

CANADA / JUDGMENT

Middlebrooks v. Stanger

2024 BCSC 127

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Supreme Court of British Columbia

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2024 BCSC 127 Middlebrooks v. Stanger

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Middlebrooks v. Stanger,

2024 BCSC 127

Date: 20240105

Docket: E213471

Registry: Victoria

Between:

Jessica Mary Middlebrooks

Claimant

And:

Patrick Jarvis Stanger

Respondent

Before: The Honourable Justice Morley

Oral Reasons for Judgment

Counsel for the Claimant:

S. Weidmann

Respondent, appearing in person:

P. Stanger

Place and Dates of Trial:

Victoria, B.C.

December 18-20, 22, 2023

Place and Date of Judgment:

Victoria, B.C.

January 5, 2024

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I. overview

- [1] THE COURT: These are oral reasons for judgment edited for errors, clarity, consistency of expression and to reduce repetition. The parties were heard on costs after the oral reasons were given and a further oral decision was made on costs. An edited version of the reasons on costs have been incorporated as Part X of these reasons.
- [2] Jessica Middlebrooks and Patrick Stanger began their spousal relationship in October 2004 and married on February 14, 2008. They separated June 23, 2021. They seek a divorce. The controversial issues before me are spousal support, property division and pension division.

- [3] An important aspect of this case is that the parties are nearing ordinary retirement age. Ms. Middlebrooks was born on June 9, 1960 and so was 61 at the time of separation and 63 at the time of trial. She retired on May 25, 2021, about a month before the separation: many of the issues in dispute in the trial arose as a result. Mr. Stanger is slightly younger, born on February 4, 1962 and so was 59 at separation, 61 at trial. He continues to work in a supervisory position for Canada Post in Victoria. He has no current plans to retire.
- [4] As a preliminary matter, I will discuss the evidence about the circumstances of Ms. Middlebrooks' retirement. It is common ground that Ms. Middlebrooks would not have retired early if she had not believed herself to be in an enduring relationship. It is disputed, however, the extent to which the retirement was at Mr. Stanger's instance and whether Mr. Stanger had already decided to separate at the time.
- [5] For reasons I will discuss in more detail, I find that Mr. Stanger did not form the intention to separate until after Ms. Middlebrooks' retirement, which was a joint decision based in part on Ms. Middlebrooks' difficulties with her supervisor. I do not find that Mr. Stanger did anything wrong. However, this is not central to the issues I have to adjudicate. Early retirement left Ms. Middlebrooks in a more difficult financial position than she would otherwise be in. She would not have done so if the parties had already separated. Her lower income as a result is therefore an "economic disadvantage" arising from the marriage and its breakdown, in the words of s. 15.2(6)(a) of the Divorce Act. Ms. Middlebrooks' early retirement in reliance on her relationship, and her consequent difficulties finding comparable employment, are the primary basis for compensatory spousal support and, by increasing her need, strengthen the non-compensatory rationale for spousal support.
- [6] In fairness, Mr. Stanger has consistently recognized this and so entitlement to spousal support is not in issue. How much spousal support, by contrast, definitely is. On any approach, support will be higher because Ms. Middlebrooks retired. Ms. Middlebrooks' lower income as a result of retirement is something already taken into account under the Spousal Support Advisory Guidelines ("SSAG"), which guide how trial judges exercise their discretion to award spousal support. I therefore do not need to depart from them in order to fairly address the early retirement. However, I do need to address the following:
- a) Should I apply the low, middle or high range of the SSAG?
 - b) Should I include Mr. Stanger's overtime income in his income for the purposes of calculating spousal support and, if so, how much overtime earnings should I attribute to him?
 - c) Ms. Middlebrooks is currently working part-time for British Columbia Ferry Services Inc. ("BC Ferries") and Mr. Stanger argues she could be working more. The third sub-issue for determining spousal support is therefore what I should attribute or impute as employment income for Ms. Middlebrooks.

- d) Finally, Ms. Middlebrooks' main source of income is her pension with Canada Post, which will be divided as a result of this proceeding. Ms. Middlebrooks argues that as a result of a Supreme Court of Canada case called *Boston v. Boston*, 2001 SCC 43 and a British Columbia Court of Appeal case called *Malbon v. Malbon*, 2017 BCCA 427, I must exclude entirely from any calculation the divided portion of the pension.
- [7] On these issues, and for reasons I will explore at greater length, I rule as follows:
- a) The middle of the range of the SSAG is appropriate here. There is a medium compensatory and needs-based rationale for spousal support. On the compensatory side, the main argument for compensation is the early retirement. I do not see any basis for concluding Mr. Stanger's earning potential was enhanced by the marriage, nor was Ms. Middlebrooks' lessened by the marriage with the crucial exception of the early retirement in reliance on it. While Mr. Stanger has greatly reduced his financial needs by living in his van, I do not consider this sustainable or an appropriate thing to continue to require as part of a spousal support award. On a needs basis as well, therefore, this is an appropriate case for the middle of the SSAG range.
- b) In his original pleadings and in his financial statements, Mr. Stanger took the position that his spousal support should be based only on his base salary, not his overtime earnings. This is not a tenable position. On the other hand, Ms. Middlebrooks sought to permanently attribute nearly \$138,000 to Mr. Stanger based on what the evidence shows was the atypical year of 2020, during which Canada Post supervisory employees had an unusual amount of overtime. Recognizing that the amount of overtime is uncertain, it must be estimated and it must be estimated realistically. I attribute \$103,000 of annual income to Mr. Stanger, taking into account association dues.
- c) I accept that Ms. Middlebrooks is not realistically going to obtain employment equivalent in remuneration to her job at Canada Post. Her current job at British Columbia Ferry Services Inc. ("BC Ferries") has an hourly rate of \$26.38/hour. I do not consider it reasonable to impute to her a full-time income. In December 2023, she worked 56 hours, for a total monthly employment compensation of \$1,477.28. Recognizing some uncertainty in both directions (December is likely an unusually active month for customer support for BC Ferries, but in a seniority-based position her opportunities to work are likely to grow), I consider it fair to attribute to her \$17,727 employment income annually.
- d) Because pensions can be viewed either as an income stream or as assets, and because spousal support and property/pension division both serve the underlying purpose of equitably distributing the economic consequences of marriage breakdown, it is important for courts to avoid what has become called "double dipping". In *Boston*, the Supreme Court of Canada addressed this concern with a rule-of-thumb excluding income from an already-divided pension from a payor's income for spousal support purposes. However, this is not an absolute rule and does not apply in these circumstances. This case is more like *Yemchuk v. Yemchuk*, 2003 BCCA 406 ("*Yemchuk*"), in which the Court of Appeal ordered compensatory

spousal support when a spouse retired early in reliance on a marriage and attributed the entire pension income to the recipient spouse.

