family debt was incurred in the normal course of the relationship between the spouses;
 - (e) if the amount of family debt exceeds the value of family property, the ability of each spouse to pay a share of the family debt;
 - (f) whether a spouse, after the date of separation, caused a significant decrease or increase in the value of family property or family debt beyond market trends;
 - (g) the fact that a spouse, other than a spouse acting in good faith,
 - (i) substantially reduced the value of family property, or (ii) disposed of, transferred or converted property that is or would have been family property, or exchanged property that is or would have been family property into another form, causing the other spouse's interest in the property or family property to be defeated or adversely affected;
 - (h) a tax liability that may be incurred by a spouse as a result of a transfer or sale of property or as a result of an order;
 - (i) any other factor, other than the consideration referred to in subsection (3), that may lead to significant unfairness.
- [57] The determination of whether the equal division of family property would be significantly unfair take place in two stages: *Polard v. Polard*, 2017 BCSC 1963 at para. 19. First, the Court must determine the extent of family property in accordance with ss. 84-86 of the FLA and undertake the notional exercise of dividing the property (and any family debt) equally. Second, the Court must determine whether the equal division would be significantly unfair, taking into account the factors set out in s. 95(2) of the FLA. B. Notional equal division of family property and debt
- [58] At the time of trial the fair market value of the family property is \$144,767.63 (comprising \$92,500 for chattels, \$6,168 for the increase in the value of the claimant's TD DISA RSP, and \$8,349.63 for the increase in the value of the claimant's TD Canada Trust RRSP, and \$37,750 for the increase in the value of the claimant's share of the Campbell Road Property). If family property was divided equally, each of the parties would receive property and or compensation totalling a value of \$72,383.82.
- [59] The amount of family debt remaining is \$241,809.50 (comprised of \$152,598 for the New Mortgage on the Campbell Road Property, \$35,989 for the TD Auto Finance 2014 Flagstaff V-Lite Travel Trailer loan, \$50,000 for the claimant's BMO LOC, \$2,755.62 for the respondent's RBC LOC, \$466.88 for the respondent's TD LOC). If family debt was divided equally, each of the parties would be responsible for \$120,904.75.

- [60] Equal division of family property and family debt would result in the claimant receiving the full value of her share of the family property and the respondent being responsible for making a \$48,520.93 compensation payment to the claimant. C. Analysis of the FLA s. 95(2) factors
- [61] This was a seven-year relationship. There is no agreement between the parties to factor into the analysis, beyond who will receive the various chattels. I find neither made contributions to the career of the other sufficient to warrant consideration. There is no evidence to support a conclusion there is a potential tax liability to take into account.
- [62] The amount of the family debt exceeds the value of the family property. The claimant has a much greater ability to pay a share of the family debt than the respondent.
- [63] The parties' dispute with respect to the unequal division of family property and family debt centre around three issues:
- a) how family property and family debt associated with the Campbell Road Property should be divided;
 - b) significant post-separation decreases or increases to family property and family debt caused by the parties; and
 - c) whether equal division of the amount of the claimant's BMO LOC family debt associated with satisfying the judgment against the respondent for child support would be significantly unfair to the claimant.
1. Campbell Road
 - a) Division of the family property arising from the Campbell Road Property
 - i. Claimant's position
- [64] Based on the parties' assumption about the relative value of the claimant's interest in the Campbell Road Property, \$37,750 would be her half share of the increase in value. Presumptively under the FLA, the amount by which the value of excluded property has increased since, in this case, the date the spouses' relationship began, is family property. However, there are some unique facts in this family law case which add a level of complexity to the family property and family debt analysis.
- [65] On July 31, 2015, the claimant's son, Kyle Neuman, was added to the title of the Campbell Road Property to be a joint tenant with the claimant. Kyle is not a party to this action. The Form A freehold transfer shows consideration for the transfer was \$1, however the agreed statement of facts states the transfer was for \$185,000.
- [66] On the same date, the claimant and her son executed a Form B mortgage (the New Mortgage) in the amount of \$229,000 against the Campbell Road Property. The respondent is not a signatory to that mortgage.

