
CANADA / JUDGMENT

P.G. v. D.G.

2015 BCSC 1454

COURT

Supreme Court of British Columbia

DECIDED

18 August 2015

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2015 BCSC 1454 P.G. v. D.G.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

P.G. v. D.G.,

2015 BCSC 1454

Date: 20150818

Docket: E141191

Registry: Vancouver

Between:

P.G.

Claimant

And

D.G.

Respondent

Before: The Honourable Madam Justice Fenlon

Reasons for Judgment

Counsel for the Claimant:

J.A. Janzen

M. Au, A/S

Appearing on her own behalf:

D.G.

Place and Date of Trial:

Vancouver, B.C.

March 24-27, 30, 2015

Written Submissions:

April 27, 2015

May 8 and 12, 2015

Place and Date of Judgment:

Vancouver, B.C.

August 18, 2015

INTRODUCTION

- [1] The claimant P.G. and the respondent D.G. were married for 14 years. Ms. G. was self-represented at trial, although she had retained a number of lawyers from time to time prior to trial. As the trial unfolded over five days, it became apparent that the parties in fact agreed on many matters put in issue by the pleadings.
- [2] The primary dispute relates to the division of family property and in particular whether the value of a home Mr. G. owned before the marriage is excluded property. The other main issue is whether income should be imputed to Ms. G. for the purpose of calculating child and spousal support.

ANALYSIS

1. Divorce

- [3] The parties have been separated for over a year. There is no prospect of reconciliation. While I am satisfied that a divorce should be granted, I cannot make that order until clearance has been received from Ottawa and the registrar is in a position to issue a certificate of pleadings
- [4] In the result, the application for divorce is adjourned generally. The parties have leave to reset that application before me at 9:00 a.m. once the certificate of pleadings is available.

2. Parenting Arrangements

- [5] The parties have three daughters: D.O., who is now independent, D.E. who is 19 years old, and O. who is 16. Although D.O. and D.E. were born of Ms. G.'s two previous relationships, Mr. G. has acted as their father throughout the marriage and considers them to be his daughters along with O.

- [6] Since the parties separated, D.E. and O. have resided primarily with their mother in the former family home. They have spent regular time with their father; D.E. and O. see Mr. G. every weekend.
- [7] Living arrangements for O. became an issue in this case only a few months before trial. At that time, Ms. G. confronted D.E. about her lack of tidiness, issuing an "eviction notice" to her. O. and D.E. are very close and O. vowed that if D.E. left, she would follow.
- [8] The parties agreed to have Dr. Aubé prepare a views of the child report. Dr. Aubé found O. to be sad over the circumstances of her life. O. feels emotionally abused by her mother and feels abandoned by her father. She expressed a wish to be able to spontaneously decide where she will stay. O. told Dr. Aubé that she wished to spend weeks with her father and some weekends with her mother. In Dr. Aubé's opinion, O. should be given an unfettered choice as to where she lives. Mr. G. accepts that recommendation.
- [9] During argument Ms. G. produced a letter from O. stating that she wants to stay with her mother. Ms. G. insists O. wishes to remain in her care primarily. She submits Dr. Aubé misunderstood O.'s wishes. Ms. G. did not appear to grasp that a child may feel pressured into stating a preference to a parent in line with what that parent wishes to hear.
- [10] Despite failing to accept that O. wishes to live with her father primarily, Ms. G. ultimately agreed that O. should be able to decide where she lives.
- [11] I therefore order, by consent, that O. will determine the amount of time she spends with each parent. To be clear, she is not required by court order to live primarily with either parent. I also order by consent that both parents are guardians of O. and have responsibility for all decisions affecting her.
- [12] Before leaving the issue of guardianship, I note that I have, in accordance with ss. 37(2)(g) and (h) and s. 38 of the Family Law Act, S.B.C. 2011, c. 25 [FLA], considered three incidents of violence alleged by the parties to have occurred during their relationship.
- [13] The first occurred after the parties had an argument in late 2009. While the parties gave contradictory versions of this event, I find Ms. G. began taking Mr. G.'s clothes out of the closet in their bedroom and putting them in green garbage bags. Mr. G. moved into the walk-in closet to retrieve his clothes. Ms. G. picked up a wooden curtain rod and struck Mr. G. hard across his forearm. Mr. G. called the police who charged Ms. G. and required her to leave the home. The charges were eventually dropped at Mr. G.'s request.
- [14] The second incident occurred in May 2012 during an argument when Mr. G. flicked Ms. G. on the nose and she smashed the blender he was using onto the counter and floor.
- [15] The third incident took place on Thanksgiving weekend in 2012 after the parties had separated and Mr. G. was living in the basement.

- [16] Ms. G. and the girls had already had their Thanksgiving dinner; Mr. G. had not been invited to dinner. He began to cook some dinner for himself and was also playing the piano in the living room. The others were in the family room at the other end of the house.
- [17] Ms. G. came into the living room and asked Mr. G. to stop playing the piano. He continued, asking to play 10 minutes more. Ms. G. became furious and slammed the key cover down. Mr. G. took his hands away just in time to avoid being struck. Ms. G. also took Mr. G.'s cell phone which was on the sheet music holder and would not give it back to him. Ms. G. took the cell phone into the family room and Mr. G. followed her. She threw the phone to D.E. and it landed on the floor.
- [18] When Mr. G. bent down to pick up his phone, his knee made inadvertent contact with D.E.'s face. Ms. G. told Mr. G. he had committed an assault and said "You're out of here". She then called the police. I find Ms. G. saw this incident as an opportunity to avenge herself for the 2009 police incident which had been a sore point with her for years. At trial she acknowledged that Mr. G. did not intend to hurt D.E. and that she knew that at the time. She says she called the police because Mr. G. was "uncaring about D.E.'s pain".
- [19] These were isolated incidents over a period of four years. There is no indication that the parties have a tendency to violence generally or that they would be physically violent with their daughters. The greatest concern is that Ms. G.'s rather volatile emotional state is hard on her children, as O. herself reported to Dr. Aubé. That concern is ameliorated because both O. and D.E. are old enough to choose where they will reside.

3. Division of Property

(a) Does the Family Relations Act or the Family Law Act apply?

- [20] The parties do not agree on whether the Family Relations Act, R.S.B.C. 1996, c. 128 [FRA], or the FLA governs the division of property.
- [21] The FLA came into effect on March 18, 2013. The property provisions in the FRA continue to apply to couples who began proceedings respecting property division under the FRA before that date unless they agree to be governed by the FLA: FLA s. 252(2)(b). As I have noted, there is no such agreement in this case. The issue arises because the FLA excludes property acquired before marriage from the pool of family assets to be divided on separation (s. 85), while the FRA does not.
- [22] The issue of which Act governs in this case is complicated by the fact that two actions claiming division of property were before the Court at trial: New Westminster action number E40259 commenced under the FRA by Ms. G. on January 31, 2012 (the "New Westminster Action"), and Vancouver action number E141191 commenced under the FLA by Mr. G. on May 1, 2014 (the "Vancouver Action"). These actions were consolidated in an order made after application by Mr. G. dated February 4, 2015, as amended by an order made on March 23, 2015.