- [8] Adding Ms. Middlebrooks' annual pension income of \$35,448 to an employment income of \$17,727, her total income for spousal support purposes is \$53,175. Applying the mid range of the SSAG to a relationship duration of 16.67 years, and the parties' incomes as I have determined them, spousal support is \$1,211/month, which I will order to be paid beginning February 1.
- [9] To avoid unfairness, once Mr. Stanger retires, his spousal support will be calculated including his full pension income. This can be reviewed after Mr. Stanger turns 71 in February 2032, at which time the parties - and, if necessary, a court - will have a much better sense of their relative needs and means. Either party can of course seek a review of the amounts if they retire (in Ms. Middlebrooks' case, fully retire), but at least until February 2032, spousal support must be based on full incomes, including divided pensions. In Mr. Stanger's case, if he wants to significantly reduce his overtime or retire before he turns 65, he will need to show special circumstances, such as a change in his health or a significant change in his employment circumstances outside of his control. I will expect the parties to give three months' notice of reduction of work unless they can show a reason that a shorter time is appropriate.
- [10] The other issues I will address are the following:
- a) I find no basis for unequal property or pension division.
 - b) The parties have agreed to an order under s. 126(2) of the Family Law Act ("FLA") that Mr. Stanger hold any survivorship benefits under Ms. Middlebrooks' pension in trust for persons designated by Ms. Middlebrooks. I will make that order.
 - c) While Mr. Stanger has made errors or been late in his financial disclosure, I do not find he has conducted the proceeding in a manner that misused the court process and therefore I am not prepared to make an order under s. 221 of the FLA.
 - d) Since neither party achieved substantial success, each party should bear his or her own costs.

II. Background Facts

- [11] Both Ms. Middlebrooks and Mr. Stanger are or were long-time employees of Canada Post.
- [12] Ms. Middlebrooks started there on November 20, 1989. She always worked in the bargaining unit represented by the Canadian Union of Post Workers ("CUPW"), which includes those employees considered non-supervisory. As a result of an injury in 1999, exacerbated by degenerative disease later, Ms. Middlebrooks had permanent partial disability status at Canada Post, which meant the employer accommodated her with jobs that did not involve bending or heavy lifting. Her annual salary when she retired in 2021 was \$62,841.

- [13] Mr. Stanger began work at Canada Post in 1991. He has worked in supervisory roles in the bargaining unit represented by the Association of Postal Officials of Canada ("APOC").
- [14] Ms. Middlebrooks and Mr. Stanger met in September 2004 when he became the superintendent of the section in which she was working. Mr. Stanger was not her direct supervisor, but he was responsible for the section in which she worked.
- [15] They moved in together by the end of October. The quick development in the relationship occurred in part because Mr. Stanger was still sharing a home with his previous spouse despite separating from her. Although the exact date is not determinable, the parties agree that their spousal relationship began October 31, 2004, a date corroborated by Canada Post documents showing they began obtaining spousal benefits November 1, 2005, in accordance with the workplace rule that these begin one year after parties begin living together in a marriage-like relationship.
- [16] Ms. Middlebrooks testified that there is a culture of distrust between CUPW members and supervisory employees and that this made it difficult for her as a CUPW member in a relationship with an APOC member. She believes she was discriminated against as a result of the relationship, a belief that became the subject of a complaint to the Canada Human Rights Tribunal, with Mr. Stanger's assistance. This in turn stressed her relationship both with CUPW and supervisory employees. It did not however result in a decrease in work hours and overall Ms. Middlebrooks "loved" her job.
- [17] Ms. Middlebrooks testified that during the early years, it was often "hard" because Mr. Stanger continued to have issues with his children and his ex-wife. It does not appear that Mr. Stanger's children lived with the couple. The couple paid their money into a joint chequing account. Ms. Middlebrooks managed the finances, with each party taking out a small amount of spending money. At some point, they acquired a home in Sidney, where they both worked.
- [18] In November 2020, Canada Post informed Mr. Stanger that as a result of reorganization, his job as Superintendent in Sidney was "surplus". APOC negotiated on his behalf a replacement position in Nanaimo starting in January 2021. Ms. Middlebrooks testified that she received no notice of this arrangement. I accept Mr. Stanger's evidence that he also had to make a decision very quickly because of the nature of the grievance process. Ms. Middlebrooks' sister lived "up-Island" and the couple had discussed moving there after retirement. Although I heard conflicting evidence about Ms. Middlebrooks' relationship with her sister at the time, there is no question that Ms. Middlebrooks made the best of it and decided to move with Mr. Stanger.
- [19] The couple sold their home in Sidney and moved to Nanaimo, where they rented an apartment. Ms. Middlebrooks found a replacement job in Nanaimo as a lead hand beginning April 1, 2021. She used banked vacation time to cover the transition.

- [20] Ms. Middlebrooks said she enjoyed her work in Nanaimo. However, in April 2021, an incident occurred that made her decide she could not continue in that specific role. After a customer disclosed that family members had died from Covid, she approached her supervisor about the appropriate protocol to disinfect the work space. According to Ms. Middlebrooks, this supervisor became unreasonably angry, apparently motivated by skepticism about Covid protocols. She says he started yelling at her, shocking her and her co-worker.
- [21] This event shook Ms. Middlebrooks. She did not return to work after the incident. She considered her options were seeking a position at the other Canada Post retail outlet in Nanaimo or retiring early. She testified that she spoke with Mr. Stanger about these options. They had discussed the possibility of her retiring a few years earlier, and Ms. Middlebrooks had even put in a request, but she withdrew it when she did pension calculations and decided it was not financially possible. They discussed it again in April 2021, at which point Mr. Stanger said he thought his salary would be sufficient and Ms. Middlebrooks decided to retire.
- [22] As a result, on April 25, 2021, Ms. Middlebrooks gave her notice that she would retire on May 24 of that year. She put in her pension paperwork on June 22.
- [23] On June 23, Mr. Stanger told Ms. Middlebrooks that he wanted a trial separation. He said he felt controlled. Ms. Middlebrooks testified that she did not notice any serious problems in their relationship until she received this communication. She does not, however, believe Mr. Stanger's assertions that he had no pre-existing intention to separate. I will address this issue later. The common ground is that this was the first point (at least in recent times) that the parties discussed separating. As Ms. Middlebrooks observed, it was a day after she applied for her pension.
- [24] On July 28, the parties agreed to split their income pending trial. They deposited Mr. Stanger's pay from Canada Post and Ms. Middlebrooks' pension cheques in a single account and then each took half. Ms. Middlebrooks kept her own employment income.
- [25] On August 6, Ms. Middlebrook moved out of the joint home in Nanaimo. After living with her sister on Gabriola for a while, she moved to Victoria in June 2022. She looked into part-time work, recognizing the limitations caused by her age and physical limitations. Canada Post has a policy against rehiring retired employees. She worked at minimum wage at HomeSense for three months. During that time she did three or four 8-hour shifts per week. She now works for BC Ferries. The wage is higher (\$26.38/hour), but, at least at this point, she gets less work, receiving seven shifts in December 2023. Shift allocation is by seniority, however, so she is likely to eventually get more hours.
- [26] Mr. Stanger also returned to Victoria. He took a supervisor (as opposed to superintendent) job, which has a lower base salary than he previously had, although it has more opportunities for overtime and Mr. Stanger's overall income remained more or less constant. After the unusual 2020 tax year, during which he made \$137,949, Mr. Stanger

received a gross income of \$107,522 in 2021, \$102,537 in 2022 and \$104,140 in 2023. Overtime is uncertain in the future. Opportunities for overtime are rotated, although first choice goes on the basis of seniority (of which Mr. Stanger has the most). Mr. Stanger continues to take all the opportunities for overtime that are available.