- [67] The claimant's position with respect to the treatment of the Campbell Road Property fluctuated over the course of closing submissions. In her initial submissions and Scott Schedule, she argued half the fair market value of the Campbell Road Property was family property. She argued the respondent was entitled to compensation of \$45,594 for his share of this family property, calculated based on one half of her half (with Kyle being entitled to the other half) of the equity in the Campbell Road Property. She also argued one half of the New Mortgage was family debt, for which the respondent was equally responsible. The claimant later presented a revised Scott Schedule and submissions in which she argued that "her exclusion in the Campbell Road Property" was to be valued at \$137,042 (being the value of the equity at the time the parties' relationship began). Relying on Justice Choi's judgment in *Zellweger v. Zellweger*, 2018 BCSC 1227, she argued there was no remaining family property (arising from the Campbell Road Property) to divide because the value of her exclusion exceeds what she argued was the respondent's interest in the Campbell Road Property, being the \$45,594. ii. Respondent's position
- [68] The respondent asserted he was entitled to compensation for his share of the family property arising from the Campbell Road Property increased value. He argued he is "entitled to (a) the increase in value of the property [sic] from 2010 to the date of trial, which is represented by the September 2022 appraisal, as well as (b) increase in equity of the property from 2010 to the date of separation, September 20, 2017, by way of mortgage pay down". He calculates his share of that interest as being \$48,927. The respondent argued the New Mortgage was a family debt but should be divided unequally, with the entire amount being attributed to the claimant. iii. Analysis and conclusion
- [69] At the start of the parties' relationship the claimant had \$137,470 in equity in the Campbell Road Property. At the time Kyle acquired his interest, the equity in the Campbell Road Property had grown to \$285,952.13 (\$390,000 being the appraised value at the time Kyle acquired his interest, less the then remaining \$104,047.87 balance of the BMO Mortgage), resulting in a \$133,422.13 growth in equity during that period. That growth in equity was the result of market forces bringing increasing property values, improvements to the Campbell Road Property to which I find both parties equally contributed, and mortgage payments made during the parties' relationship with the parties' integrated finances. After Kyle acquired his interest he became responsible for the mortgage payments, and the respondent should not benefit from those payments in my view.
- [70] With respect, I disagree with the claimant's analysis of *Zellweger* and its application to the unique circumstances of this case. In *Zellweger*, the debt was incurred for the construction of the family home, versus here where it was incurred to enable Kyle to purchase an interest in the Campbell Road Property. As Choi J. noted in *Zellweger* at para. 50, "financing of a property may cause a spouse to lose their exclusion".

- [71] In my view Kyle's acquisition of an interest in the Campbell Road Property and its concurrent encumbrance via the New Mortgage are factors that would make equal division of the simple increase in fair market value over the course of the parties' relationship significantly unfair to the respondent: FLA, s. 95(2)(i).
- [72] To remediate this significant unfairness, I conclude the respondent is entitled to \$66,711.07 (calculated as one half of the \$133,422.13 growth in equity during the parties' relationship to the point Kyle acquired his interest) as compensation for his share of the family property arising from the Campbell Road Property.
- [73] I also find the New Mortgage was not a family debt that was incurred in the normal course of the relationship between the spouses: FLA, s. 95(2)(d). The purpose of the New Mortgage was for the benefit of the claimant's son, and enabled him to acquire a half interest in the Campbell Road Property, fully financed. The claimant's willingness to assume the legal responsibility for the New Mortgage as co-mortgagor was a private arrangement between the claimant and her son and was the product of that relationship. It would be significantly unfair to burden the respondent with a substantial debt arising from that private arrangement. As between the parties, the claimant shall be fully responsible for the New Mortgage.
2. Were there significant post-separation decreases or increases to family property and family debt caused by the parties?
- a) Pre-separation payments by the claimant
- [74] The proceeds from the New Mortgage were disbursed as follows:
- a) \$104,047.87 was paid to retire the original BMO Mortgage against Campbell Road Property;
- b) \$88,042.44 was paid to retire a Bank of Montreal line of credit (account ending in 666) secured against the Campbell Road Property, which had been used to purchase the Higgins Lake Property and to make the \$20,000 down payment on the Buick;
- c) the remaining \$37,129.91 was deposited in the claimant's TD Bank account;
- d) \$33,000 of those remaining proceeds was used by the claimant to pay off Kyle's vehicle loan;
- e) \$4,000 remained in the claimant's TD bank account but has since been depleted.
- [75] The claimant argues that unequal division of family property and debt in her favour is warranted because "the proceeds from the sale [of an interest in the Campbell Road Property] to Kyle were spent during the relationship and for the benefit of both [parties]". I reject that argument for several reasons. First, those payments were made during the parties' relationship, not post-separation: FLA, s. 95(2)(f). Second, the claimant's argument is inaccurate. The claimant's contribution of \$33,000 of those proceeds to pay off a vehicle loan of Kyle's did not benefit the respondent. The respondent bore no responsibility for that debt. The payment of \$104,047.87 to retire the original BMO Mortgage against Campbell Road

