

CANADA / JUDGMENT

P.J. v. A.M.

2020 BCSC 814

COURT

Supreme Court of British Columbia

DECIDED

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2020 BCSC 814 P.J. v. A.M. IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: P.J. v. A.M., 2020 BCSC 814 Date: 20200601 Docket: E182026 Registry: Vancouver Between: P.J. Claimant And A.M. Respondent Before: The Honourable Madam Justice Douglas Reasons for Judgment Counsel for Claimant: T.R. Bell Counsel for Respondent: M.T.E. Yates Place and Date of Trial: Nelson, B.C. November 26 - 29; December 2 - 5, 2019; January 23 - 24, 2020 Place and Date of Judgment: Vancouver, B.C. June 1, 2020 Table of Contents INTRODUCTION. 4 THE PARTIES. 4 CHRONOLOGY. 5 THE ISSUES. 5 BACKGROUND FACTS. 6 Former Family Residence. 6 Division of Labour during Relationship. 6 Claimant's Educational and Employment History. 6 Respondent's Education and Employment History. 8 Respondent's Income and Expenses. 10 Parties' Marijuana Business. 11 Division of Labour 11 Outdoor Crops. 12 FFR. 12 The Barn. 12 Post-Separation Marijuana Operations. 13 Settlement of Respondent's Family Trusts. 13 Nelson Rental Account 14 2009 Orchard Street Fire. 17 Dissolution of NRA. 17 Evidentiary Issue. 19 Family Property. 21 FFR. 21 Sunshine Drive. 21 Upper Parcel and the Barn. 25 Development of Waterfront Lots. 27 Subdivision Approval 28 Joint Real Estate Appraisals. 29 FFR. 29 Sunshine Drive. 30 Subdivision. 32 The Barn. 32 CREDIBILITY AND RELIABILITY OF EVIDENCE. 34 LAW AND ANALYSIS. 36 Income Determination and Child Support 36 Respondent 38 Claimant 39 Retroactive Child Support 42 Prospective Child Support 43 Spousal Support 43 Compensatory Support 43 Non-Compensatory Spousal Support 47 Family Property. 48 What is the current market value of the FFR?. 48 When did the respondent acquire an ownership interest in Sunshine Drive?. 49 Documentary Record. 50 Dissolution of NRA. 51 Upper Parcel 53 Waterfront Lot 53 What is the value of the respondent's interest in Sunshine Drive?. 54 Deficiencies in Joint Appraisal Evidence. 54 Sunshine Appraisal 55 Value of the Upper Parcel in 2011. 56 Value of Hypothetical Lot 3 in 2012. 57 Other Excluded Property. 58 Insurance Proceeds. 59 Toyota Sienna. 60 Gift from L.M. 60 Parties' Net Financial Positions. 61 Reapportionment of Family Property. 62 Lump Sum Spousal Support 64 Contributions to Family Marijuana Business. 64 SUMMARY. 66

INTRODUCTION

- [1] The parties, now in their forties, are former spouses. They lived together for about 11 years and had two children before marrying in 2011 and separating in 2016. Throughout their relationship, their main source of income was the illicit cultivation, harvesting, and cash sale of marijuana. The respondent continues to work in this business; the claimant's involvement ceased in August 2018.
- [2] The claimant says she assumed primary responsibility for childcare and the domestic economy during the parties' lengthy and traditional relationship while the respondent focused on generating an income. She claims she has suffered acute and disproportionate disadvantage as a result of the parties' marriage breakdown. She has now abandoned the marijuana business and wishes to upgrade her education to improve her vocational prospects. She seeks retroactive and prospective child support, compensatory and non-compensatory spousal support, and a reapportionment of family property in her favour as compensation for her contributions to the family business.
- [3] The respondent denies the claimant is entitled to any spousal support or has met the burden of establishing an equal division of family property would be significantly unfair. He says both parties are similarly qualified to work in an unskilled capacity, left their marriage in comparable financial situations, and that neither has suffered any significant economic detriment as a result of their relationship.
- [4] [Content Redacted]. THE PARTIES
- [5] The claimant currently works five months of the year as a seasonal pastry chef for a fly-in ski lodge in the Nelson area. The respondent grows marijuana and works as a self-employed contractor in general construction. CHRONOLOGY
- [6] The following dates are not contentious:
- a) The parties began cohabiting in a marriage-like relationship in 2000.
 - b) They were married in Nelson, British Columbia on August 23, 2011.
 - c) They have two children together:
 - i. R.M. born [date of birth redacted]; and ii. P.M. born on [date of birth redacted] (collectively, the "Children").
 - d) They separated on April 1, 2016.
- [7] The parties agree both are capable and loving parents. To their credit, they have resolved the issue of guardianship of the Children: R.M. will reside with the claimant full-time; P.M. will divide her time equally between the parties. The parties have agreed to share special and extraordinary expenses for the Children on a 50/50 basis. The evidence at trial permits me to grant the parties a divorce. THE ISSUES