- [27] Mr. Stanger dramatically limited his monthly expenses by living in his van, which he parks at work or at the Juan de Fuca Recreation Centre. He engages in budget international travel during his vacation weeks. Mr. Stanger has no immediate plans to retire, but said that after this case is over, he will seek a transfer to Vancouver where his daughter resides.

III. Did Mr. Stanger "wilfully induce" Ms. Middlebrooks to Retire?

- [28] Although I ultimately conclude it is a "red herring" given the issues before me, I will begin by addressing the allegation that Mr. Stanger "wilfully induced" Ms. Middlebrooks to retire. A previous trial of this proceeding was adjourned so that Mr. Middlebrooks could amend her pleadings to make that allegation. At the opening of this proceeding, I gave Mr. Stanger leave to file an appendix to his Response to Family Claim pleading the material facts in response to this allegation.
- [29] It is not immediately clear what "wilfully inducing" retirement means, but "wilful" implies something wrongful and "induce" implies that Mr. Stanger was the active agent. It is not in dispute that Mr. Stanger was consulted about the retirement and supported it or that Ms. Middlebrooks relied on the existence of the marriage when she decided to retire. I will take this pleading as an allegation either that Mr. Stanger concealed an already-crystallized intention to separate or that he exercised some kind of undue influence that caused Ms. Middlebrooks to make a decision against her own interest and in his.
- [30] On this interpretation, I do not find that the allegation was made out on the evidence.
- [31] It is understandable that Ms. Middlebrooks reacted negatively to the fact that Mr. Stanger's decision to separate came a single day after she put in her paperwork for her pension. I can understand that for someone who has always been fiscally prudent, this would be terrifying, an emotion that could only add to the feelings that people typically have when a long-term partner tells them they intend to separate. On cross-examination, Ms. Middlebrooks stated her firm belief that Mr. Stanger encouraged her to retire because he did not want an ex-wife working near him.
- [32] However, there is no evidence at all that Mr. Stanger had an intention to separate when he and Ms. Middlebrooks discussed her retirement. Ms. Middlebrooks' evidence about that time period was that the relationship seemed fine to her. Her retrospective speculation cannot be evidence from which I could infer Mr. Stanger's actual intentions. Mr. Stanger clearly was struggling internally over those months, but I accept his evidence that he only firmly decided to separate when he told Ms. Middlebrooks.

- [33] Ambivalence about a relationship is not the same thing as an intention to separate. Some people have moments of such ambivalence and remain happily together for life. I accept Mr. Stanger's testimony that he considered the marriage as permanent as Ms. Middlebrooks did in April. It was only in June that the relationship began to break down for him psychologically and I accept it when he says he did not come to a decision until the same day he communicated it to Ms. Middlebrooks.
- [34] There is also no evidence of anything like "undue influence". It is common ground that Ms. Middlebrooks had considered retirement a few years earlier and had gone so far as to "put in for one", but that she withdrew the request when she did the pension calculations and decided they did not have enough money. It is also common ground that Ms. Middlebrooks was the partner who kept the closest eye on the finances. I accept Mr. Stanger's testimony that he supported her retirement, but that he relied on Ms. Middlebrooks' assessment of the financial reality at least as much as she relied on his.
- [35] On Ms. Middlebrooks' testimony, as on Mr. Stanger's, the retirement conversation became a serious one because Ms. Middlebrooks felt she could no longer work with her supervisor after his outburst. She decided not to pursue the option of transferring elsewhere and instead retired after discussing the matter with Mr. Stanger.
- [36] When asked what Mr. Stanger's view was on whether she should retire, Ms. Middlebrooks' response was that he said he could not understand why someone would continue to work if they could retire. That is not evidence of anything in the nature of undue influence.
- [37] I accept Ms. Middlebrooks' recollection that Mr. Stanger remarked that if she retired, she would be able to get a dog and they would be able to spend more time together. I also accept her recollection that he said it would be "stupid" to wait longer than she had to if she had decided to retire and as a result supported her giving one-month's notice, rather than longer. The decision to retire remained Ms. Middlebrooks'.
- [38] At the time Ms. Middlebrooks and Ms. Stanger were discussing Ms. Middlebrooks' retirement, both of them assumed that the relationship would continue. It was clearly not in Mr. Stanger's financial interest that Ms. Middlebrooks retire and I do not see any motive other than that he thought this was what she wanted and was prepared to support it. I therefore do not find anything "wilful" about Mr. Stanger's conduct.
- [39] Shortly after the separation, the parties had a conversation about the reasons for Mr. Stanger's decision. Unbeknownst to him, Ms. Middlebrooks recorded the conversation. In the course of it, he remarked, "I get that I fucked you over by deliberately talking you into retiring and then leaving," a comment Ms. Middlebrooks asks me to take as an admission of "wilful" behaviour. I decline to do this.
- [40] It is crucial to put this comment in context. It occurs in the course of an emotional discussion about why the separation took place. Mr. Stanger puts forward his vision of what Ms. Middlebrooks' true feelings are, namely that he was someone she "invested" in as a

source of retirement security as part of an argument that she did not really care about him, but about money. I note that this is said in the heat of a discussion in which Mr. Stanger is clearly feeling some guilt about his decision and so I do not think it should be taken as a cool assessment of reality. But in any event, it is about "feelings", as Mr. Stanger fairly noted. In context, the remark means that he is conceding that he undid her expectations by leaving right after she retired. He offers to continue working until 70 on the basis this will be long enough "to make you feel that I didn't fuck you over ..."