Property did not benefit the respondent. That mortgage was a debt of the claimant that predated the parties' relationship; it was not a family debt: FLA, s. 86.

- [76] While the claimant used some of the proceeds she received when Kyle acquired his interest in the Campbell Road Property to pay off a line of credit (account ending in 666) during the relationship that had been used in part to purchase the Higgins Lake Property. This is similar to the respondent's contribution of approximately \$50,000 of his excluded house sale proceeds towards family expenses during the relationship. I do not consider these payments made during the parties' relationship to be a basis to conclude it would be significantly unfair to the claimant to order equal division of family property or family debt.
- [77] Similarly, I do not consider the claimant's use of the proceeds she received when Kyle acquired his interest in the Campbell Road Property to pay off the line of credit (account ending in 666) that had been used in part to make the \$20,000 down payment on the Buick Enclave to be a basis to conclude it would be significantly unfair to the claimant to order equal division of family property or family debt. The respondent similarly made significant financial contributions during the parties' relationship, including \$5,000 as a down payment on their Ford F350 and paying for expensive vacations.

b) The Higgins Lake Proceeds

- [78] The \$85,433.44 in Higgins Lake Proceeds were family property. Of those proceeds, the claimant loaned her son Kyle \$13,500 so he could purchase a Jeep, made payments towards various financial obligations which I will address shortly, and deposited the remainder in a savings account to which I find she had sole access. Kyle repaid the \$13,500 by February 25, 2021. All of the Higgins Lake Proceeds have been disbursed or depleted by the claimant. In doing so she significantly reduced the value of that family property. I find it would be significantly unfair to the respondent to value those proceeds as at the date of trial. I find the value of the Higgins Lake Proceeds is \$85,433.44, which amount is to be divided equally between the parties.
- [79] However, the claimant also used some of the Higgins Lake Proceeds to reduce various family debts. She seeks a different valuation date related to those family debts in order to remediate what would otherwise be what she argues would be a significant unfairness. I now turn to that aspect of the property division analysis.
- c) The Ford F350 loan, LOC 623, Scotia Bank Buick loan, Capital One Mastercard
- [80] The claimant paid \$46,000 of the Higgins Lake Proceeds towards the LOC 623, \$7,545 to the Capital One Mastercard ending in 2703, and used \$10,574.58 to retire the loan for the parties' Ford F350, which she kept and has had the exclusive use of since the separation.

- [81] Sections 87 and 95 of the FLA are two ways to address potential unfairness that may arise from a party's post-separation contributions. As Justice Savage described in *Slavenova v. Ranguelov*, 2015 BCSC 79 at para. 53: Under s. 95 a court can order reapportionment to address any "significant unfairness" that may arise from an equal division of property and debt in light of the spouse's post-separation contribution. Alternatively, under s. 87 the Court may depart from the date of hearing or agreement as the valuation date.
- [82] Because departing from the presumptive valuation date of the trial is akin to ordering reapportionment, this requires a finding that the presumptive valuation date would be significantly unfair considering the factors set out in s. 95(2): *Zilic v. Zilic*, 2021 BCCA 107 at para. 13(e), citing *Kumagai v. Campbell Estate*, 2018 BCCA 24 at para. 76; *Namdarpour v. Vahman*, 2019 BCCA 153 at para. 59.
- [83] Given that LOC 623 was used to finance improvements to the Higgins Lake Property, in my view it would be significantly unfair to the claimant to value that debt at the time of trial. Doing so would fail to account for the contributions the claimant has made post-separation to reduce that debt. The same analysis applies for the Capital One Mastercard ending in 2703. Accordingly, I fix the amount of the family debt associated with LOC 623 as at the date of separation, being \$46,000. That amount of family debt is to be divided equally. I fix the amount of the family debt associated with Capital One Mastercard ending in 2703 to be the amount it was as at the date of separation, being \$7,545. That amount of family debt is to be divided equally.
- [84] However, I do not consider that it would be significantly unfair to the claimant to value the Ford F350 loan as at the time of trial, which is nil. Although the claimant paid \$10,574.58 to retire the Ford F350 loan post-separation, she reluctantly admitted during cross-examination that she had kept it when the parties separated, even though it was the vehicle the respondent generally used during the parties' relationship. The claimant has had the exclusive use of it ever since, which allowed her to share it with her Kyle and his wife, as well as her boyfriend Dean. Accordingly there is no family debt to divide vis-à-vis the Ford F350.
- [85] Nor do I consider that it would be significantly unfair to value the Scotia Bank Buick loan as at the time of trial, which is nil. Again, the claimant kept that vehicle when the parties separated and has had the exclusive use of it since separation.
- d) The claimant's BMO LOC (ending in 631)
- [86] There are two issues with respect to the claimant's BMO LOC 631 relevant to the division of this family debt.
- [87] First, the respondent points out that the BMO LOC balance increased from \$19,319 on April 7, 2017 to \$44,527 in September of that year and notes that much of that increase is due to "cash advances", including \$15,546 over the course of June 2017. He argues the BMO LOC should be valued as at April 7, 2017.