- [8] The following issues arise in this action:
- a) What are the parties' incomes?
 - b) What retroactive and prospective child support is payable?
 - c) Is the claimant entitled to spousal support on a compensatory and/or non-compensatory basis?
 - d) How is family property to be valued and divided?
 - e) Is the respondent entitled to any excluded property claims? BACKGROUND FACTS Former Family Residence
- [9] The parties met in about 1997, developed a romantic relationship, and moved in together, renting the former family residence at [address redacted] Nelson (the "FFR") for about one year before purchasing it in March 2001. They lived there separate and apart for about one year after the date of separation. The claimant continues to reside at the FFR; the respondent is currently living in a basement apartment at his mother's house. Division of Labour during Relationship
- [10] The parties agree the claimant was primarily responsible for most domestic chores during their relationship. The claimant said she performed 95% of the shopping, cooking, cleaning, and child care while the respondent occasionally mowed the lawn and helped her with the gardening. Both accept his primary role was to make money. The claimant admits she periodically assisted the respondent in the family marijuana business by watering, trimming, transplanting, and doing general maintenance work. The claimant's evidence regarding the parties' division of labour during their relationship was corroborated by her mother, P.S., and her friend, J.S. Claimant's Educational and Employment History
- [11] The claimant left high school after completing grade 11 and did not graduate. From 1998 to 2003, she cultivated and trimmed plants for the respondent in the family marijuana business. In 2004, after R.M. was born, she secured a part-time waitressing job for about one year, working three days a week earning about \$12/hour, plus tips. While she admitted the respondent might have assumed more child care responsibilities after she started working, she said she continued to shop, cook, and clean and that her domestic responsibilities did not change. That evidence was corroborated by P.S. and J.S.
- [12] The claimant is a talented baker. In 2005, she left Nelson to attend the Art Institute of Vancouver to obtain a diploma in French pastry, earning what she described as top marks. Her study plans were interrupted for family reasons. She did not complete the Art Institute program and returned to Nelson to look after the Children in 2006. Thereafter, she waitressed three or four shifts a week for about two and a half years earning \$12 to \$15/hour, plus gratuities.

- [13] The claimant said her ability to work outside the home was limited because she was busy with domestic and childcare duties, including raising her first daughter, born in 1995 of another relationship. She testified the respondent did not support her decision to work outside the home. She made no further attempts to upgrade her education or skills, saying she had not felt supported when she did so in 2005, evidence J.S. corroborated. Instead, the claimant settled back into her roles as spouse and mother. According to the respondent, he supported the claimant's wish to upgrade her culinary skills but not her decision to leave Nelson in 2005. He thought it was important for her to be home then as R.M. had just started school. He found it difficult managing as a single father in the claimant's absence while looking after the parties' indoor and outdoor marijuana crops.
- [14] In 2017, the claimant's only source of income was the family marijuana business. She conceded the \$20,341 she reported to Revenue Canada that year did not reflect her actual income.
- [15] In 2018, the claimant worked part-time for a catering company in Nelson earning \$25/hour for a total of \$3,744 that year. Her shifts were event-dependant. She also had net rental income of \$9,600 and \$14,948 net business income from marijuana cash sales. The claimant said 2018 is the first year she reported her actual marijuana income to Revenue Canada. In November 2018, she began working as a seasonal pastry chef for a lodge, earning \$200/day. At the time of trial, she planned to resume this work for the 2019/20 season, having received a \$50 per diem pay raise. The claimant's net income from January to April 2019 was approximately \$16,000, including taxable gratuities. She received employment insurance ("EI") benefits for the balance of the year and was not employed from August to November 2018.
- [16] The claimant's current goal is to return to school in September 2020 to study psychology or social work and become a psychotherapist. She has researched different programs at Thompson Rivers University, Selkirk College, and Athabasca University. She would need to upgrade her English 12, obtain a student loan, and seek admission as a mature student. To date, she has taken no steps to upgrade her high school English or to apply for enrollment in any of these programs. It is unclear whether she has applied for financial assistance.
- [17] The claimant disclosed total employment income of \$16,000, plus a child tax benefit and BC family bonus of \$342.56, on her April 9, 2019 sworn financial statement. She testified her current income is insufficient to meet her basic annual living expenses, calculated as \$39,203.28 on her 2019 financial statement. To date, she says she has made up this shortfall by incurring credit card debt and personal loans. Respondent's Education and Employment History
- [18] The respondent left high school in grade 12 and did not graduate. He has no post-secondary education, formal training, professional certifications, or trade designations. After leaving high school, he worked in construction for about nine months for a family member's log home business in Kelowna. He then returned to Nelson, working seasonally at a nursery

preparing trees for reforestation, building greenhouses, and maintaining equipment. He also worked for two summers as a firefighter while periodically assisting his family member with log home construction.