- [23] To understand how the existence of the two actions came about, and the implications flowing from that, it is helpful to review a chronology of the events leading to the filing of the actions.
- [24] The parties had a tumultuous marriage, with a number of separations and reconciliations.
- [25] Ms. G. argues that the real breakdown of the marriage occurred in October 2011. The parties agree that the marriage was in difficulty at that time, at least in part because Mr. G. had learned Ms. G. was seeing another man. Mr. G. commenced a notice of family claim in Vancouver on January 23, 2012 on the ground of adultery. Unbeknownst to him, Ms. G. commenced the New Westminster Action a week later.
- [26] The couple reconciled shortly after these actions were commenced. Mr. G. discontinued his action and Ms. G., who had not served her notice of family claim, took no further steps in that action.
- [27] Ms. G. submits that the October 2011 separation date should govern because it was "the first real separation". I do not accept that characterization to be accurate. Although the October 2011 separation was the first one in which legal proceedings were commenced, it was not the parties' first separation.
- [28] In early 2010, Ms. G. informed Mr. G. that she wanted a divorce. Each party retained a lawyer. By the end of February 2010 they had reconciled. By January 2011 they had separated again with Mr. G. moving back into the basement of the home. By April 2011 it is common ground that the parties reconciled, staying together until the next separation in October 2011.
- [29] Following the October 2011 separation, the parties again reconciled sometime in February 2012. The parties then separated for the last time on May 18, 2012 and Mr. G. commenced the Vancouver Action almost two years later.
- [30] With this background in mind, I turn now to a discussion of the implications of the New Westminster Action and the Vancouver Action being heard concurrently before me. I note that the effect of a consolidation order may vary based on the wording of the order. In some instances the actions may become one action for all purposes, while in other cases the actions remain distinct and are simply heard concurrently: Fraser, Horn & Griffin, *Conduct of Civil Litigation in British Columbia*, loose-leaf (consulted on 31 July 2015), (Markham, Ont: LexisNexis Canada, 2007) ch 14 at 6-7. In this case the language of the order is clear that the two actions will be "tried at the same time". Thus, the second action was not subsumed into the first action; instead the actions proceeded in tandem. For the reasons that follow, I conclude that the New Westminster Action should be dismissed in its entirety.
- [31] The New Westminster Action was brought primarily under the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.) seeking dissolution of the marriage and corollary relief, and under the FRA seeking division of property. All claims were based on a separation date of October 2011.

- [32] Under s. 8(2) of the Divorce Act, the Court has jurisdiction to grant a divorce on the ground that the parties have lived separate and apart for one year and were living separate and apart at the time the proceedings were commenced. Under s. 8(3)(b)(ii), if the parties separate but subsequently live together for more than 90 days, the running of the 12-month clock stops, and the original period of separation ends -- in effect, the original separation date is nullified.
- [33] The FRA entitles a spouse to division of family property on the occurrence of a number of triggering events. Those triggering events do not include separation in and of itself, but it is implicit in the scheme and purpose of the FRA that the parties should be separated at the time of the commencement of such a proceeding. The FRA, like the FLA, is intended to deal with the rights of spouses on marriage breakdown. If they are not separated, and the marriage is ongoing, there is no basis for commencing an action for division of property: none of the triggering events giving rise to a property claim (other than nullity of the marriage) can be established if the parties have not separated.
- [34] Ms. G. argued at trial that the parties' short-lived reconciliation in early 2012 did not interrupt the running of the one-year separation period that began in October 2011, so that separation date continued to apply. The evidence at trial was ambiguous as to the exact date of reconciliation in February 2012. Mr. G. filed a notice of discontinuance of the Vancouver Action on March 7, 2012, but neither party proved the precise date in February on which the parties began cohabiting again.
- [35] It is not surprising that neither side led evidence to address this date since Ms. G. admitted prior to trial that the parties' separation date was May 18, 2012. She acknowledged that date on three occasions.
- [36] First, in her response to the notice of family claim in the Vancouver Action Ms. G. did not disagree with Mr. G.'s assertion that the parties separated on May 18, 2012. Second, in her counterclaim, Ms. G. asserted the date of separation was May 18, 2012. Third, following a settlement conference in February 2014, canvassing all of the legal issues, Ms. G. consented to an order settling the date of separation as May 18, 2012. I note that this admission is consistent with other evidence that the parties had moved beyond a short period of reconciliation. In March 2012 they purchased a piece of property together to build their "dream home".
- [37] In any event, Ms. G. is bound by her admission. The date of separation was determined before trial. It was not open to Ms. G. in argument to resile from her admission. Based on that admission, the parties are deemed to have reconciled and continued their marriage after the New Westminster Action was commenced. As a result, the jurisdictional underpinnings for that divorce and FRA proceeding no longer existed.

- [38] While this is a sufficient basis for dismissal of the New Westminster Action, I would dismiss it as well on the basis that the action was not prosecuted. As I have earlier noted, Ms. G. did not serve the notice of family claim on Mr. G. Indeed she was not even aware that the New Westminster Action remained in place until it was brought to her attention on January 8, 2015, less than a week before the original trial date of January 14, 2015.
- [39] Both parties proceeded under the Vancouver Action. When the existence of the New Westminster Action came to light, Mr. G. filed a response and sought to consolidate the two actions so that the New Westminster Action could be dealt with and the record cleared up. He then applied at trial to have the New Westminster Action dismissed.
- [40] In summary on this issue, I conclude that the New Westminster Action should be dismissed. Accordingly, all of the parties' claims fall to be determined in the Vancouver Action pursuant to the provisions of the FLA.
- (b) What property is excluded property?
- [41] The parties agree that the following assets were owned by Mr. G. prior to the commencement of their relationship and are his property alone: a vacuum cleaner, cherry armoire, night stand, sleigh bed, glider chair, musical equipment, and instruments. These items are specifically identified in the summary at para. 149 of these reasons.
- [42] The parties disagree whether the equity Mr. G. had in a property located at 5806 Main Street in Vancouver at the time of the marriage should be excluded from family property (the "Main Street Property").
- [43] Section 85 of the FLA provides:
- Excluded property
- 85 (1) The following is excluded from family property:
- (a) property acquired by a spouse before the relationship between the spouses began;
 - (b) inheritances to a spouse;
 - (b.1) gifts to a spouse from a third party;
 - (c) a settlement or an award of damages to a spouse as compensation for injury or loss, unless the settlement or award represents compensation for
 - (i) loss to both spouses, or
 - (ii) lost income of a spouse;
 - (d) money paid or payable under an insurance policy, other than a policy respecting property, except any portion that represents compensation for
 - (i) loss to both spouses, or

- (ii) lost income of a spouse;
- (e) property referred to in any of paragraphs (a) to (d) that is held in trust for the benefit of a spouse;
- (f) a spouse's beneficial interest in property held in a discretionary trust
- (i) to which the spouse did not contribute, and
- (ii) that is settled by a person other than the spouse;
- (g) property derived from property or the disposition of property referred to in any of paragraphs (a) to (f).
- (2) A spouse claiming that property is excluded property is responsible for demonstrating that the property is excluded property.

[Emphasis added.]