- [88] I am not prepared to accede to the respondent's request. I am not prepared to infer the cash advances were not debt incurred to satisfy family expenses. If the respondent wanted me to make that finding, more evidence should have been presented--either as part of the respondent's case or through his cross-examination of the claimant.
- [89] The second issue arises from my finding that approximately \$16,000 of this family debt was accrued in order to satisfy the respondent's child support judgment. While I have found the arrangement was not a loan agreement between the parties, I am satisfied the claimant believed there would be some accounting as between the parties for this expense. In my view a failure to consider the circumstances surrounding that aspect of the family debt could lead to significant unfairness to the claimant: FLA, s. 95(2)(i). Further, in my view there are sound policy reasons for encouraging both spouses to take steps to satisfy one spouse's financial obligations in relation to their children from a previous relationship. A willingness to take the circumstances surrounding that aspect of a family debt into account may serve to encourage such agreements.
- [90] The respondent gave the claimant \$6,000 which I am satisfied was done to acknowledge his greater responsibility for the use of those family funds. I order the claimant's BMO LOC 631 to be divided unequally in the claimant's favour by \$10,000, with the claimant being responsible for \$18,000 and the respondent being responsible for \$28,000 of that family debt.
- e) TD Auto Finance 2014 Flagstaff V-Lite Travel Trailer Loan
- [91] The claimant agrees to this family debt being her sole responsibility on the basis that this family property will be distributed to her. I so order.
- f) Respondent's TD LOC (ending in 1327)
- [92] The balance owing at time of separation was \$9,718.60. This family debt has since been reduced to \$466.88. I infer this was due to payments made by the respondent. That amount of reduction caused by the respondent is significant, particularly given his financial circumstances post-separation. It would be significantly unfair to the respondent to bear the sole burden of the debt he has been able to retire. I fix the amount of this family debt at \$9,718.16. That amount of family debt is to be divided equally.
- g) Respondent's RBC LOC (ending in 7-001)
- [93] The balance owing at the time of separation was \$4,501.81. This family debt has since been reduced to \$2,755.62. I infer this was due to payments made by the respondent. That amount of reduction caused by the respondent is significant, again particularly given his financial circumstances post-separation. It would be significantly unfair to the respondent to bear the sole burden of the debt he has been able to retire. I fix the amount of this family debt at \$4,501.81. That amount of family debt is to be divided equally.
3. The respondent's spousal support claim