- [19] The respondent's family was in the residential rental business. His parents separated when he was 16. Thereafter, he assisted his mother with maintenance work on the three rental properties she owned in Nelson.
- [20] The respondent developed an early interest in growing marijuana; by the age of about 19, he had begun to earn a modest income from this enterprise. In the ten years after P.M. was born until the parties separated, he was involved in the illegal marijuana business. Initially, he grew marijuana almost exclusively outdoors, working about four days a week doing so until 2013. He also cultivated marijuana in the FFR basement and later, in a structure he built (the "Barn") on the upper portion of [address redacted] ("Sunshine Drive"). The respondent said the FFR operation required at least one hour of work a day up to a maximum of 14 hours per day during harvest time. The Barn required a greater time commitment given its relatively remote location and more challenging access, particularly in the winter.
- [21] In addition to his work maintaining rental properties and growing marijuana, the respondent earned income harvesting, cutting, and selling firewood, periodically assisting in the log home business, and as a part-time general labourer. After P.M. was born, he worked seasonally at a nursery and occasionally for a local carpenter. He worked full-time in a friend's masonry business for about four months in 2013 or 2014, assisting with the construction of a cinder block warehouse. In 2014 or 2015, he did some subcontracting work for a timber framing business, performing general labour including concrete, post and beam work, framing foundations, and installing windows.
- [22] At the date of separation, the respondent was working at a local retreat centre renovating a duplex, converting a workshop into a yoga studio, and completing various jobs including planting, fencing, building a pond and meditation structure, and installing garden watering systems. He was paid a flat rate of \$30/hour for this work. For health reasons, he withdrew from project managing the yoga studio construction but continued to do "farm chores" and completed the duplex renovation. He held this job for about three and a half years, from 2016 until late 2019, working week on/ week off. This schedule permitted him to work extended hours one week and to spend more time with P.M. the following week. In the winter 2018, he was paid \$30/hour to do some renovation work. He has also done rock work for his brother, J.M., who operates a local lawn and garden business.
- [23] The claimant said the respondent has a broad array of landscaping and construction skills including rock and cement work, and building structures from the foundation up. She said he is able to do some plumbing and electrical work and can perform a wide variety of general repairs. Respondent's Income and Expenses

- [24] The respondent disclosed \$18,000 of self-employment contracting income on his March 26, 2019 sworn financial statement. He also reported \$22,000 of "other" income which he said represented marijuana sales. He estimated his annual expenses to be \$58,887.
- [25] The respondent testified he plans to return to more regular work once this litigation is resolved. He said his marijuana sales declined after the date of separation because he was not "in sync", had trouble maintaining his focus, and was working more with seeds, which engage his passion for his work and introduce genetic diversity, but are less consistent than clones and take longer to harvest.
- [26] The respondent sought mental health counselling on four occasions in late 2016 or early 2017. No medical records or reports were in evidence. He admitted he let some payments (including MSP) slip because he could not afford them and said he has borrowed about \$30,000 from his mother, L.M., since the date of separation. Parties' Marijuana Business
- [27] The parties' marijuana business income was not reported to Revenue Canada. Both admit their filed tax returns do not accurately record their actual historical incomes. Division of Labour
- [28] The marijuana business did not engage the parties on a full-time basis. The claimant agreed the parties liked the fact this business afforded them the leisure time both wanted. She estimated they worked three to 20 hours/week, depending on the stage of the marijuana plants in their growing cycle.
- [29] In cross-examination, the claimant admitted the parties were effectively partners in the marijuana business while they lived together. She became more involved once they had two operational indoor locations (i.e., at the FFR and the Barn) which were roughly equal in size and growing capacity. This arrangement became more formalised after the parties separated. The claimant agreed she was contributing more to the business by the spring 2016, when the parties split their net sale proceeds after payment of all business and household expenses. This arrangement continued into 2017, after the respondent had moved out of the FFR; the respondent said they were equal partners for about 18 months following the date of separation. The claimant shut down the FFR operation in the summer 2018.
- [30] The respondent admitted he did most of the work in the marijuana business when the parties were a couple and the claimant did most of the domestic chores. He said she took a greater interest and role in the marijuana business after P.M. was born. She cooked for the outdoor trimming crews they periodically hired; both agreed she was paid for at least some of this work. According to the respondent, the parties formed a type of partnership in or about 2013; thereafter, the claimant assisted with bigger jobs including trimming, pruning, and transplanting and they divided their net earnings equally (after all expenses were paid and a portion was set aside to cover their projected living expenses).