- [41] It would be as unreasonable to treat this emotional argument after a separation that Mr. Stanger was still ambivalent about - and which he had no idea was being recorded - as if it were a discovery transcript as to treat it as a binding settlement offer. Mr. Stanger was expressing a mix of anger and guilt. He was not claiming he had a plan to render Ms. Middlebrooks destitute, a plan that would not make sense. Mr. Stanger was trying to articulate what he understood to be Ms. Middlebrooks' perspective, not state objective facts.
- [42] To be sure, Mr. Stanger was correct in acknowledging that Ms. Middlebrooks took a step that financially disadvantaged her in reliance on the continuation of the relationship. That is an important part of her compensatory claim to spousal support. This does not depend on coming to any kind of moral judgment, which of course is not what the Divorce Act calls for, and indeed what it forbids under s. 15.2(5). The Divorce Act is a "no fault" regime. What matters is not whether a spouse engaged in misconduct, but whether economic advantages or disadvantages arose from the marriage and whether economic advantages, disadvantages or hardship arose from its breakdown: *Leskun v. Leskun*, 2006 SCC 25, at para. 18.
- [43] In that respect, Mr. Stanger's intentions at the time of the retirement decision do not matter. Ms. Middlebrooks' decision to retire at 61 was only made because of the marriage and therefore the economic disadvantages and hardship as a result of that decision have to be considered in awarding spousal support. Mr. Stanger apparently recognized this in the surreptitiously-recorded conversation and has recognized it throughout this proceeding. The question that I must address is how much spousal support is appropriate as a result of this fact (and the other relevant factors).
- [44] But this is already adequately addressed by the SSAG. The result of the early retirement is that the difference between Ms. Middlebrooks' income and Mr. Stanger's is much greater than it would have been if she had continued working at Canada Post. Spousal support will therefore also be higher. Had Ms. Middlebrooks decided to retire early after the separation, in the absence of health problems or other special circumstances, she likely would have had her entire working income imputed to her and her case for requiring Mr. Stanger to continue to work as much overtime as available would not be very strong. There would be a much weaker compensatory basis for spousal support.

[45] It is only because this issue was the subject of an adjournment and pleadings amendment that I have addressed it at length. I confirm that Mr. Stanger did not "wilfully induce" Ms. Middlebrooks to retire or otherwise engage in any relevant misconduct. I will now turn to the analysis of the quantum of spousal support, which is the primary legal issue in this proceeding.

IV. Approach to spousal support calculation

[46] Section 15.2 of the Divorce Act provides for orders for spousal support. Section 15.2(4) provides for "factors" that shall be taken into consideration. Clearly relevant, and taken into account under the SSAG, is the length of time the parties cohabited, in this case 16 years and eight months. Also relevant are the functions performed by each spouse during cohabitation: leaving aside the last month, both parties worked full time. There is no agreement or arrangement.

[47] Section 15.2(6) sets out the objectives of spousal support. The relevant objectives in this case are:

(a) recogniz[ing] any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown;

...

(c) reliev[ing] any economic hardship of the spouses arising from the breakdown of the marriage; and

(d) in so far as practicable, promot[ing] the economic self-sufficiency of each spouse within a reasonable period of time.

[48] The statutory language "recognizing economic advantages or disadvantages to the spouses arising from the marriage" is the basis of the "compensatory" aspects of spousal support, explored authoritatively by the Supreme Court of Canada in *Moge v. Moge*, [1992] 3 S.C.R. 813. The language "relieving any economic hardship of the spouses arising from the breakdown of the marriage" and, at least arguably, "recognizing any economic disadvantages" arising specifically from the marriage's breakdown is the basis of non-compensatory or "needs-based" spousal support, was explored in *Bracklow v. Bracklow*, [1999] 1 S.C.R. 420. *Bracklow* and subsequent cases made clear that the concept of "need" is not an absolute one, but is made with reference to the standard of living during the marriage. *Bracklow* also refers to the "contractual" basis for support, which can be sourced to s. 15.2(4)(c) of the Divorce Act.

[49] These three bases for support try to recognize all of the following:

a) To the extent one spouse's earning capacity after the marriage is either enhanced or diminished as a result of the marriage, compensatory spousal support tries to equalize that advantage or disadvantage. This is in principle a matter of fact and can occur in any

marriage, but will typically be greater in marriages of longer duration and those which are "traditional" in the sense that one spouse specializes in activities that increase earning capacity while the other specializes in activities of benefit to the couple that do not. These factors are explicitly recognized in s. 15.2(4). A spouse assisting another with education, training or other activities that have a long-term economic benefit will also be recognized as a basis for compensatory support.

- b) The needs-based rationale for spousal support is about disproportionate hardship as a result of marriage breakdown. In this case, as in many others, it is not really possible for either spouse to live at the same level they did while married since the collective income must sustain two households. As Justice L'Heureux-Dubé put it in *Moge*, equitable sharing does not guarantee either party the standard of living enjoyed during the marriage, but this standard is "far from irrelevant" with longer relationships presumptively getting closer to a claim to equal standards of living after dissolution: *Moge* at p. 870; *Yemchuk* at para. 35. The factor of length of marriage recognized in 15.2(4)(a) is obviously relevant for the extent to which a spouse will be required to mitigate loss of the standard of living during the marriage.
- c) The contractual rationale respects the autonomy of the parties to craft their own arrangements (within limits that are not relevant here) and holds them to their bargains (again within limits).

[50] The Spousal Support Advisory Guidelines are not law, unlike the Child Support Guidelines which, despite their name, are binding legislation. The purpose of the SSAG is to assist trial judges in determining spousal support under the Divorce Act (or under provincial legislation such as the FLA) by bringing more predictability and stability to that determination. They incorporate the factors and objectives set out in s. 15.2(4) and (6), but it should always be remembered that those factors and objectives are primary, not the SSAG. The SSAG are intended to reflect the law, as it existed when they were first formulated and as it has developed, rather than change it. In *Yemchuk*, the Court of Appeal stated they are a "useful tool to assist judges in assessing the quantum and duration of spousal support": *Yemchuk* at para. 64. In this case, since duration is not in issue, they are of assistance in determining quantum.

[51] There are two basic formulas for spousal support under the SSAG: "without child support" and "with child support". Since neither Mr. Stanger nor Ms. Middlebrooks have dependent children, the relevant formula is the "without child support." That formula depends on three things:

- a) The cohabitation time. This is agreed.
- b) The gross income difference. This depends on the incomes I attribute to each of the parties and I will discuss that later.

- c) The point on the range. The formula does not provide a single number, but sets out a low end, mid point and high end based on duration and gross income difference.
- [52] The without-child support range is intended to give the recipient a net disposable income equal to the number of years of cohabitation times 1.5-2% of the gross income difference, up to a maximum of 25 years. In relationships lasting 25 years or more, this means the high end of the range splits disposable income exactly equally, while the low end of the range would be 37.5%.