- [94] The claimant seeks retroactive and prospective spousal support.
- [95] Property division is usually determined before considering spousal support but where a spouse seeks an unequal division of family property under s. 95 of the FLA, the Court may consider the "extent to which the financial means and earning capacity of a spouse have been affected by the responsibilities and other circumstances of the relationship between the spouses if, on making a determination respecting spousal support, the objectives of spousal support under section 161 [objectives of spousal support] have not been met". As Justice Butler, then of this Court, observed in *Parton v. Parton*, 2016 BCSC 1528, varied in part 2018 BCCA 273:
- [101] In other words, if the spousal support order which would be made based on the parties' circumstances and incomes at the time of separation would not fulfil the objectives of spousal support, that fact can be a relevant consideration in deciding whether it would be significantly unfair to divide family property evenly. This provision recognizes the close connection between the property division and spousal support orders made on dissolution of a marriage. It is particularly applicable to situations involving parties like the Partons, who separated late in their careers when they may not be in a position to continue to earn sufficient income to pay spousal support at a level and for the duration which would otherwise be appropriate.
- [96] Consideration of a claim for spousal support takes place in two stages: first, the Court must determine whether there is an entitlement to spousal support; second, if the Court concludes there is an entitlement, the issues of quantum and duration of that award are addressed: *Bracklow v. Bracklow*, [1999] 1 S.C.R. 420 at para. 50, 1999 CanLII 715; FLA, s. 160.
- a) Is the respondent entitled to spousal support?
- [97] The objectives of spousal support are set out in s. 15.2(6) of the Divorce Act, R.S.C. 1985 (2nd Supp.), c. 3 [DA], as well as in s. 161 of the FLA, reproduced below:
- (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.
- [98] Depending on the functions performed by each spouse during their relationship, an entitlement to spousal support may arise on a compensatory or non-compensatory basis.

- [99] Compensatory entitlement arises when the applicant spouse has suffered economic disadvantage, or contributed to the other spouse's economic advantages, through the parties' respective roles during the marriage, such as sacrificing their own career opportunities and advancement in order to take on more of the family's household or child-rearing responsibilities: *Zacharias v. Zacharias*, 2015 BCCA 376 at para. 26. When that marriage ends the spouse who has made such sacrifices may be entitled to spousal support, either to compensate for their own diminished earning capacity, or to share in the increased earning capacity of the other spouse, with the main goal of achieving an equitable sharing of the economic consequences of the marriage: *Moge v. Moge*, [1992] 3 S.C.R. 813 at 858-66, 1992 CanLII 25; *Zacharias* at para. 26.
- [100] Non-compensatory entitlement is rooted in the idea of a social obligation of spouses, by virtue of their marriage relationship, to have some ongoing responsibility to care for one another after marriage breakdown. Rather than that burden falling on the public, spouses have a responsibility to look after a former spouse who experiences difficulty post-separation, with the needs and means of the spouses being the focus of the analysis: *Zacharias* at para. 27; *Bracklow*, particularly at para. 53.
- [101] The respondent argues he is entitled to spousal support on a non-compensatory basis.
- [102] The claimant was born in 1967. She began working a temporary part-time position at West Fraser Mills Ltd. in Chetwynd, B.C. in 1992. She worked her way up within that company, eventually accepting a full-time permanent non-designated Divisional Controller position in 2005. She worked in that role throughout the parties' relationship and continued to hold that position at the time of trial. She is a high-income earner with a reliable position.
- [103] The respondent was born in 1976. He is a member of SFN. He received his Red Seal carpentry designation in or around 1998. The respondent worked with his father, Sig Loberg, for many years doing contracting. Around the fall of 2010, with the encouragement of the claimant, the respondent began operating his own unincorporated contracting business--Monty Loberg Contracting. The business took on small and large projects at various times in the early days of the parties' relationship. The work available to the business was not steady and varied both seasonally and with fluctuations in the local economy, including the shut down of the Willow Creek mine. The respondent ceased operating the business sometime between spring of 2016 and early to mid 2017, but in any event, before the parties separated.
- [104] Considering the applicable legal principles and the evidence at trial, I conclude the respondent is entitled to spousal support on a non-compensatory needs based basis.
- [105] This was a shorter relationship, lasting for approximately seven years, however during the course of their relationship the parties fully integrated their economic lives. Both contributed their incomes to household expenses and the acquisition of real and personal property, including the Higgins Lake property where they planned to retire together, and the Campbell Road Property. The claimant managed the parties' joint finances. The amount

of income each had available to contribute fluctuated but the claimant was the primary income earner throughout the parties' relationship.