- [44] Mr. G. has met the burden of proving that he owned the Main Street Property before the relationship between the parties began. The Main Street Property had belonged to Mr. G.'s grandparents. He bought it from their estate in May 1991 for \$285,000, taking out a \$252,000 mortgage. By the time the parties married on November 29, 1997, the mortgage had been reduced to \$181,867.
- [45] The parties do not agree on the value of the property at the time of the marriage. Ms. G. relies on the BC Assessment Authority notice of assessment showing a value of \$321,000 in 1997. While the Court of Appeal has acknowledged that notices of assessment may be used in some family cases in the absence of better evidence, appraisals are to be preferred: *Dosanjh v. Liang*, 2015 BCCA 18 at paras. 60 and 61.
- [46] In the present case, the parties commissioned a joint appraisal on the Main Street Property as of the date of marriage. The appraiser valued the property historically at \$400,000. While he initially made an erroneous assumption about the number of bathrooms in the residence in November 1997, the appraiser provided a supplemental report and was cross-examined on his reports by Ms. G. at trial. I am satisfied that his amended opinion should be accepted. I therefore find that Mr. G. had equity of \$218,133 in the Main Street Property at the time the parties married (\$400,000 - \$181,867).
- [47] During their marriage, the parties decided to repurpose the Main Street Property into a rooming house. They converted the two suites into nine rooms, completing that work in July 2005. At the commencement of the renovation work, on December 22, 2003, Mr. G. added Ms. G. to the title of the Main Street Property as a joint tenant.

- [48] Mr. G. did much of the renovation work himself, working full-time as a truck driver during the day and renovating in the evenings, on weekends, and during holidays. Ms. G. contributed by caring for the children, doing yard work, and assisting with tenants. I accept both parties were partners in the work done to improve the Main Street Property as Ms. G. asserts.
- [49] The number of tenants in the renovated Main Street Property made it less than ideal as a home for raising their children. In July 2005, the parties increased the mortgage on the Main Street Property by \$131,000 in order to buy a home in Walnut Grove in Langley (the "Former Family Home"). The title to the Former Family Home was registered in joint tenancy.
- [50] On December 2, 2009, the parties sold the Main Street Property for \$1.065 million. After paying off the mortgage on the Main Street Property, the balance of the money went into the parties' joint account. It was then used to pay off the mortgage on the Former Family Home of \$334,049.
- [51] There is thus a direct line between Mr. G.'s equity in the Main Street Property at the time of the marriage and the acquisition of the Former Family Home.
- [52] The issue is whether the equity in the Main Street Property at the time of marriage continued to be excluded property after Mr. G. transferred the Main Street Property into joint tenancy on December 22, 2003, and after he put the proceeds of the sale of the Main Street Property into the Former Family Home, which was also held in joint names.
- [53] Ms. G. asserts that the transfer of the Main Street Property into her name constitutes a gift of Mr. G.'s otherwise excluded portion. She says that is also evident from his statement at the time of their marriage: "all I have is yours".
- [54] I will address first the latter submission. In my view, those words are ambiguous and do not alone constitute proof of a gift. They could simply mean "all I have is yours to use".
- [55] The question of whether a transfer of property into the name of the other spouse constitutes a binding gift that extinguishes the right of the transferor to claim it as excluded property on separation is a more complicated one. This Court has considered the issue in three cases that establish two conflicting lines of authority.
- [56] In *Remmem v. Remmem*, 2014 BCSC 1552, the husband used the proceeds of an excluded property to purchase property in joint tenancy with his wife. The parties' relationship began in 1990, at which time the husband owned property on Greaves Road on the sunshine coast valued at \$65,000. When the husband sold the Greaves Road property in 1995, the parties used the money to buy a home in both names at Middle Point. The parties lived there until they moved into a new home on Curran Road in Halfmoon Bay, BC. The Middle Point property was later sold and the proceeds used to purchase a five-acre lot on MacMillan Road in Halfmoon Bay, where the parties planned to build a new family home.

- [57] The wife agreed that the Greaves Road property was excluded property and that the Middle Point property and Curran Road property were derived from that excluded property. However, she submitted that when Mr. Remmem used the Greaves Road proceeds to buy Middle Point and placed that property in joint tenancy, he effectively gave one-half of his interest in those excluded proceeds to her. She based that submission on the presumption of advancement between spouses (at para. 20).
- [58] The trial judge rejected this submission. He concluded that the purchase of property held in joint names using the proceeds of excluded property does not reduce the value of the exclusion (at para. 52). At para. 50, the trial judge identified a number of problems that would arise if the presumption of advancement between spouses applied to the scheme of Part 5 of the FLA:
- a) The presumption only applies to married spouses and so gratuitous transfers between married and unmarried spouses would be treated differently.
 - b) The presumption is at odds with and would limit the utility of the tracing provisions. Property (such as the Middle Point property) placed in joint names is clearly derived from excluded property and so it is easy to trace the full amount of the exclusion. Unlike the presumption of advancement, tracing does not depend on the parties' intentions. The application of the presumption of advancement and an examination of whether property was gifted is at odds with the simple concept of tracing.
 - c) When applied, the presumption of advancement would significantly reduce the value of the exclusion to the donor spouse.
 - d) Further, if half of the excluded property is a gift to the donee spouse, shouldn't [the donee still] be able to claim that his or her half of the property is excluded?
- [59] He concluded at para. 52:
- [52] When I consider these difficulties, I conclude that the tracing provisions in the FLA, at least when applied to the circumstances in this case, are to be applied without considering or applying the presumption of advancement between married spouses. In other words, none of the excluded property - the fair market value of the Greaves Road property in October 1990 - was gifted to Ms. Remmem when the Middle Point property was placed in joint names. Mr. Remmem remains entitled to the full value of the exclusion of \$65,000.
- [60] In *Wells v. Campbell*, 2015 BCSC 3, the trial judge came to the opposite conclusion. In that case the husband owned a two-acre waterfront property on Hornby Island valued at \$185,000 when the relationship began. In 2008, about five years before the parties separated, the husband transferred the Hornby Island property into joint tenancy with his wife. The trial judge concluded that at the time the husband transferred the Hornby Island property into joint tenancy, he did so as a gift to his wife because it was a perfected inter vivos gift that cannot be revoked (at para. 32). He concluded that the FLA does not alter the law of inter vivos gifts, so that the presumption of advancement applied (at paras. 32-33). He found

that the husband had not established a contrary intention behind his transfer of the Hornby Island property into joint tenancy, nor had he pleaded or argued such (at para. 31).