- [31] Over the course of their relationship, the parties grew marijuana at three locations. Outdoor Crops
- [32] Until about 2013, the parties earned some income from outdoor marijuana crops grown in the hills surrounding Nelson. This income was inconsistent as they could not control growing conditions. FFR
- [33] The claimant testified the parties began growing marijuana in the basement of the FFR almost immediately after moving in as tenants. They constructed a false wall to conceal their operation and installed wiring, lighting, fans, and a watering system. The claimant described a good year as grossing \$60,000 - \$70,000 and a bad year as grossing \$30,000 - \$45,000, in addition to their outdoor crop income. She said they had a few good years when they earned about \$100,000 and other years when they earned as little as \$30,000.
- [34] The parties periodically hired temporary labour to help them trim marijuana plants. The claimant said they usually employed two or three workers in the spring and fall and a trim crew of 10 to 12 people at harvest time for one to three weeks. The trim crew usually worked off site; the claimant was responsible for cooking and delivering their daily meals and snacks. The Barn
- [35] In 2014, the parties began operating a second indoor marijuana grow location at the Barn. The respondent continues to grow marijuana there. Post-Separation Marijuana Operations
- [36] After the parties separated in 2016, they divided the marijuana business: the respondent operated from the Barn; the claimant did so from the FFR. Both accepted this division as approximately equal. They initially agreed the claimant would pay all expenses associated with the FFR operation, including the line of credit on the FFR and would retain all associated revenue. They agreed the respondent would do the same for the Barn. This arrangement continued into 2018 when they agreed to end it. Thereafter, the claimant shut down the FFR operation, stopped paying the line of credit on the FFR, and departed for Indonesia in August 2018. The respondent described the claimant as fully capable of operating a marijuana grow room independently. Settlement of Respondent's Family Trusts
- [37] L.M., the respondent's mother, arrived in Canada from the United States in 1970, marrying her first husband, O.M., in 1974. They had three sons together: the respondent and his two younger brothers, J.M. and M.M. L.M. has an older daughter, M.A.M. from a previous relationship. L.M.'s father, L.S., gifted \$40,000 to each of her four children. In December 1986, he settled four separate trusts, naming L.M. as trustee and her four children as beneficiaries. L.M. testified \$40,000 was placed into trust for each of her four children.
- [38] In 1988, L.M., O.M., and his cousin, R.P., purchased Sunshine Drive, then a vacant tract of land with frontage on Kootenay Lake, for \$180,000, using a \$33,000 contribution from L.M. and O.M., \$33,000 from R.P., and the \$120,000 the respondent and his two brothers received from L.S. Neither the trust documents settled in 1986, nor the two-page handwritten contract of purchase and sale dated November 21, 1988, corroborate L.M.'s evidence about

who contributed what to the purchase of Sunshine Drive. That information was not recorded in any documents in evidence. L.M., the respondent, J.M., and M.M. agreed M.A.M. used her \$40,000 inheritance to purchase a house in Nelson and, accordingly, those funds were not included in the purchase of Sunshine Drive. L.M. thought she and O.M., and each of her sons had a 1/6th share and R.P. had a 1/3rd share in Sunshine Drive. When shown the transfer document indicating R.P. sold his 1/4 share to L.M. in August 1994, L.M. conceded she must have been mistaken about her ownership interest.