- [106] In 2016 and 2017 the respondent had several seizures, which the claimant believed were the result of his heavy drinking. He ceased operating his business. The respondent became ill in the spring of 2018 during a brief flight layover in Los Angeles, and was hospitalized there for several weeks. Upon his return to Canada he remained in the hospital for approximately six weeks. He lost the ability to walk and had to undertake physiotherapy to be able to regain his mobility. When he was discharged he required a walker. His balance was poor.
- [107] By April 2019 he was feeling stronger and was able to secure a full time carpenter position working on the Site C dam project. His position involved concrete formwork, which involved lots of walking, heavy lifting, and going up ladders. However in June 2019, the respondent went on sick leave after what he thought had been a cold turned out to be pneumonia. Things went from bad to worse for the respondent and in August 2019, he tripped while going across a crosswalk and fell landing on a curb. He broke his hip which required a replacement and then physiotherapy. He could not return to the work he had been doing. He received unemployment insurance benefits for a few months and then began receiving disability benefits. At the time of trial the respondent's disability benefits had terminated and he was unemployed.
- [108] The respondent enjoyed a higher standard of living during the marriage than he has been able to achieve on his own, and than the standard of living the claimant presently enjoys.
- [109] The respondent received some additional monies from SFN, in the form of 'Cow and Plow' Treaty 8 settlement funds received from the government of Canada which were distributed through SFN, and benefits in the form of monies and indirect loan benefits via mortgage proceeds and guarantees. The claimant urges me to consider the respondent's receipt of those monies and benefits as a basis to find there is no entitlement to spousal support: DA, s. 15.2(4).
- [110] I have considered the respondent's receipt of those monies, however in my view they do not serve to increase the respondent's means, or decrease his need. The factual context in which the respondent received the SFN benefits must be considered: *Lozinski v. Lozinski*, 2017 BCCA 280 at paras. 46-48. Based on the evidence presented, I find the purpose of the benefits are to redress, insofar as money can, historical wrongs and economic denials and the negative effects of colonialism. Further, the respondent used some of these monies to acquire a home (which he did not have post-separation), and to pay legal fees associated with this family law case. Even taking those proceeds into account, there remains a stark contrast between the parties' respective financial circumstances post-separation.

- [111] With respect to the claimant, the amounts above include annual bonuses to which she was entitled based on the formula used by West Fraser. The claimant acknowledges, reasonably in my view, that in considering spousal support, her post-separation increases in salary should be taken into account since they have been the result of her expertise and seniority established during the parties' relationship and not any intervening event: *Judd v. Judd*, 2010 BCSC 153 at para. 23.
- [112] The claimant also argues that if I find an entitlement to spousal support I should impute \$90,000 of income to the respondent on the basis of "his deliberate unemployment, his certain exemptions from paying federal and provincial taxes (from the sums he receives from SFN), and inter alia, his property is not being properly utilized such as the shop on his property could be rented out, or he could conduct his Business there". The claimant argues that the imputation of income to the respondent during his child support proceedings "should signal to the court a pattern of behaviours in attempting to hide his income".
- [113] Counsel for the claimant acknowledges that spousal support has been ordered where a spouse's inability to be self-sufficient is due at least in part to alcohol addiction: *Brown v. Brown*, [1998] B.C.J. No. 2734, 1998 CarswellBC 2627 (S.C.)[5]; *P.B. v. H.R.*, 2000 BCSC 270; *R.E.M. v. G.A.B.*, 2003 BCSC 1182. In *P.B. and R.E.M.*, unlike the case before me, the Court found the applicants were capable of working to a capacity of self-sufficiency.
- [114] The respondent testified he no longer consumes alcohol to excess. Although I found the respondent to be a credible witness generally, I am sad to say I do not accept his evidence on that point. He continues to purchase alcohol at a rate that is concerning. His history of significant alcohol consumption and dependence is longstanding. The evidence does not satisfy me he is no longer within the grips of alcohol addiction.
- [115] Nonetheless, I agree with the claimant that the respondent's alleged need must be placed in the context of his life choices. However, and without making a determination about whether alcoholism is a life choice, I find the respondent's level of alcohol consumption is not the sole, or even primary, reason for his current inability to work. His current situation is largely driven by the physical deterioration of his body, and corresponding decrease in his inability to undertake the physically demanding tasks that are integral to the only type of work he has ever done and for which he currently has adequate training.
- [116] Having concluded the respondent is entitled to spousal support, I turn to the question of the commencement date of the support obligation.
- b) Retroactive support
- [117] The respondent seeks prospective and retroactive spousal support on a non-compensatory basis. His plea for spousal support was included in his counterclaim filed June 18, 2019. He seeks spousal support at the mid-range from the date of separation for a period of eight years extending to October 2025.