- [61] Although the transfer of the property into joint tenancy was considered most significant, the trial judge also observed at paras. 28 and 29:
- [28] I note that the term "excluded property" self describes itself as property and that "property" is described as real or personal property and includes a beneficial interest. It is questionable then as to whether a "value" in property falls within the definition of excluded property. Next, in respect to family and excluded property, the items described as such are things (e.g. gifts, inheritances, money) or recognized interests and not a value as argued by Mr. Wells. The only exception appears to be where there has been an appreciation in value of excluded property after the start of a relationship. In such a situation the appreciation is considered family property. Other than appreciation, it is apparent that property is viewed distinct from value. Interestingly, depreciation in value is not considered family property.
- [29] As a result, it would seem that value appears to be different from property and does not constitute excluded property.
- [62] Confining *Remmem v. Remmem* to its facts, the trial judge disagreed with the conclusion reached in that case that the presumption of advancement did not apply to Part 5 of the FLA by necessary implication, saying:
- [38] While I do not disagree certain problems can be presented; I am not persuaded that they lead to the conclusion that the Act displaces or extinguishes the presumption of advancement, or the effect of an inter vivos gift resulting in a joint tenancy. There is no explicit extinguishment in the Act, as has been done in other jurisdictions. See for example: *Waters' Law of Trust in Canada*, 4th ed. [Waters'], at p. 414. In those other jurisdictions, the application of the presumption of resulting trust is required in questions of ownership of property between spouses. The legislation in those jurisdictions state where a property is held by the spouses as joint tenants, that fact is proof, in the absence of evidence to the contrary, that the spouses are intended to own the property as joint tenants.
- [63] This Court once again considered the question of excluded property under s. 85 of the FLA in *V.J.F. v. S.K.W.*, 2015 BCSC 593. In that case, the husband used \$2 million of excluded property (an inheritance) to purchase and register a house solely in his wife's name. Registration in the wife's name was part of a legitimate creditor-proofing exercise (at para. 23). The husband was a highly paid employee and director of a real estate development company that did not have director's liability insurance.
- [64] The conflicting authorities of *Remmem* and *Wells* were squarely before the Court in *V.J.F.* (at paras. 56-68). Relying on *Remmem*, the husband argued that the \$2 million inheritance was excluded and traceable into the property held by the wife. The wife relied on *Wells*, arguing that once the title to the house was registered, the presumption of advancement applied.

[65] The trial judge in V.J.F. endorsed Wells. At para. 69, he noted that Wells had confined Remmem to its facts and stated:

In this case, when excluded property owned by one spouse was comingled with funds derived from family property to purchase an asset that is placed solely in the name of the other spouse in order to immunize it from potential creditors, the exclusion is lost because the disposing spouse gifted it to the other.

[66] At para. 63 he also distinguished Remmem on the basis that s. 104(2) of the FLA was not raised in that case. Section 104(2) provides that any rights granted under the Act are in addition to and not in substitution for rights under equity or any other law. He concluded that the presumption of advancement was thereby preserved, and since the husband had intended to transfer the house to his spouse to protect it from creditors, he could not rebut that presumption; the entire property was therefore family property to be divided equally between the parties (at paras. 69-77).

[67] Having considered these conflicting cases I conclude that I should follow the approach taken in Remmem for a number of reasons. First, Wells and V.J.F. focussed on the continued existence of the presumption of advancement -- neither case addressed s. 85(1)(g), the tracing provision which expressly provides for the exclusion of property derived from excluded property or the disposition of excluded property.

[68] In Wells, it appears the effect of s. 85(1)(g) was not raised. The subsection is not listed in the summary of the relevant provisions of the FLA at para. 17, and is not referred to at all in the analysis. In V.J.F., s. 85(1)(g) is referred to in the summary of the claimant's position at para. 39, but it is not referred to in the discussion of excluded property at paras. 53-55 of the analysis. As set out in *Re Hansard Spruce Mills*, [1954] 4 D.L.R. 590 (B.C.S.C.), given that a relevant statutory provision was not addressed, I am not bound to follow these decisions.

[69] In considering the effect of s. 85(g), I am mindful that the provisions of a statute are to be read in their entire context, in their grammatical and ordinary sense, harmoniously with the scheme of the Act, the object of the Act and the intention of the legislature: *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, at para. 21; *Loyola High School v. Quebec (Attorney General)*, 2015 SCC 12 at para. 50.

[70] Section 85(1)(g) of the FLA is broadly worded. The section excludes property "derived from property or the disposition of property" acquired by a spouse before the relationship between the parties began.

[71] In *Minister of National Revenue v. Hollinger North Shore Exploration Co., Ltd.*, [1963] S.C.R. 131, the Supreme Court of Canada considered the meaning of the word "derived" and held that in the relevant context - the interpretation of exemptions in the Income Tax Act, R.S.C. 1952, c. 148 - it was broader than "received" and equivalent to "arising or accruing" from (at 134).

[72] The Interpretation Act, R.S.B.C. 1996, c. 238, s. 29, defines "dispose" as follows:

"dispose" means to transfer by any method and includes assign, give, sell, grant, charge, convey, bequeath, devise, lease, divest, release and agree to do any of those things;

[73] In *Cominco American Inc. v. Duval* (1993), 89 B.C.L.R. (2d) 83 (S.C.) Huddart J. held that a definition in the Interpretation Act applies unless a contrary intention appears in the legislation in issue (at para. 4). No such contrary intention appears in the FLA.

[74] The Court in *Wells* referred to the registration of the Hornby Island property in joint tenancy as a "transfer". It also referred to the registration in joint tenancy as a "gift to Ms. Campbell" (at para. 32). To do either of these actions is to "dispose" of property as that word is defined in the Interpretation Act.

[75] Section 85(1)(g) does not restrict tracing to an asset held solely by the spouse who owned the original excluded asset. Recognizing the presumption of advancement when applying Part 5 of the FLA would generally "extinguish" the right of a spouse who has brought property into the relationship to retain it on separation whenever the pre-owned property is mingled with property held by the other spouse. The implications of this are far-reaching. Arguably an inheritance deposited into a joint bank account, a gift from a parent to one spouse used to pay down the mortgage on a home held as joint tenants, or an award of damages for pain and suffering used by a spouse as a down payment on a house placed in both names or placed in the other spouse's RRSP would be subject to the presumption of advancement. It would follow that the spouse who was the original owner of these assets, which are expressly defined as excluded property under s. 85(1) of the FLA, would not be able to claim them as excluded property at the end of the relationship, unless he or she could marshal evidence to rebut the presumption of advancement at the time the transfer occurred.

[76] The second reason I prefer the approach in *Remmem* is that it is consistent with the objects of the FLA. In the British Columbia Ministry of Attorney General's White Paper on Family Relations Act Reform: Proposals for a new Family Law Act, (2010), online: <<http://www.ag.gov.bc.ca/legislation/shareddocs/fra/Family-Law-White-Paper.pdf>> the reason for introducing an excluded property regime was described as follows (at 81):

The most compelling reasons for moving to an excluded property regime are to make the law simpler, clearer, easier to apply, and easier to understand for the people who are subjected to it. The model seems to better fit with people's expectations about what is fair. They "keep what is theirs," (such as pre-relationship property and gifts and inheritances given to them as individuals) but share the property and debt that accrued during their relationship. Where one spouse enters the relationship with more assets than the other, providing that spouses share the increase in the value of the excluded property promotes a fair outcome. For example, assume one spouse enters the relationship with a house and a mortgage. During the relationship, the spouses pay down the mortgage and invest in renovations to the house. Upon separation, the spouse who brought the house into the relationship retains the value the house had at the beginning of the relationship, and the associated mortgage. The spouses share in the increased equity flowing from renovations

and mortgage payments over the duration of the relationship.

Changing to an excluded property scheme removes the broad judicial discretion from the asset identification stage and leaves some discretion at the distribution stage. This change is designed to make it easier to identify property subject to division and, therefore, reduce the potential for disagreement.

[Emphasis added.]