A. Determination of Point on the Range

- [53] The determination of the best point on the range depends on how strong the compensatory and non-compensatory bases for spousal support are. If they are of sufficient strength that in a 25 year or more relationship, indefinite income equality would be called for, then the high range is appropriate. If the compensatory and needs-based rationale is sufficient for entitlement, but otherwise weak, then the low range would be called for. Cases in between would appropriately be in the middle.
- [54] I will start with considering the compensatory rationale. In my view, there is a significant compensatory rationale, but the case is not at the high end of such cases. I have no evidence of Ms. Middlebrooks taking on roles or financing education that enhances Mr. Stanger's post-separation earning potential.
- [55] Ms. Middlebrooks suggested she was denied management opportunities at Canada Post because of her relationship with Mr. Stanger. If true, this would be employment discrimination based on family status, but this was apparently not substantiated before the Canada Human Rights Tribunal. I recognize that a lower standard of evidence is needed to establish the basis for a compensatory claim in spousal support, which can include contingent possible losses that are attributable to the relationship. I accept, based on Moge, that I should take social reality into account without necessarily requiring strong evidence of specific losses. Taking this at its highest, however, I do not think it gives rise to an unusually high compensatory claim. Up until she retired, Ms. Middlebrooks was on the career path that she most likely would have been on if she had never met Mr. Stanger. This is not a case where Ms. Middlebrooks interrupted her career because of unpaid labour in the home.
- [56] I do not see that the move to Nanaimo as such (that is, not taking into account that it ultimately led to the early retirement) reduced Ms. Middlebrooks' earning capacity or enhanced Mr. Stanger's. Ms. Middlebrooks had options in Nanaimo and I am not persuaded they were worse than those in Sidney, either in a pecuniary or non-pecuniary sense. Ms. Middlebrooks was the one with family in mid-Vancouver Island and she said she enjoyed her work until she had the conflict with the supervisor. At the time, Ms. Middlebrooks found a job of equal pay. Both parties have now moved back to the Victoria area.

- [57] The strongest case for compensatory support is clearly the early retirement. In that respect, this case is similar to Yemchuk. In that case, Mr. Yemchuk retired early so that Ms. Yemchuk could keep her job with the federal government by relocating. Ms. Yemchuk did not object to the early retirement and once it occurred, Mr. Yemchuk could not readily find employment at the same compensation that he had had before he retired. There is a significant difference here in that Ms. Middlebrooks could have continued to work in Nanaimo and decided not to because of her conflict with her supervisor. But as in the Yemchuks' case, Mr. Stanger did not object to the retirement and once Ms. Middlebrooks retired she could not readily find comparable employment.
- [58] I note, though, that this does not imply that compensatory rationale is at the high end. Ms. Middlebrooks receives some benefit from not having to continue to work full-time. She clearly wanted to retire early. In Yemchuk, the Court of Appeal actually went below the low-end of the SSAG: Yemchuk at para. 70 (low end of the range would be \$1,190 per month) and para. 72 (actual order is \$1,100 per month reducing to \$800 when Mr. Yemchuk became eligible for Old Age Security). I do not consider that appropriate here, but I think it shows that early retirement in reliance on the continued existence of a relationship does not itself necessarily justify the high end of the range (i.e., 2% of gross income disparity per year of spousal relationship).
- [59] I see no basis to say that Mr. Stanger's career was positively impacted by the relationship, which is an alternative basis for a compensatory claim and typically found in the strongest cases.
- [60] There is also a needs-based rationale for spousal support in this case. Clearly, if Ms. Middlebrooks was limited to her pension income, even after proportionate sharing, and what she can reasonably be expected to earn part-time, she would have a lower standard of living. However, as things currently stand she clearly is closer to the pre-separation standard of living than Mr. Stanger, who is living in his van.
- [61] Ms. Middlebrooks argued that because Mr. Stanger has that option - one that also allows him to do budget international travel - he has lower needs than she does. However, I do not think it is reasonable to expect Mr. Stanger to continue live in a vehicle while doing maximum overtime in a supervisory job indefinitely. As a general matter, needs for income are considered to be greater for those who are still in full-time work: see Yemchuk at para. 72. I think it is appropriate to order that Mr. Stanger pay spousal support to mitigate the financial impact of the separation, but that impact is an objective fact and needs to be shared.
- [62] There is a substantial basis for a spousal support claim and its duration should be indefinite. But this is not on the high end of spousal support cases. I therefore will calculate spousal support at the mid range of the SSAG.

B. Mr. Stanger's Income for Spousal Support Purposes

- [63] Under the SSAG, subject to exceptions that do not apply in Mr. Stanger's case, income for spousal support purposes is calculated like child support income under the Child Support Guidelines. In other words, it is gross income from all sources. While Mr. Stanger is entitled to a deduction for union or association dues, he cannot exclude bonuses or overtime.
- [64] I accept Mr. Stanger's evidence that 2020 was an unusual year for overtime opportunities. I also accept that there is at minimum uncertainty about his overtime opportunities going forward. However, while it is possible that overtime opportunities will decrease in the future, I have no reason to think that this will happen. Avoiding a false precision, and taking into account Mr. Stanger's association dues, I attribute an income of \$103,000 per year to him.
- [65] Mr. Stanger's base salary will go up over the next few years. It is difficult to predict the fluctuations of overtime. Since the parties want a clean break, I will not provide a review unless Mr. Stanger retires or - short of retirement - decides to significantly reduce his overtime. I find that this would be voluntary underemployment if he does this prior to 65 in his current situation.
- [66] I recognize that Mr. Stanger's health may change such that he can no longer work his current amount of overtime or may need to retire altogether before 65. Other special circumstances are imaginable, including changes by Canada Post outside Mr. Stanger's control. I will therefore provide that Mr. Stanger can seek a review if he intends to either reduce his overtime substantially or retire. If he does this before he turns 65, he will need to demonstrate circumstances such that the retirement or substantial reduction in overtime is not "voluntary": *Greco v. Greco*, 2017 BCSC 172.

V. Ms. Middlebrooks' employment income

- [67] Ms. Middlebrooks is currently working in customer support for BC Ferries. She makes \$26.38/hour. She is a casual employee at this point with very little seniority, so she is dependent on the availability of shifts. Over time, she will accumulate seniority and have more choice of shifts.
- [68] Ms. Middlebrooks' testimony was that she obtained seven 8-hour shifts in December. I accept that this is likely to decline somewhat until ferry traffic picks up again in the summer months. However, in the long run, she will have access to more shifts. As with Mr. Stanger, it is important if there is to be a "clean break" to avoid a false precision. I think it is fair on an annual basis to extrapolate from her December experience, which leads to an employment income of \$1,477.28 per month or \$17,727 per year.

- [69] In light of my decision to attribute her December shifts throughout the year, I do not think it would be fair to impute income to Ms. Middlebrooks. Her decision to reduce her hours but get into a union situation was a reasonable decision for maximizing her income in the next few years.