- [118] The claimant argues such an award would be outside the duration range suggested by the Spousal Support Advisory Guidelines ("SSAG") and urges a shorter range. The claimant also submits if retroactive spousal support is ordered, it should be offset against any equalization payment owed to her.
- [119] The eight-year period of support sought by the respondent extends approximately eight years before this Court's order regarding spousal support is made. Retroactive spousal support is authorized by s. 170(b) of the FLA and is often ordered having regard to the needs of the recipient, conduct of the payor, reason for the delay in seeking support, and any hardship the retroactive award may occasion on the payor: *Kerr v. Baranow*, 2011 SCC 10 at para. 207.
- [120] In this case, I am satisfied a retroactive order of spousal support is appropriate. Spousal support was included in the respondent's initial pleading: *Kerr* at paras. 209-211. The claimant has been aware of his claim since the earliest days of this litigation. The spousal support claim will not cause the claimant undue hardship, because the retroactive aspect will take the form of a lump sum that can be accounted for in the division of the family property, whether or not an overall lump sum support is ordered. The respondent asked for spousal support post-separation but the claimant refused. Further, the claimant has had the benefit of the use of the majority of the family property since separation--a period of approximately six years--and has made unilateral decisions with respect to its use and, in certain cases, its disposition.
- c) Quantum and duration of support
- [121] If the Court determines a spouse is entitled to spousal support, the other spouse has a duty to provide support for the spouse, with the amount and duration of spousal support being determined on consideration of the conditions, means, needs and other circumstances of each spouse, including the following:
- (a) the length of time the spouses lived together;
 - (b) the functions performed by each spouse during the period they lived together;
 - (c) an agreement between the spouses, or an order, relating to the support of either spouse.
FLA, ss. 160, 162; DA, s. 15.2(4)
- [122] Again, this was a relatively short relationship.
- [123] There is no agreement between the parties in this case respecting spousal support so that factor is not relevant to my analysis.
- [124] The parties shared tasks during the marriage. The claimant was the primary income earner and the respondent relied on the claimant's financial contributions during the relationship, but it was not a relationship in which the parties had agreed only one of them would work or make financial contributions.

- [125] In determining quantum and duration of spousal support, the range of support suggested by the SSAG should be taken into account: *I.F. v. R.J.R.*, 2015 BCSC 793 at para. 131; *Dunnigan v. Park*, 2007 BCCA 329 at para. 16; *Sebok v. Babits*, 2022 BCCA 2 at paras. 21-25. Under the SSAG, income is calculated in the same way as is done under the Federal Child Support Guidelines, SOR/97-175 [Guidelines]: *French v. French*, 2021 BCCA 30 at para. 34.
- [126] The claimant submits that if I find the respondent is entitled to spousal support, her Guideline Income should be calculated based on her total income: Guidelines, s. 16. However, she also submits her Guideline Income should be based on her last three years of earnings, which is referred to in s. 17 of the Guidelines.
- [127] This is not an appropriate case for averaging the claimant's income over the last three years pursuant to s. 17 of the Guidelines. The trend is generally upward; although the bonuses are discretionary, they are reliably recurring amounts. The calculation of income based on the total income on the claimant's tax returns is fair in this case.
- [128] The claimant's Guideline Income in 2022 was \$161,746, while the respondent's was \$20,043. Applying the without child support formula of the Guidelines in this case results in a range of spousal support of \$1,063 to \$1,417, with a mid-range of \$1,240 for a duration of three to six years.
- [129] In this short marriage, I find the particular circumstances of the claimant and the respondent support a finding that a departure from the SSAG formula range is appropriate to account for an exception arising from the respondent's current inability to meet his basic needs and consequential hardship (SSAG, s. 12.7). However, while this exception may support a higher quantum of spousal support than the SSAG range, it does not support an extension of the duration of spousal support.
- [130] In my view, high range monthly spousal support for a period of six years (retroactive from the date of this order), is appropriate and I so order, based on the parties' Guideline Incomes as follows:
- | Year | Claimant's income | Respondent's income |
|------|-------------------|---------------------|
| 2017 | \$130,696 | \$6,804 |
| 2018 | \$139,907 | \$9,461 |
| 2019 | \$136,147 | \$34,057 |
| 2020 | \$124,159 | \$32,849 |
| 2021 | \$157,073 | \$24,406 |
| 2022 | \$161,746 | \$20,043 |
- [131] I order spousal support be paid by the claimant to the respondent as a lump sum. I calculate the lump sum amount payable to be \$86,652 (calculated based on high range monthly support of \$1,239 in 2017, \$1,304 in 2018, \$1,021 in 2019, \$913 in 2020, \$1,327 in 2021, and \$1,417 in 2022), but I encourage the parties to verify that calculation. D. Effecting division of family property and family debt in this case
1. Chattels
- [132] The parties agreed on the distribution of most of the chattels as set out in the Scott Schedule, and I so order, subject to my determinations earlier in these reasons.