- [77] Canadian courts have referred to White Papers as aids in interpreting statutory provisions: see e.g. *Canada v. Kieboom*, [1992] 3 F.C. 488 at 498 (C.A.). Subsections 85(1)(a) and (g) of the FLA did not change from First Reading in the Legislature: Bill 16, Family Law Act, 4th Sess, 39th Parl, British Columbia, 2011, cl 85(1)(a),(g) <http://www.leg.bc.ca/39th4th/1st_read/gov16-1.htm#section85>.
- [78] Third, the reasoning in *Wells* and *V.J.F.* focusses on the legal effect of a transfer of property during the marriage without reference to the overall scheme of the FLA on marriage breakdown. In my view, general property law, including the presumption of advancement, applies during the parties' marriage. While the relationship continues, a transfer of real property from the husband's sole name into joint tenancy gives the wife an undivided interest in that property. If the husband dies, the entire property vests in the wife and does not fall into the husband's estate. If the house is put into the wife's sole name, it is hers absolutely during the marriage and the husband's creditors, absent a fraudulent conveyance, cannot pursue it because the husband has no interest in that property.
- [79] On marriage breakdown, however, a new property rights regime descends as between the spouses, just as it did under the former FRA. The rights of third parties vis-à-vis the property held by the spouses remain unaffected (s. 82), but between the spouses, all changes. Whether property is held solely in the wife's name, solely in the husband's name, or jointly, it is all subject to the scheme of division created by Part 5 of the FLA (s. 84(1)). Some of that property is to be excluded under s. 85(1) and all the rest is presumptively to be divided equally regardless of whose name it is in at the date of separation.
- [80] Under this scheme it does not matter that one spouse during the marriage is presumed to have gifted property, whether excluded or otherwise, to his or her spouse. There is a whole new regime once the marriage ends. In my view, this interpretation finds support in s. 85(1)(b.1), which was amended to clarify that only gifts from a third party, as opposed to a spouse, are excluded property. Originally, s. 85(1)(b) of the FLA read:

85 (1) The following is excluded from family property:

- (b) gifts or inheritances to a spouse;

[81] The amended ss. 85(1)(b) and (b.1) provides:

85 (1) The following is excluded from family property:

(b) inheritances to a spouse;

(b.1) gifts to a spouse from a third party;

[82] The reason for this amendment was clarified by Hon. S. Anton. in the committee stage for Bill 14, Justice Statutes Amendment Act, 2014 (British Columbia, Legislative Assembly, Hansard, 40th Parl, Sess, Vol 9 No 3 (27 March 2014) at 2531):

Hon. S. Anton: There are two changes here, and I'll do them one at a time. The first one. Again, we're not aware of case law, but family law lawyers were concerned with the way the provision was written. There was a possibility that gifts between spouses might be excluded, and the intention is only that a gift from a third party should be excluded.

[83] As a result of this amendment and the property regime under the FLA as a whole, whether a house or a piece of jewellery is given by one spouse to another during the marriage, it all falls back into the communal pot when the marriage ends. Some of the property will then be excluded if a spouse can meet the requirements of s. 85, and the remainder may, in certain cases, be divided unequally under s. 95. Section 96 of the FLA provides that even excluded property may, in certain cases, be divided if justice so requires.

[84] Logically, if the presumption of advancement continues to govern on marriage breakdown, then a gift from one spouse to another would not fall back into the communal pot. If "a gift is an irrevocable gift" for the purpose of determining what can be claimed as excluded property, why would a gift not be an irrevocable gift for the purpose of determining what is family property to be divided at the end of a marriage? The amendment reflected in s. 85(1) (b.1) demonstrates the legislature did not intend that approach to be taken.

[85] The interpretation of s. 85 adopted in Remmem is also, in my view, more consistent with the objectives of the FLA and the reality of most marriages. In a majority of cases, assets owned by one spouse before the couple comes together will be mingled with property held in both names. The cost of owning a home in many parts of British Columbia practically compels spouses to pool their assets. Registering the home so acquired in both names as tenants in common reflects the unity of the couple in marriage; placing a home in joint tenancy is a practical tool for estate planning; and placing the home in the name of one spouse is an accepted way to protect a core family asset from business creditors.

[86] The adoption of an excluded property regime "to better fit with people's expectations about what is fair [so] that they keep pre-relationship property and gifts and inheritances given to them as individuals[,] but share property and debt that accrued during their relationship" (White Paper on Family Relations Act Reform, at 81) is effectively negated if the excluded property cannot be traced into assets placed in whole or in part in the name of the other spouse.

- [87] It is unlikely that when the legislature drafted the new excluded property regime under the FLA it was unaware of the practical reality that many spouses will combine assets during their marriage.
- [88] Finally, I note that failing to give effect to the tracing provision in s. 85(1)(g) when excluded property is placed in the name of the other spouse in whole or in part may result in an unfairness. Section 95 of the FLA replaces s. 65(1) of the FRA and provides for an unequal division of family property in circumstances of "significant unfairness". However, whereas s. 65(1) of the FRA specifically invited the Court to consider circumstances relating to acquisition and preservation of family assets, those factors are not included in the enumerated factors to be considered in s. 95 of the FLA: see generally *Jaszczewska v. Kostanski*, 2015 BCSC 727 at para. 144.
- [89] In summary on this issue, I conclude that I should follow the approach taken in *Remmem*. Accordingly, the equity in the Former Family Home of \$218,133, derived from the Main Street Property held by Mr. G. at the time of the parties' marriage, is excluded property under s. 85(1)(g).
- (c) Are the children's instruments family property?
- [90] The parties do not agree on whether two musical instruments are family property: a violin used by O. worth \$6,000 and a cello used by D.E. worth \$3,000.
- [91] Mr. G. submits these are family property while Ms. G. asserts that the instruments were gifts to the children, belong to them, and should not be divided between the parties.
- [92] I find that the instruments were purchased by the parents and given to their daughters. The presumption of advancement applies when a parent transfers property to a minor child: *Pecore v. Pecore*, 2007 SCC 17 at para. 40. The presumption that the musical instruments were gifts to O. and D.E. has not been rebutted by Mr. G. The violin and cello therefore do not constitute family property.
- (d) Should family property and debts be divided equally?
- [93] The parties have agreed on how to divide some of their property. Furniture remaining in the Former Family Home as of the date of trial is to be divided between the parties equally. Ms. G. is to select an item, followed by Mr. G., with the parties alternating thereafter until all items have been divided.
- [94] They also agree that during the separation, Mr. G. purchased Ms. G.'s interest in the Estonia grand piano valued at \$30,000 and in the treadmill valued at \$2,000. Mr. G. will retain these items and will not pay anything further to Ms. G. on their account.