- [39] On April 11, 1989, L.M. and O.M. transferred 1/2 of their interest in Sunshine Drive into 1/6th shares in trust for each of their sons, in L.M.'s name as trustee. They divorced in 1993. In 1994, L.M. purchased R.P.'s interest in Sunshine Drive, noting her family likes to have its money in the earth, preferably in revenue-generating property, rather than in stocks or the bank. In 1996, O.M. transferred his interest in Sunshine Drive to L.M. to satisfy child support arrears. In 2006, L.M. added M.A.M.'s name on title to Sunshine Drive, despite M.A.M. having already received and spent her \$40,000 inheritance on the purchase of a house.
- [40] The respondent understood the \$40,000 he and his siblings had received from L.S. was held in trust for them until they were mature enough to receive it. The claimant was aware a respondent family trust existed; she did not know the particulars of it but thought it encompassed their family businesses. Nelson Rental Account
- [41] Pursuant to the separation agreement L.M. reached with O.M., she acquired title to three rental properties in Nelson: a duplex and single family residence on Silica Street and a four-plex on Orchard Street. In 1992, she and her sons began operating a residential rental business in Nelson known as the Nelson Rental Account ("NRA").
- [42] On February 8, 1996, L.M. transferred an undivided one-half interest in the fee simple estates of these three Nelson rental properties (collectively, the "NRA Properties") to herself, with the remaining undivided one-half interest to her sons. Before doing so, she said she asked them if they would prefer to be on title to the revenue-generating NRA Properties rather than own vacant land at Sunshine Drive. She thought the value of Sunshine Drive and the NRA Properties was approximately equal. L.M. said her sons liked this idea; all corroborated that evidence, saying they agreed to "transfer" their interests in Sunshine Drive to NRA in 1996. L.M. testified she transferred her sons' trust interests in Sunshine Drive to NRA so they would own something, could work together as a family business, and learn the skills she had been taught by her own parents. Her sons corroborated that evidence. This "transfer" of the respondent's trust interest from Sunshine Drive to NRA was not formally documented.

- [43] When asked why she did not correct title to Sunshine Drive and remove her sons' names (since their interests had been "transferred" to NRA in 1996), L.M. said she understood from her lawyer that doing so was unnecessary, would involve additional cost, and that Sunshine Drive would pass more easily to her sons on her death if she left title unchanged. She confirmed she has always intended her children to inherit her entire estate.
- [44] The claimant learned shortly after meeting the respondent that he worked for NRA. She understood title to one of the NRA Properties was in his name and had been purchased with an inheritance from his grandfather.
- [45] The respondent testified his mother needed help managing the NRA Properties after her separation and wanted to provide her sons with an education and an opportunity to earn an income. He understood his inheritance, which had been held for him in trust by L.M., was transferred to a 1/6th share in NRA. He said amending title to Sunshine Drive to reflect this transfer was not an issue for him and is only being discussed now because the parties are in litigation.
- [46] J.M. understood L.M. invested the trust money given to him and his brothers in Sunshine Drive, where it remained until 1996 when they "switched their holdings" to NRA so they would have an income. He recalls having a meeting in the mid-90s with L.M. and his brothers when this proposal was discussed and agreed upon. Thereafter, J.M. considered his \$40,000 inheritance to be invested in NRA. While he had "not done the math", he assumed the values of the NRA Properties and Sunshine Drive were roughly equal and was happy to have an income from NRA. He understood L.M. decided to leave him and his brothers on title to Sunshine Drive after their interests were transferred to NRA because they were going to inherit Sunshine Drive anyway and amending title would cost money. Thereafter, J.M. understood Sunshine Drive was L.M.'s property to do with as she pleased. However, he also said he assumed she would deal with it in accordance with her sons' best interests, noting everything she did was "always for us".
- [47] Like his brothers, M.M. understood L.M. had set up trusts for him and his brothers when they were children, funded by their \$40,000 inheritances and "transferred" to NRA in 1996 so they could own property, earn an income, and acquire skills in the residential rental business.
- [48] The respondent said NRA was run much the same way the parties shared the proceeds of their marijuana business: net revenue was divided in accordance with everyone's ownership interests after payment of all expenses (i.e., 1/6th to each of the brothers and ½ to L.M.). He thinks he earned about \$500/month from NRA.
- [49] In 2006, L.M. gave M.A.M. a 1/6th share in NRA from her own one-half interest. She said M.A.M. was then in trouble and needed her help. The respondent and his brothers corroborated that evidence. The respondent was not upset when M.A.M. was added to NRA; neither he nor his brothers owned less as a result. His brothers gave similar evidence: J.M. said it would have seemed petty and greedy to disagree with L.M.'s decision to include

M.A.M. in NRA, noting she has always done her best to be fair to her children; M.M. testified he "would have been a jerk" to care that M.A.M. was put on title to the NRA Properties, despite having already received her inheritance. He was uncertain if he knew M.A.M.'s name was also placed on title to Sunshine Drive at about the same time. 2009 Orchard Street Fire