- [133] The parties will each deliver up those items they have in their possession within 30 days of these reasons to fulfil that division arrangement.
2. Cash remaining in the parties' respective bank accounts
- [134] The parties agree to keep the bank accounts that are in their own names, free of claim from the other, and I so order.
3. Pension division
- [135] The claimant has a pension at West Fraser. That pension, as well as the parties' CPP credits, shall be divided in accordance with Part 6 of the FLA based on entitlement dates being July 2010 until September 20, 2017. The parties will equally share any administration fee related to the division of the pensions.
- [136] The family property and family debt is to be valued, divided, and distributed in accordance with these reasons, with claimant making a net compensation payment to the claimant within 45 days of the date of these reasons. V. DIVORCE
- [137] The parties both seek an order of divorce. They have been living separate and apart since September 2017. I am satisfied there are no bars to this Court granting a divorce and that the requirements for a divorce order pursuant to s. 12 of the DA are met in this case.
- [138] I therefore grant an order of divorce that will take effect on the 31st day after the date of this judgment. VI. CHANGE OF NAME
- [139] The claimant seeks a name change under s. 5 of the Name Act, R.S.B.C. 1996, c. 328, to change her surname to "Miller". I order that the claimant's surname be changed to Miller. VII. COSTS
- [140] The parties sought leave to make submissions on costs following final judgment. The parties are encouraged to agree on costs but if they are unable to do so, within 30 days of these reasons either of them may submit the appropriate online form to request to appear before a particular judge to address the issue. In those circumstances it may be that the Court will direct the parties to exchange and file written submissions, and determine whether further oral submissions are necessary after a review of the written submissions. "Jackson, J."
- [1] The Respondent is in agreement that this item can be distributed to the claimant in the division of family property, unless in the final analysis he is ordered to make a compensation payment to the claimant, in which case he asks that the item be sold and his shares of the proceeds be used to offset that obligation.
- [2] The Respondent is in agreement that this item can be distributed to the claimant in the division of family property, unless in the final analysis he is ordered to make a compensation payment to the claimant, in which case he asks that the item be sold and his shares of the proceeds be used to offset that obligation.

- [3] The respondent testified this item was a Christmas gift given to him by the claimant. The claimant denied it was a gift. I prefer the respondent's evidence to that of the claimant on this point and I find the trailer was a gift to the respondent from the claimant. I find the trailer was bought in December 2016. The timing of the purchase is consistent with the trailer being a Christmas gift. The respondent did not make unreasonable claims that an extensive list of items had been given to him by the claimant as gifts, which enhances the credibility of his evidence on this point in my view. However, my finding that the trailer was a gift to the respondent from the claimant does not make it excluded property. Only gifts a spouse receives from a third party are excluded property: FLA, s. 85(1)(b.1). However, the trailer was purchased on the claimant's Mastercard and the balance was subsequently transferred to the claimant's BMO LOC, increasing that balance by \$11,753.92. The fact that a gift from one spouse to another has resulted in a family debt is a factor that I may take into account in considering whether the equal division of family property would be significantly unfair: FLA, s. 95(2)(i).
- [4] Although the agreed statement of facts refers to the claimant purchasing the Higgins Lake Property, the parties both acknowledge this was a joint purchase and it was not suggested Higgins Lake was the claimant's excluded property rather than family property.
- [5] As this decision was written 25 years ago, it uses language that I consider to be dated to discuss alcoholism and its effects. Nevertheless, the decision serves as an example of the Court recognizing that spousal support may be warranted in similar circumstances, namely where an applicant is unable to meet their own needs and will suffer economic hardship following the breakdown of the relationship in part as a result of a disability arising from alcohol dependence.

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