VI. Ms. Middlebrooks' pension income

- [70] Perhaps the most difficult legal issue is whether I should attribute all of Ms. Middlebrooks' pension income or only the "undivided" portion.
- [71] To understand why this is a difficult issue requires consideration of *Boston v. Boston*, [2001] 2 S.C.R. 413, which recognized that including a payor's already-divided pension income in spousal support calculations could sometimes lead to "double dipping" and *Malbon v. Malbon*, 2017 BCCA 427, which concluded that there is a reciprocal principle where a recipient spouse is in receipt of an income stream from a previously-divided pension asset: *Malbon* at para. 2.
- [72] However, in applying *Boston* and *Malbon*, it is important to distinguish the principle against double recovery from the presumption against inclusion of already-divided pension income in spousal support calculations that the Supreme Court of Canada and the British Columbia Court of Appeal derived from that principle. This can be seen both from the Revised User Guide to the SSAG, which cautions against a mechanical application of the *Boston* presumption and from *Yemchuk*, which, for reasons I will explain, departed from that presumption where the recipient spouse retired early in reliance on the now-ended marriage.
- [73] In *Boston*, the parties separated after a 36-year traditional marriage in which the wife was the homemaker with primary responsibility for the couple's seven children. Three years after separation, the parties agreed to a split of their assets in which the wife obtained the matrimonial home and substantial RRSPs. These assets were equivalent in capital value to the husband's defined benefit pension, which he kept under the agreement. Mr. Boston paid spousal support based on his employment income while he worked.
- [74] After Mr. Boston retired, the majority of the Supreme Court of Canada held that it would be unfair to base spousal support on his entire pension income, since most of it was part of what had been divided in asset division. The basic principle they announced was that while there is "no reason per se that spousal support cannot continue past the date of retirement of the pension-holding spouse", it is important to fairly avoid "double recovery": *Boston*, paras. 61, 63.

- [75] Double recovery should be understood in terms of the underlying purposes of spousal support as discussed in Moge and Bracklow, which, to some extent, are also underlying purposes of property and pension division, namely compensation, need and contract. Double recovery occurs when a spouse is compensated twice for the same economic advantage or disadvantage from the marriage or its breakdown, or if the terms of an agreement are in effect altered because one party gets more than they bargained for.
- [76] In the Boston situation, unless there was an aggressive imputation of income from Ms. Boston's assets, a path the Supreme Court was reluctant to take, the fact that the wife primarily got capital and the husband got a pension in the asset division would result in unfairness if spousal support was calculated without taking this prior division into account.
- [77] In implementing the principle against double recovery, Justice Major set out in Boston the following presumptive rule, while making it absolutely clear that it was not an absolute and inflexible one:
- [63] [] It is generally unfair to allow the payee spouse to reap the benefit of the pension both as an asset and then again as a source of income. This is particularly true where the payee spouse receives capital assets which she then retains to grow her estate. ...
- [64] To avoid double recovery, the court should, where practicable, focus on that portion of the payor's income and assets that have not been part of the equalization or division of matrimonial assets when the payee spouse's continuing need for support is shown. In this appeal, that would include the portion of the pension that was earned following the date of separation and not included in the equalization of net family property.
- [65] Despite these general rules, double recovery cannot always be avoided. In certain circumstances, a pension which has previously been equalized can also be viewed as a maintenance asset. Double recovery may be permitted where the payor spouse has the ability to pay, where the payee spouse has made a reasonable effort to use the equalized asset in an income-producing way and, despite this, an economic hardship from the marriage or its breakdown persists. Double recovery may also be permitted in spousal support orders/agreements based mainly on need as opposed to compensation.
- [Citations omitted; emphasis added.]
- [78] It is worth noting that Boston was decided before the SSAG and in an asset recovery regime quite different from that existing in British Columbia under the FLA. A critical aspect of the Boston fact scenario was the asymmetry between the main asset retained by Mr. Boston after asset division, namely his defined benefit pension, and those Ms. Boston got in the same division, which had equivalent capital value but did not generate income.

- [79] The presumption against including income from an already-divided pension as set out in Boston remains the "general rule", even in circumstances and under property/pension division regimes far from the one in which it was announced. I accept that if a judge departs from the presumptive principle of excluding already-divided pension income from a payor's income for spousal support purposes, this must be explained: Malbon at para. 1.
- [80] However, I note that Professors Thompson and Rogerson have provided a number of cautions about this "general rule" in "Spousal Support Advisory Guidelines: The Revised User's Guide" (Ottawa: Department of Justice, 2016) ("RUG"). Noting that lawyers and judges "struggle" with the practical implications of Boston, they say that it is an "exception" to the general principles of the SSAG and was decided before they were developed. They warn against a "simple formulaic approach to apply Boston" and say that in the majority of cases, the exceptions to Boston have "swallowed the rule": RUG, pp. 104-106. They emphasize the need for flexibility in approaching the Boston principle.
- [81] On its facts, Boston was about whether the payor's income should include a divided pension. This leads to the question of whether the same rule should apply to a recipient. If a recipient is receiving a divided pension, then it might seem that failing to include that income would result in precisely the "double recovery" that Boston was designed to avoid. On the other hand, if a payor's income is reduced but the recipient's is not, this can also lead to inequities. Professors Thompson and Rogerson say the following:

If the payor's income is reduced, taking out all the previously-divided portion of the pension, and the recipient's income is increased to include investment income on any assets derived from the property division (or, even worse, to include some estimate of the annuity that could be generated from the assets), then there is double-counting working against the recipient. To be balanced as between the parties, you must take the divided pension income (or its equivalent in investment terms) out of both sides or out of neither.

[RUG, p. 106. Emphasis in the original.]

- [82] The recipient spouse is only undercompensated if the Boston general rule is applied in a single direction: if the even more general rule that all income is included is followed, then there is no complaint that a recipient spouse can make, since their spousal support entitlement is calculated based on their actual disadvantage as a result of the relationship and its breakdown. However, if the payor is allowed to exempt their already-divided pension income and nothing symmetrical is done for recipient spouses, there is a problem. But in those cases where Boston's exceptions "swallow the rule" for payors, that rule must be swallowed for recipients as well.
- [83] The importance of prioritizing the principle of avoiding double recovery and a practical and fair distribution of the financial consequences of marital breakdown over a mechanical application of the rule of thumb in Boston was emphasized by Prowse J.A. in Yemchuk at para. 57:

After considering this issue, I conclude that Mr. Yemchuk's pension income should be treated in the same manner in the hands of both parties. Either it should be included in income, because it is in fact an income stream in the parties' hands, or it should be excluded from both parties' income on the basis that it had already been divided between them as property. In these circumstances, I am satisfied that it should be included as income to both parties since that accords with practical realities. I do not consider that this results in "double dipping" as that concept is discussed in the leading case of *Boston v. Boston* [2001] 2 S.C.R. 413.