- [50] In July 2009, the four-plex on Orchard Street burned down (the "Fire"). The Fire destroyed four of the seven NRA rental units and a substantial portion of NRA's revenue. NRA was dissolved within about one year of the Fire.
- [51] Insurance proceeds were paid following the Fire (the "Proceeds"). After deducting excavation costs, the balance was divided between L.M. (who received 1/3) and her four children (who each received 1/6th). The respondent's 1/6th share of the Proceeds was \$57,166, which was deposited into his TD account on November 24, 2009. The parties agree they used the Proceeds to buy a new family vehicle (a Toyota Sienna for \$22,778, which the claimant retained after separation) and to pay down their mortgage on the FFR. Dissolution of NRA
- [52] The respondent testified he and his brothers met with L.M. after the Fire to discuss how to divide the NRA Properties. He said he had always wanted the upper portion of Sunshine Drive above Wightwick Road (the "Upper Parcel") and proposed it be given to him in exchange for his 1/6th interest in NRA. He saw potential for expanding the family marijuana business there by building a second indoor grow room (i.e., the Barn). He did not consider the cost of subdividing the Upper Parcel from the rest of Sunshine Drive at the time.
- [53] L.M., J.M., M.M., and the claimant all testified the respondent wanted out of NRA after the Fire. J.M. wanted to rebuild and continue NRA, saying M.M. was indifferent and M.A.M. wanted a payout as she needed cash. J.M. could not recall when NRA was dissolved or whether that occurred before the June 2010 sale of the Orchard Street land. He said everyone was happy with the final distribution. He recalls asking the respondent if he was sure he wanted the Upper Parcel and the respondent being adamant he wanted out of NRA and thought the agreement reached was a fair enough deal.
- [54] M.M. recalls that he and his brothers had been "butting their heads" as business partners in NRA and that the respondent wanted the Upper Parcel. M.M. thought the agreement reached was "fair enough" for everyone.
- [55] L.M. confirmed her children were not working well together in NRA. She agreed the respondent wanted the Upper Parcel instead of one of the NRA Properties. She said everyone thought he had struck a poor deal for himself by exchanging one of the revenue-generating NRA Properties for vacant land but he told her that is what he wanted. L.M. and her sons did not document their agreement following the dissolution of NRA; L.M. testified they trusted each other and that doing so was unnecessary. In cross-examination, she noted "we're not lawyers", do not think that way, and that it was all "very loose". It is unclear on the evidence precisely when the alleged agreement regarding the dissolution of NRA and

distribution of the NRA Properties was reached.

- [56] In June 2010, M.A.M. was given proceeds of approximately \$180,000 from the sale of the Orchard Street land. In November 2011, ownership of the single family residence on Silica Street was transferred to M.M.; in March 2012, ownership of the duplex on Silica Street was transferred to J.M. The respondent said he was given the Upper Parcel; the effective date of this transfer is contentious.
- [57] The respondent testified he received two things following the dissolution of NRA: a 1/6th share of the Proceeds and the Upper Parcel. He considered Sunshine Drive to be L.M.'s property following the transfer of his trust interest from Sunshine Drive to NRA, until NRA was dissolved after the Fire. He did not know title to Sunshine Drive had remained unchanged after the formation of NRA, noting he was then a teenager and, until recently, these were all just old documents sitting in filing cabinets and "not a big deal". Like his brothers, he said he trusted his mother to make wise decisions in their collective best interest.
- [58] The claimant considered the division of the NRA Properties after the Fire to be unfair to the respondent as he received raw land instead of a revenue-producing property. However, she agreed he planned to build the Barn on the Upper Parcel for the purpose of generating additional marijuana revenue. Evidentiary Issue
- [59] An undated and unsigned handwritten note, apparently comparing the value of Sunshine Drive to the NRA Properties and purportedly written around the time L.M. and her sons were discussing a possible "transfer" of their trust interests in the former for an ownership interest in the latter, was produced by the respondent at trial (the "Note"). The claimant objected to its admissibility, arguing it did not meet the tests of relevance or materiality and was not properly authenticated. The respondent did not explain why the Note was not listed or why it was produced for the first time at trial.
- [60] The respondent testified there is a "good chance" the Note was written by one of his brothers and that it was "almost certainly" J.M.'s handwriting (based on his recollection of J.M.'s handwriting from his NRA bookkeeping days). He admitted he did not write it, said there is a "small chance" M.M. might have done so, and that he had a vague recollection of attending a meeting to discuss the information recorded in it sometime in the 1990s, before NRA was formed. He later said the Note was likely written in 1996, observing it was a long time ago, he was young, and his memory is pretty foggy.
- [61] J.M. testified the Note represented the "paperwork" to "change over our inheritance" (i.e., from Sunshine Drive to NRA). He did not know who prepared it, saying it was probably his writing although he did not know that for certain, it was not his mother's or his brothers' handwriting, and "would have been written by one of us four". He said he found the Note in his "records" and that it was probably written in 1996.