- [95] By consent, Mr. G.'s pension acquired between November 18, 1997 and May 12, 2012, is to be divided equally by the pension plan administrator so that Ms. G. receives her portion directly upon Mr. G.'s retirement. Ms. G. is to apply for that division and Mr. G. is to assist as necessary to enable her to complete that division.
- [96] The parties further agree that the 25 shares in Lafarge Concrete owned by Mr. G. and valued at \$2,367 will be retained by him.
- [97] Finally, the sum of \$6,400 held in trust by Ms. Janzen from a payout by the insurance company is to be used to do the repair work on the Former Family Home for which that money was claimed. The parties are to jointly retain contractors to complete the work. The cost of the work will first be paid from the money held in trust. If the work exceeds \$6,400, the parties are to share equally the additional expense.
- [98] The remaining property to be divided consists primarily of two pieces of real property: the Former Family Home, and an acreage purchased in March 2012 on 260th Street in Langley (the "Acreage"). Ms. G. submits that the Acreage should be reapportioned primarily to her because she paid a greater portion of the payment on closing. Some background is necessary to assess this argument.
- [99] The Acreage was purchased using the proceeds of sale of the Main Street Property. From the net proceeds of \$671,100, after paying off the mortgage on the Former Family Home, the remaining sum of about \$335,000 was put into a savings account and term deposit. When the parties had their first separation in early 2010, Mr. G. retained a lawyer who advised him to place the remaining proceeds of the sale of the house into his trust account. When the parties reconciled in mid-2010, after paying a Revenue Canada tax bill of \$96,000, they divided the remaining \$236,000 equally and deposited their shares into separate accounts in each of their names. By the time they decided to purchase the Acreage in March 2012, Ms. G. had \$70,000 left in her account and Mr. G. had about \$36,000. The parties used this money to put \$100,000 into the property as a cash payment and took out a mortgage of \$571,450. Hence Ms. G.'s assertion that she paid for more of the Acreage.
- [100] However, the use of individually held accounts to purchase family property does not justify reapportionment on separation. There is no suggestion that Ms. G. used excluded property to purchase the Acreage, indeed the money clearly came from the sale of their first family home on Main Street.
- [101] Ms. G. also submits that since she has not worked outside of the home during the marriage, she needs the home for security. She would like to buy the Former Family Home so that she, O. and D.E. can continue to reside there.
- [102] Section 95(1) of the FLA gives the Court discretion to order an unequal division of family property or family debt if it would be significantly unfair to divide the property equally. In order to determine if it would be significantly unfair to divide the family property equally, the Court must notionally divide the family property, taking into account the exclusions, in

accordance with the provisions of the FLA. When that is done in this case, the parties will divide the family property with a value of about \$710,000, leaving each of them with \$355,000. I have not included in this consideration cars and furniture that will be divided equally, or the Teamsters pension and CPP credits that will be divided at their source and have not been valued.

[103] In *Jaszczewska v. Kostanski*, Madam Justice Baker helpfully reviewed cases addressing the meaning of "significantly unfair" at paras. 166-169:

[166] In *L.G. v. R.G.*, 2013 BCSC 983, at para. 71, Justice N. Brown stated:

In my view, the term "significantly unfair" in s. 95(1) of the FL essentially is a caution against a departure from the default of equal division in an attempt to achieve "perfect fairness". Only when an equal division brings consequences sufficiently weighty to render an equal division unjust or unreasonable should a judge depart from the default equal division.

[167] Similar statements were made in *Remmem v. Remmem*. In that case, at para. 44, Justice Butler noted:

The Concise Oxford English Dictionary defines "significant" as "extensive or something weighty, meaningful, or compelling. In other words, the Legislature has raised the bar for a finding of unfairness to justify an unequal distribution. It is necessary to find that the unfairness is compelling or meaningful having regard to the factors set out in s. 95(2).

[168] In *Slavenova v. Rangelov*, 2015, BCSC 79, at para. 60, the court said:

The "significant unfairness" contemplated by s. 95 requires much more than differing financial contributions in a relationship. Exactly equal contribution is more likely exceptional than commonplace. The new regime under the FLA recognizes that partners will come to a relationship in differing circumstances and accounts for those in the concepts of "family property" and "excluded property". The starting point in the division of property analysis already applies significant exclusions.

[169] In *Nearing v. Sauer*, Justice Fleming stated at para. 141:

Section 95(2) does not appear to allow for the wide ranging examination of each spouse's contribution to the accumulation of family assets and their respective capacities that occurred pursuant to s. 65(1)(f).

[104] The disadvantages Ms. G. relies on to support her submission that an equal division would be unfair stem from her lack of participation in the work force. They can be addressed through spousal support. I conclude that there is nothing significantly unfair in this case about dividing the property equally between the parties.

4. Division of Debt

[105] The parties will be responsible for their own debts since separation. The outstanding fee of \$2,500 owed to Capilano College is to be paid by the parties in proportion to their income (68/32%): \$1,700 by Mr. G. and \$800 by Ms. G. The small remaining debt to Revenue Canada for outstanding taxes is being paid down through retention of the Child Tax Benefit. If that situation changes and the parties are required to pay it in another manner, they are each equally responsible for the remaining amount.

[106] Since Mr. G. wishes to retain the Acreage, he is responsible for the mortgage on that property.

5. Prospective Spousal Support

[107] The parties had a traditional marriage. Ms. G. stayed home to care for their children and Mr. G. worked full-time as a truck driver for Lafarge Cement, often six days a week. Mr. G. is now 52, Ms. G. is 45. She has not worked since the parties separated in May 2012.

[108] Mr. G. concedes that Ms. G. is entitled to spousal support. I agree with that assessment and find she is entitled to support both on a compensatory and, at this point, a needs basis.

[109] Section 15.2 of the Divorce Act governs. In making an order for spousal support I must consider the condition, means, needs and other circumstances of each spouse including (s. 15.2(4)):

- (a) the length of time the spouses cohabited;
- (b) the functions performed by each spouse during cohabitation; and
- (c) any order, agreement or arrangement relating to support of either spouse.

[110] I must also recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown and the other factors listed in s. 15.2(6).

[111] The amount of both prospective and past support payable is in issue. I begin by determining the parties' incomes. Mr. G.'s income is well settled. He is an employee and fluctuations in his income are due only to the number of hours of overtime worked in any given year. I find his income to be as follows:

2012

\$103,063

2013

\$117,356

2014

\$107,515

2015

\$107,515

- [112] Ms. G. argues that it is suspicious that Mr. G.'s income in the years after they separated fell from \$117,000 to \$107,000. She submits that he failed to accept overtime and that income should be imputed to him of \$120,000 per year.
- [113] Ms. G.'s argument is not persuasive given that Mr. G. actually earned significantly more in the first full year following their separation than he did in the preceding years. In any event, I find Mr. G. has accepted the overtime available to him. That extra work has always fluctuated. In 2009 for example he worked 2,034 hours, in 2010 he worked 2,261 hours, and in 2011 he worked 2,445 hours. His total hours in 2014 are 2,462. There is no pattern of declining effort here.
- [114] The more difficult question is whether income should be imputed to Ms. G. She was unemployed when she met Mr. G. but had worked in a number of clerical positions successfully after completing school. She agrees that she is a capable user of software programs, including graphic design.
- [115] Ms. G. is a healthy, capable woman who has no barriers to employment other than a long absence from the workforce. She states that she has not been able to work since the separation because she has been busy taking care of her daughters, managing the Acreage, and training herself to be a graphic artist. Ms. G. uses online and library resources and has been teaching herself to use Photoshop and animation software. Her plans for future employment involve opening her own company to develop logos and branding for clients. She argues her time in the three years since the parties separated has been better spent doing this retraining than looking for a minimum wage job.
- [116] While Ms. G. appears to have talent in the area of graphic design, her plans for a future as a graphic design artist were vague and somewhat unrealistic. For example, she asserted that she had a number of mentors in the field who would be able to help her develop her business, but on cross-examination was unable to provide a single name in support of that statement. She has not taken any accredited courses in this field.
- [117] Both parents have an obligation to work to support their children. While it was not unreasonable for Ms. G. to seek some retraining before returning to the workforce, I conclude that she should have been able to complete such retraining within two years of the parties' separation. I therefore find that Ms. G. should have found employment by July 1, 2014. In accordance with s. 19(1)(a) of the Federal Child Support Guidelines, SOR/97-175, I impute to her income based on a minimum wage full-time position paying \$10.25 per hour for 40 hours per week for 50 weeks a year, resulting in income of \$20,500.
- [118] In summary on this issue, Mr. G. is to pay spousal support at the mid-range of the Spousal Support Advisory Guidelines commencing September 1, 2015, for seven years, ending on May 31, 2022, for a total of ten years of spousal support following separation.