- [84] As I have noted, the facts of *Yemchuk* bear an uncanny similarity to those in this case. The main compensatory basis for the spousal support claim was the early retirement and subsequent reduced employment earning capacity induced by the recipient's reliance on the spousal relationship.
- [85] What I take from *Yemchuk* is the broad principle that the recipient and payor must be treated equivalently, but also the more specific principle that when the basis for the recipient's compensatory claim is relationship-induced early retirement, not to include the pension income can result in overcompensation.
- [86] In this case, if I applied the *Boston* "general rule" to both spouses, then the result would be perverse. As long as Mr. Stanger is working, Ms. Middlebrooks' living standard would be considerably higher than his, possibly higher than it was during the relationship, since about a third of her actual income would be ignored. But once he retires, the situation would be completely reversed. Indeed, because his pension was already divided with his former spouse, it is possible that Ms. Middlebrooks would have to pay him support. This would create a massive cliff in Ms. Middlebrooks' disposable income precisely when she is least likely to be able to afford it.
- [87] In addition, such a rule would massively disincentivize Mr. Stanger from continuing to work a moment longer than the courts require him to. But if this leads him to retire earlier than he otherwise would, both parties will be financially worse off. This makes no sense. I do not see any basis on which to distinguish the "practical realities" of this case from *Yemchuk* and am inclined to take the same approach.
- [88] Before I do, though, I must address the *Malbon* decision of the Court of Appeal. In that case, the parties agreed on spousal support and pension division in a consent decree under the Family Relations Act ("FRA"). When the FLA came into force, it was no longer necessary for the recipient to wait until the payor retired to collect her share of his pension. The payor argued that this was a "material change in circumstances" beyond the contemplation of the parties that could justify a variation of the previous agreement. The trial judge disagreed, relying on the *Boston* principle, and the Court of Appeal upheld his decision stating that he made "no conceptual error or error in law" in applying the "general rule" in *Boston* to the circumstances of the case: *Malbon*, para. 44.

- [89] Malbon was a case in which one party tried to change the bargain originally agreed to and therefore the most relevant basis for spousal support could be said to be the third, "contractual" basis. In that context, the real issue was whether the change from the FRA to the FLA approach to pension division "altered the deal". The trial judge and the Court of Appeal both felt that it did not, but that reducing spousal support as a result of this change would.
- [90] In Malbon, the Court of Appeal is careful to note that Boston sets out a "general rule" that is subject to "exceptions". Indeed, the one disagreement the justices of the Court of Appeal had with the trial judge was that he prematurely concluded that those exceptions would not apply after both parties retired: Malbon at para. 48.
- [91] For the reasons I have already given, the "general rule" in Boston would not fit with the practical realities in this case, which are like those in Yemchuk. The Court in Malbon did not refer to Yemchuk, let alone purport to overrule it. I therefore consider it binding on me.
- [92] In contrast to the situation in Malbon, I do not think it is premature to make some findings here about how the Boston "general rule" should apply at least in the first years after Mr. Stanger reaches ordinary retirement age. In order to avoid unfairness, if Mr. Stanger retires, his entire actual pension income must be included in spousal support calculations, at least until he reaches the age of 71. After that point, either party may apply for a review on the grounds that their means and needs at that stage in their lives justify a different approach.

VII. Would equal property division be significantly Unfair?

- [93] The parties have already divided the proceeds of the sale of their matrimonial home and their other property and debt in an equal manner. However, Ms. Middlebrooks asks me to change that and allocate more of the TSFAs in which that money was paid to her.
- [94] One of the changes introduced by the FLA, compared to its predecessor, was to restrict the discretion of judges to order unequal division of family property and debts. Section 95(1) allows this court to order an unequal division of family property or family debt, or both, but only if it would be significantly unfair to equally divide family property or family debt, or both or divide pensions as required under Part 6.
- [95] Significant unfairness must be compelling or meaningful having regard to the factors set out in s. 95(2) of the FLA. Reapportionment will require something objectively unjust, unreasonable or unfair in some important or substantial sense: Dheenshaw v. Gill, 2017 BCSC 319 at para. 44.
- [96] I therefore do not accept Ms. Middlebrooks' argument that the fact that she put her pension income into the joint account between separation and trial is a basis for finding "significant unfairness" in the equal division of the proceeds of the matrimonial home.

- [97] The arrangement was not only agreed to, but was also beneficial to Ms. Middlebrooks. In effect, it was the equivalent of an interim spousal support order with equal net disposable income division (i.e., at the very high end of the SSAG), but excluding Ms. Middlebrooks' employment income and without the tax benefit that would come from deducting spousal support from Mr. Stanger's employment income. As Ms. Weidmann fairly conceded, this was a better arrangement for Ms. Middlebrooks than she could have hoped to get from a court order.
- [98] I do not consider there is any reason to order anything other than equal division of family property and debts. I understand the parties have already done this, and I will simply make an order confirming that.
- [99] Part 6 of the FLA applies to the Canada Post pension plan, despite the fact that it is federally-regulated by s. 25(2) of the federal Pension Benefits Standard Act and by sub-paragraph (b) (ii) of the definition of "local plan" under s. 110 of the FLA. Ms. Middlebrooks asks me to depart from proportionate division here as well, but I see nothing "substantially unfair" about such a division, and I consider that her needs for spousal support can be addressed with an order under the Divorce Act and therefore s. 129 of the FLA is not engaged.

VIII. Survivorship benefits

- [100] When she retired, Ms. Middlebrooks chose a joint survivorship option for her pension with Mr. Stanger as her beneficiary. She now asks me for an order under s. 126(2) of the FLA that Mr. Stanger holds any survivorship benefits he receives in trust for a beneficiary or beneficiaries she designates. Mr. Stanger agrees with this order, so I will make it.

IX. Did Mr. Stanger Misuse the Court Process Such that a Fine Under s. 221 of the FLA is Appropriate?

- [101] Finally, Ms. Middlebrooks asks for a fine under s. 221 of the FLA.

- [102] Section 221 states in relevant part:

221 (1) A court may make an order prohibiting a party from making further applications or continuing a proceeding without leave of the court if satisfied that the party

[...]

(b) is conducting a proceeding in a manner that is a misuse of the court process, or

(c) is otherwise acting in a manner that frustrates or misuses the court process.

(2) If an order is made under subsection (1), the court may do one or more of the following:

[...]

(c) require the party to pay

(iii) a fine not exceeding \$5 000.

- [103] Mr. Stanger failed to meet deadlines in rules and court orders. Ms. Weidmann, counsel for Ms. Middlebrooks, was conscientious in telling him about his obligations, but he did not always meet them.
- [104] I find that this was not because of a desire to stall the process. In a number of cases, it showed confusion about the law - most importantly, when he reported only his "base" salary as income. While I recognize that Mr. Stanger was self-represented, he is still required to follow the Rules and abide by court orders.
- [105] Mr. Stanger was not trying to hide income. All of his income, including overtime and bonuses, was available on his pay cheques and he provided these when requested to do so.
- [106] In order to make an order under s. 221, I would have to be satisfied that one of the preconditions under s. 221(1)(a)-(c) is satisfied. Mr. Stanger has not made any trivial applications, so I would have to be satisfied either that he was conducting the proceeding in a manner that is a misuse of the court process, or was otherwise acting in a manner that frustrated or misused the court process. I do not think his neglect of some of his responsibilities under the Rules rose to that level.
- [107] I therefore dismiss an application for a fine under s. 221 of the FLA.