- [62] M.M. thought the Note looked like J.M.'s writing. He assumed it was written around the time he and his brothers were comparing the value of Sunshine Drive and the NRA Properties with L.M. in about 1996. He had no recollection of seeing the Note before it was shown to him at trial.
- [63] L.M. confirmed she did not write the Note, guessed it was J.M.'s handwriting, and said it was "definitely not M.A.M.'s" handwriting. Ultimately, L.M. admitted she did not know who wrote it. She thought it recorded the offer she made to her children in 1996 about them securing an ownership interest in NRA but admitted that too was a guess.
- [64] I have considered whether the Note is relevant, material, and admissible and, if so, what, if any, weight it ought to be given. The threshold for relevance is not high; it is enough that the evidence has some tendency to advance the proposition of fact for which it is offered: *R. v. J.-L.J.*, 2000 SCC 51 at para. 47. Evidence is material if it is offered to prove or disprove a fact in issue: *Biehl v. Strang*, 2010 BCSC 1391 at para.16. The Note is relevant to a determination of the respondent's ownership interest in Sunshine Drive and NRA. Those matters are relevant to the division of family property in this action. Accordingly, I conclude it is both relevant and material.
- [65] Whether proof of the origin and authorship of a document is sufficient for it to be admitted into evidence is a question of law for the trial judge. There must be "sufficient evidence rationally permitting a conclusion that the item is what the proponent claims": *R. v. Bonamy*, 2000 BCCA 308, at para. 51; S. Schiff, *Evidence in the Litigation Process*, 4th ed., vol. 2 (Toronto: Carswell) at 1069; J. Sopinka, S. N. Lederman and A. W. Bryant, *The Law of Evidence in Canada* (Toronto: Butterworths, 1992) at 950; *R. v. Christurajah*, 2016 BCSC 2608, at paras. 2 - 6.
- [66] No witness definitively authenticated the Note but the preponderance of evidence indicates it was probably written by J.M. in about 1996. While, on its face, the Note appears to compare the values of Sunshine Drive and the NRA Properties, conflicting evidence was given about when it was written and for what purpose. On all the evidence, it is unclear whether the Note represents a record of an informal discussion, an offer (as suggested by L.M.), or an agreement regarding a "transfer" of the respondent's trust interest in Sunshine Drive to NRA. I am troubled by the fact it was produced for the first time at trial and the claimant had no opportunity to examine the respondent about it on discovery. Ultimately, I conclude the Note, while admissible, is inherently unreliable and I give it minimal weight.
- Family Property FFR
- [67] The purchaser's statement of adjustments indicates the respondent and L.M. purchased the FFR in March 2001 for \$163,000, subject to a mortgage of \$146,535. L.M. paid the \$17,883.60 deposit; by promissory note dated March 28, 2001, the respondent pledged to repay this amount, without interest. The parties agree some of this deposit was repaid and L.M. forgave the balance. Both agree they periodically gave L.M. cash and she would match the amount, using the combined funds to pay down the parties' mortgage.

- [68] In 2008, the respondent did some renovations at the FFR. The claimant said he removed the roof, expanded the house, enclosed the deck, and upgraded the kitchen, bathroom, and boot room. This project was subject to a stop work order as the necessary permits were not obtained. It remains incomplete. Sunshine Drive
- [69] The parties disagree about when the respondent acquired an ownership interest in Sunshine Drive, its value over time, and the extent to which each is entitled to benefit from the corresponding increase. Those issues are central to this dispute. Sunshine Drive is the parties' most valuable asset.
- [70] The claimant recalls the respondent taking her to Sunshine Drive in about 1998 (when it was a vacant lot) and referring to it as "family property". She understood L.M. was a one-half owner and the respondent and his two brothers each owned a 1/6th share. She said the parties discussed their possible construction of a waterfront home there when they were together. J.S. corroborated that evidence and recalled having conversations with the claimant about the parties doing so.
- [71] The claimant said the respondent began to refer to Sunshine Drive as "the boys' property" after 2001. The respondent disputes that evidence, saying he would not have done so until 2012 or 2013, and that J.S. would never have attended any of the respondent family dinners when Sunshine Drive was discussed. While he agreed the parties fantasised about different ideas over the years, he said they never ended up with the same vision and had no definite plans for building on the Sunshine Drive waterfront when they were a couple. Based on her discussions with him, the claimant understood the respondent had reached an agreement with L.M., M.M., and J.M. which contemplated him receiving a larger portion of Sunshine Drive (i.e., the Upper Parcel and one of three comparable waterfront lots) in exchange for relinquishing his ownership interest in NRA.
- [72] In 2006, L.M. added M.A.M.'s name on title to Sunshine Drive, saying she understood from discussions with her professional advisors that, by doing so, it would pass easily to her children on her death. She said she intended to treat her children equally, did not wish M.A.M. to suffer as a result of bad choices she had made in life, and wanted things to be simple for her children when she died. L.M. identified an undated letter she wrote to her lawyer. In it, she queried whether it would "be better to put M.A.M. in trust and keep my sons in trust also" and whether there was a way "that when I die it can just be transferred to them", noting she wanted to "keep the property safe from any collectors or seizures". Both L.M. and M.A.M. had been through acrimonious divorces.
- [73] According to L.M., she did not consider her children owned a 1/6th share of Sunshine Drive but rather that "the trust had a 1/6th interest for each of them". She understood her children would receive a ½ interest in Sunshine Drive if she died and that the other half would pass to her estate. She had no good answer when asked in cross-examination about how that would occur if her sons' interests in Sunshine Drive had already been "transferred" to NRA, saying she had not thought of that. L.M. was asked why she did not amend her will in 1996 to reflect