[119] The parties are to provide each other with copies of their income tax returns by June 1 each year, with child and spousal support to be adjusted effective July 1 based on their previous year's income. For clarity, barring a material change in her circumstances, income of \$20,500 will continue to be imputed to Ms. G. if her actual income is less than that sum. The first adjustment is to be made effective July 1, 2016.

6. Prospective Child Support

[120] Child support is payable on the first day of the month in accordance with the Child Support Guidelines for two children commencing September 1, 2015. Mr. G. agrees that he will pay support for O. and D.E. even if they are spending more than 40% of the time with him.

[121] The evidence establishes that D.E. is working and largely self-supporting at this point and not in need of support. The parties also agree, however, that if D.E. returns to school she will require support. In the event that occurs, the parties are to share expenses in proportion to their income. Based on Mr. G.'s income of \$107,500 and Ms. G.'s income of \$20,500, Mr. G. is to pay 68% of extraordinary expenses and Ms. G. 32% of such expenses.

[122] The parties also agree that they should contribute in proportion to their income to O.'s music lessons which are approximately \$1,600 - \$1,700 annually.

7. Past Support Payable

[123] There is no interim order in place for spousal or child support. The parties both continued to reside in the Former Family Home until October 8, 2012, when Mr. G. left the home following the cell phone incident in which Ms. G. called the police. Other than a three-week attempt at reconciliation in August 2013, and again in October 2013, the parties have not shared the same residence.

[124] Mr. G. claims he has overpaid child and spousal support by \$65,223. Ms. G. says he has underpaid by \$10,058. The difference between the parties largely turns on whether income should be imputed to either of them.

[125] I have already determined that income should not be imputed to Mr. G. in addition to his wages, and that income of \$20,500 should be imputed to Ms. G. starting from July 1, 2014.

[126] In order to determine whether child and spousal support has been over or underpaid, I must find and characterize what has been paid by Mr. G. and received by Ms. G. from the date of separation to the date of trial.

(a) May 2012 to December 31, 2012

[127] Immediately upon separation Ms. G. withdrew \$8,800 from the parties' savings account to cover expenses. One-half of that sum belonged to Mr. G. and I therefore find Ms. G. received support of \$4,400 in May 2012.

[128] In October 2012 Ms. G. rented out the Acreage. She received rent of \$9,000, half of which was notionally Mr. G.'s. I therefore find she received an additional \$4,500 in support.

[129] Throughout the entire period of separation Mr. G. paid the following monthly expenses on the Acreage:

Mortgage Payment

\$2,600

Property Taxes

\$277

Lease Payments

\$40

Hydro

\$100

Mr. G. also paid monthly expenses on the Former Family Home as follows:

Property Taxes

\$320

House Insurance

\$305

(for both houses)

Hydro

\$125

Gas

\$137

Telus Phone

\$18

Cable and Internet

\$150

These monthly payments come to \$4,072 per month.

- [130] Some of the sums paid are properly characterized as Mr. G.'s contribution to maintaining the Acreage and Former Family Home for which he was also responsible. These include the mortgage, property taxes, lease payments, and hydro on the Acreage as well as the property taxes and insurance on both properties in the amount of \$3,642 per month. Therefore, one-half of these payments should be characterized as support of \$1,821 per month which I round down to \$1,820.
- [131] The hydro, gas, phone, cable and internet for the Former Family Home occupied only by Ms. G., italicized above and totalling \$430 per month are not joint expenses and should be characterized as support, for a total monthly support payment of \$2,250. The total support paid over the eight months from May to December 2012 on account of these expenses is therefore \$18,000.
- [132] In summary, then, Mr. G. paid support from May 1 through December 2012 of \$26,900. That sum is made up of \$4,400 from the savings account, \$4,500 in rent collected and \$18,008 in bills paid directly.
- [133] Mr. G. should have paid support based on his income of \$103,063 and no income for Ms. G. That results in child support due in 2012 of \$1,517 per month for the two children for eight months, or \$12,136. Spousal support at the low end of the range of \$1,631 per month for a total of \$13,048 was also due.
- [134] The difference between the amount paid and the amount due for the period from May to December 2012 is an overpayment by Mr. G. of \$1,716.
- [135] I have used the low end of the range for spousal support in calculating past spousal support due for two reasons. First, because Mr. G. did not deduct the spousal support from his income, and Ms. G. did not declare it as income. The Spousal Support Advisory Guidelines assume that those tax consequences have occurred. This is not a case in which it would be appropriate to make a retroactive support order requiring the parties to refile their income tax returns for 2012 through 2014. As a result, a direct comparison cannot be made between what Mr. G. has paid and what he should have paid under the Guidelines. It would be necessary to gross up the payments. However, I have no evidence or submissions on this point. Using the low end of the range is one way of addressing this issue.
- [136] Second, I choose the low end of the range because Ms. G. has lived in the Former Family Home rent-free for more than three years. Mr. G. argues he was ousted in October 2012 when Ms. G. called the police and he should therefore be entitled to charge her occupation rent of half the market rent of \$1,600, or \$800 a month.
- [137] Mr. G. moved back into the former family home on two occasions after the forced removal by the police in October 2012. He returned in August 2013 and again in October 2013, leaving after both periods voluntarily and moving in with his mother rather than into the basement of the Former Family Home as he had done on many other occasions when the parties' marriage was in trouble. While I do not therefore find this to be an appropriate case

to charge Ms. G. occupation rent, the fact that Ms. G. had the use of a large and comfortable home and virtually no housing expenses from the date of separation to trial supports spousal support at the lower end of the range.

[138] As I have noted, the mid-range of spousal support under the Spousal Support Advisory Guidelines will apply from September 1, 2015 on. That is appropriate since an order will be in place and the tax consequences will be accurately reflected in the Guideline calculation. In addition, Ms. G. will have housing expenses because she will either buy out Mr. G.'s interest in the Former Family Home, or she will have to pay for housing elsewhere upon the sale of the Former Family Home.

(b) 2013

[139] Mr. G.'s income for 2013 was \$117,356. Ms. G. had no income in that year. Mr. G. paid monthly expenses of \$2,250 and notionally paid Ms. G. one-half of the annual rent on the Acreage in the amount of \$13,900. The total support paid by Mr. G. in 2013 was therefore \$40,900.