X. Costs

- [108] Ms. Middlebrooks asks for costs. Mr. Stanger says each party should bear their own costs.
- [109] In general, costs are awarded to the successful party, where that is understood as the party who has achieved substantial success at the trial: *S.A.M. v. J.A.M.*, 2017 BCSC 2348 at para. 7. In a case, like this one, where there were multiple issues and no party prevailed on everything, "substantial success" must be viewed globally. In my view, neither Mr. Stanger nor Ms. Middlebrooks obtained "substantial success" and therefore each party should bear their own costs.
- [110] The principal issue was the quantum of spousal support. On this issue, Mr. Stanger took what I found to be an untenable position, namely that it should be calculated using his base salary without regard to his overtime earnings. I did not agree with him that significant additional income should be imputed to Ms. Middlebrooks. However, on overall quantum my findings were between the position of the two parties. I did not accept Ms. Middlebrooks' submission that her pension income should not be attributed to her, nor the amount of overtime she (at least initially) asked me to attribute to Mr. Stanger.
- [111] I agree with Ms. Middlebrooks that the issues of property and pension division on which I found against her were secondary ones. However, a substantial amount of trial time was taken up with the question of whether Mr. Stanger "wilfully induced" Ms. Middlebrooks to retire early, an issue on which I found against Ms. Middlebrooks and which I found was not helpful. This was also the basis of a previous adjournment.

[112] Looking at the matter globally, I consider success was substantially divided and therefore it is an appropriate case for each party to bear their own costs.

XI. Order

[113] I therefore make the following orders:

- a) An order under s. 4 of the Name Act, that the claimant's name is changed from "Jessica Mary Stanger" to "Jessica Mary Middlebrooks".
- b) An order under s. 8 of the Divorce Act that the claimant Jessica Mary Middlebrooks, formerly Jessica Mary Stanger ("Ms. Middlebrooks"), and the respondent Patrick Jarvis Stanger ("Mr. Stanger"), who were married on February 14, 2008, are divorced from each other.
- c) An order under s. 12 of the Divorce Act that the divorce takes effect on the 31st day after the date of this order.
- d) A declaration that Ms. Middlebrooks and Mr. Stanger began their marriage-like relationship on October 31, 2004 and separated June 23, 2021.
- e) An order under Part 5 of the Family Law Act confirming equal division of family property and debt, as already agreed by Ms. Middlebrooks and Mr. Stanger.
- f) An order under Part 6 of the Family Law Act that Ms. Middlebrooks' share of the pension benefits accrued by Mr. Stanger in the Canada Post Corporation Registered Pension Plan is equal to $50\% \times A/B$, where A is the period beginning October 31, 2004 and ending June 21, 2021 and B is the period in which Mr. Stanger accrued pension benefits, measured in the same unit of time as A.
- g) An order under Part 6 of the Family Law Act that Mr. Stanger's share of the pension benefits accrued by Ms. Middlebrooks in the Canada Post Corporation Registered Pension Plan is equal to $50\% \times A/B$, where A is the period beginning October 31, 2004 and ending June 21, 2021 and B is the period in which Ms. Middlebrooks accrued pension benefits, measured in the same unit of time as A.
- h) An order under s. 126(2)(b) of the Family Law Act that Mr. Stanger holds any survivorship benefits he receives as a result of Ms. Middlebrooks' pension in trust for a beneficiary or beneficiaries chosen by Ms. Middlebrooks and communicated to him in writing.
- i) An order under s. 126(2)(b) of the Family Law Act that Ms. Middlebrooks may change or revoke the beneficiary or beneficiaries for whom Mr. Stanger holds survivorship benefits in trust if she does so in writing to Mr. Stanger.
- j) An order under s. 126(2)(b) of the Family Law Act that if Ms. Middlebrooks does not name a beneficiary or beneficiaries in writing to Mr. Stanger, that Mr. Stanger holds any survivorship benefits he receives in trust for the estate of Ms. Middlebrooks.

- k) An order that an administrator who consents under s. 126(3)(a) of the Family Law Act to pay survivorship benefits to a person named by Ms. Middlebrooks may apply to court for further directions and orders as may be convenient to facilitate the payment.
- l) An order that Ms. Middlebrooks or Mr. Stanger or both may apply for such directions and further orders as may be convenient to facilitate and enforce the division of their pensions under Part 6 of the Family Law Act.
- m) An order under s. 15.2 of the Divorce Act that Mr. Stanger pay Ms. Middlebrooks \$1,211 in spousal support on February 1, 2024 and on the first day of each and every month thereafter until the amount is varied or reviewed.
- n) An order under s. 15.2(3) of the Divorce Act that either party may ask for a review of the amount of spousal support in the following circumstances:
 - i. If, on or before June 8, 2025, Ms. Middlebrooks is unable to continue to work for health reasons, changes in the workplace beyond her control or other special circumstances;
 - ii. If, on or before February 3, 2027, Mr. Stanger is unable to continue to work at Canada Post for health reasons, changes in the workplace beyond his control or other special circumstances;
 - iii. If, on or before February 3, 2027, Mr. Stanger is required to substantially reduce or eliminate the amount of overtime that he performs for health reasons, changes in the workplace beyond his control or other special circumstances;
 - iv. If, on or after June 9, 2025 and before February 4, 2033, Ms. Middlebrooks notifies Mr. Stanger that she intends to stop working;
 - v. If, on or after February 4, 2027 and before February 4, 2033, Mr. Stanger notifies Ms. Middlebrooks that he intends to retire or substantially reduce the amount of overtime;
 - vi. At any time on or after February 4, 2033 if there has not already been a review on or after February 4, 2033.
- o) An order under s. 15.2(3) of the Divorce Act that if a review is requested by a party that has not reached the age of 65, the following apply:
 - i. The party asking for the review must give the other party 84 days' notice of the intended date for cessation of work or substantial reduction or elimination of overtime, unless shortened by agreement or court order;
 - ii. The party asking for the review must satisfy the court that cessation of work or substantial reduction or elimination of overtime is reasonable in the circumstances;
 - iii. Spousal support will be based on the mid range of the SSAG using the full incomes of the parties, including all pension income.

- p) An order under s. 15.2(3) of the Divorce Act that if a review is requested before February 4, 2033, the following apply:
- i. The party asking for the review must give the other party 84 days' notice of their intended retirement date or date for substantial reduction of work or overtime, unless shortened by agreement or court order.
 - ii. Spousal support will be based on the mid range of the SSAG using the full incomes of the parties, including all pension income.
- q) An order under s. 15.2(3) of the Divorce Act that if a review is requested on or after February 4, 2033, the court may address entitlement, duration and quantum of spousal support taking into account as requested by the parties and specifically may consider whether it is fit and just to consider all or only undivided pension income in the calculation of spousal support.
- r) An order that each party shall bear his or her own costs.

"J. G. Morley, J."

The Honourable Mr. Justice Morley

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