[140] Mr. G. should have paid child support of \$1,701 per month for a total \$20,412. He should have paid spousal support of \$1,927 per month for a total of \$23,124. The difference between the amount paid and the amount due is an underpayment by Mr. G. of \$2,636.

(c) 2014

[141] Mr. G.'s income in 2014 was \$107,515. The income imputed to Ms. G. in that year is \$10,250. Mr. G. paid \$27,000 in expenses towards support, and Ms. G. received one-half of the rent of \$15,600 for a total of \$42,600 in support paid.

[142] Mr. G. should have paid child support of \$1,574 per month for a total of \$18,888. He should have paid spousal support of \$1,174 per month for a total of \$14,088.

[143] The difference between the \$42,600 paid and the amount Mr. G. should have paid is an overpayment by Mr. G. of \$9,624.

(d) 2015

[144] Mr. G. is projected to earn \$107,515 again in 2015. Income of \$20,500 is imputed to Ms. G. For the eight-month period from January 1 to August 31 the claimant has paid expenses of \$18,000. I set the rent received by Ms. G. during this period at \$7,500, for total support for the first eight months of 2015 at \$25,500.

[145] Mr. G. should have paid spousal support of \$1,324 per month for a total of \$10,592 to the end of August 2015. He should have paid child support of \$1,574 per month for a total of \$12,592 over the same eight month period.

[146] The difference between the amount due and the amount paid is an overpayment by Mr. G. of \$2,316 from January 1, 2015 to August 31, 2015.

[147] In conclusion on this issue, Mr. G. has overpaid support by \$11,020 from the date of separation to the end of August 2015.

8. Ultimate Distribution

[148] Mr. G. wishes to retain the Acreage, and Ms. G. wishes to retain the Former Family Home. As I have noted, each party will receive approximately \$355,000 in family property. It appears that it will be difficult for Ms. G. to purchase Mr. G.'s interest in the Former Family Home, but she has 30 days from the date of these reasons for judgment to do so. If the transfer payment due to Mr. G. is not paid within 30 days of the date of these reasons for judgment, the Former Family Home is immediately to be listed for sale. Mr. G. is to have the right to select a real estate agent, to list the Former Family Home for sale, and to have general conduct of the sale. Any sale must however either be agreed to by the parties or approved by the Court. The net proceeds of the sale are to be divided equally. That is to be the case whether the Former Family Home is sold for more than or less than the \$650,000 appraised value.

[149] I will summarize the property that is to be excluded, the family property that is to be divided, and the distribution under the two scenarios.

EXCLUDED PROPERTY

Excluded Property

Claimant

Respondent

Value of the Main Street Property at time of marriage

\$218,133

Roland JC-120 Amp; Roland TR-626 Drums; Boss ME-5 - FX Pedal; Ro HP2700 - Digital Piano; Larc 09 Larrivee with case (acoustic guitar); Gibson electric guitar (red)

to be retained by the claimant

Vacuum cleaner, armoire, night stand, sleigh bed, glider chair

to be retained by the claimant

FAMILY PROPERTY TO BE DIVIDED

Property

Value

The Former Family Home

\$650,000

The Acreage

(\$750,000 - \$531,500)

\$218,500

RRSP Funds held by Credential Assessment Management

\$44,271

25 shares in Lafarge Canada

\$2,367

Gibson 400 Guitar

\$8,000

Fender Stratacaster Guitar

\$1,000

Travel Guitar

\$400

20% interest in Mustang Cobra

\$4,500

Total Value of Family Property to be divided:

\$929,038

[150] After giving Mr. G. credit for excluded property and overpayment of support, each party will receive the following based on an equal division of family property:

DISTRIBUTION

Claimant

Respondent

Total value of assets at date of separation

\$929,038

Credit to the Claimant for excluded property

-218,133

\$218,133

Amount to be equally divided

=\$710,905

\$355,452.50

\$355,452.50

Amount to be received by each party:

\$573,585.50

\$355,452.50

[151] If Ms. G. retains the Former Family Home, the distribution will be as follows:

Claimant

Respondent

Respondent keeps Former Family Home:

\$650,000

Claimant keeps Acreage and assumes mortgage:

\$218,500

Claimant keeps RRSPs:

\$44,271

Claimant keeps Gibson 400 Guitar:

\$8,000

Claimant keeps Fender Stratacaster Guitar:

\$1,000

Claimant keeps Travel Guitar:

\$400

Claimant keeps 25 shares in Lafarge Canada:

\$2,367

Claimant keeps 20% interest in Mustang Cobra:

\$4,500

Value of assets being retained:

\$279,038

\$650,000

[152] Ms. G. would then owe Mr. G. an equalization payment:

Claimant

Respondent

Each party's share under the FLA:

\$573,585.50

\$355,452.50

Value of Property being retained:

\$279,038

\$650,000

Equalization payment payable by the Respondent to the Claimant:

\$294,547.50

[\$294,547.50]

Credit to Claimant for overpayment of support:

\$11,020

[\$11,020]

Total Payment by Respondent to Claimant:

\$305,567.50

[\$305,567.50]

[153] Under the buy-out scenario then, Ms. G. will pay \$305,567.50 to Mr. G.

[154] If Ms. G. is unable to buy out Mr. G.'s interest on the Former Family Home, then the house will be sold and the property divided as set out below, with the appropriate adjustment to reflect the actual net proceeds of sale.

DISTRIBUTION ON SALE OF FAMILY HOME

Claimant

Respondent

½ of net proceeds of Former Family Home (to be adjusted to reflect actual proceeds):

\$325,000

\$325.000

Claimant keeps Acreage and assumes mortgage:

\$218,500

Claimant keeps RRSPs:

\$44,271

Claimant keeps Gibson 400 Guitar:

\$8,000

Claimant keeps Fender Stratacaster Guitar:

\$1,000

Claimant keeps Travel Guitar:

\$400

Claimant keeps 25 shares in Lafarge Canada:

\$2,367

Claimant keeps 20% interest in Mustang Cobra:

\$4,500

Value of assets being retained:

\$604,038

\$325,000

[155] Under this scenario which assumes net proceeds of \$650,000 from the sale of the Former Family Home, Mr. G. would pay Ms. G. \$19,432.50:

Each party's share under the FLA:

\$573,585.50

\$355,452.50

Value of Property being retained:

\$604,038

\$325,000

Equalization payment:

[\$30,452.50]

\$30,452.50

Less overpayment of support:

\$11,020.00

[\$11,020]

Total payment by Claimant to Respondent:

[\$19,432.50]

\$19,432.50

COSTS

[156] Success between the parties has been divided. While I recognize that Mr. G. succeeded in excluding the value of the Main Street Property brought into the marriage, the unsettled state of the law leads me to conclude that it would be appropriate in this case to require each party to bear his or her own costs.

LIBERTY TO APPEAR

[157] The parties have leave to set the divorce application before me at 9:00 a.m. They also have leave to seek assistance should that be required in carrying out any of the orders, including payment of support for D.E. on her return to school.

The Honourable Madam Justice L.A. Fenlon

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/SC/15/14/2015BCSC1454.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/p-g-v-d-g-2015>

Prepared on 29 October 2026 · Esheria