her stated intention to treat all her children equally on her death. She said she did not think of doing so. She admitted part of the reason she kept her sons on title to Sunshine Drive was to save some money and to avoid triggering a capital gain, "guessing" she "was doing a bit of cheating" in that regard.

- [74] L.M. made another will in March 1999, revoking all prior wills. She agreed she then intended her sons to receive a one-half interest in Sunshine Drive on her death, with the other half passing to her estate. Her 1999 will provides for her estate to be divided equally between all her children, the result of which would have been to deny M.A.M. any part of the one-half interest in Sunshine Drive which would pass automatically to her sons. L.M. testified she did not engage in a lot of estate planning with her divorce lawyer who prepared her 1999 will. However, she admitted she would have advised him of her financial holdings. Ultimately, she could not explain why she did not equalise her children's ownership in Sunshine Drive in her 1999 will.
- [75] L.M. testified she understood from her discussions with her lawyer that she retained complete power over Sunshine Drive and could do whatever she wanted with it, despite the trusts registered on title, until title was amended in 2014. The August 2, 2006 trust registered in M.A.M.'s name on title to Sunshine Drive provided it was to be collapsed when M.A.M. turned 35; M.A.M. was born in 1969 and was already 37 years old in 2006. When confronted with that information in cross-examination, L.M. said she did not think a trust meant much except as a way of moving money around and that she did not consider its legal implications.
- [76] L.M. suggested she discussed her planned gift of Sunshine Drive to her sons with them in 2013 or early 2014. She did not know if the first cut of the lower access road to the Sunshine Drive waterfront (the "Lower Road") had been completed when this conversation occurred but agreed the subdivision of Sunshine Drive was then being contemplated. She deferred to M.M. when asked how much time passed after their first discussion about this gift with her sons before steps were taken to proceed with it. She said M.M. was very excited about owning part of Sunshine Drive and would know the dates, including when the Lower Road was constructed. L.M. agreed construction of the Lower Road was the first step taken before M.M. started building at Sunshine Drive.
- [77] L.M. testified she gave M.A.M. about \$17,000 in 2014, and another \$35,000 in 2015 or 2016 to help her purchase a home. When asked why those gifts were so much less than the appraised value of the Sunshine Drive waterfront lots she gave her sons, L.M. was clearly offended. She said "in her heart things are not unbalanced" and she "did not think that way", noting M.A.M. received about \$180,000 from the sale of the Orchard Street land in 2010. Ultimately, she could not explain why M.A.M. received less than 1/5th of what J.M. received in 2014 (when title was amended to reflect two 28/100 shares for J.M. and M.M. in Sunshine Drive and one 44/100 share for the respondent). In re-examination, L.M. said she could not recall if she turned her mind to the value of Sunshine Drive when she gifted it to her sons.

- [78] According to J.M., the romantic idea had always existed that he and his brothers would each own homes on Kootenay Lake; he said this was "not really a very serious thing" and ultimately never materialised. He recalled driving around with L.M. and other family members to look at properties for sale in the area in the late 1990s or early 2000s, saying L.M. periodically "checked in" with her sons to gauge whether they had any interest in living at Sunshine Drive some day or whether she ought to sell it. That was consistent with L.M.'s evidence that she tested the market, placed a for-sale sign on the highway in 1997 or 1998, and thought she could then do what she wanted with Sunshine Drive.
- [79] M.M. recalled he and his brothers first discussed L.M.'s transfer of Sunshine Drive to them in 2012, the year a contractor arrived with his excavator to construct the Lower Road. He understood M.A.M. received no part of Sunshine Drive because she had been helped by L.M. in other ways. M.M. remembered drawing straws with his brothers to choose their individual waterfront lots (which he said did not matter as all were equal in value). In cross-examination, M.M. conceded he and his brothers may have drawn straws in the fall of 2011 (by which time they knew they would be receiving Sunshine Drive); he later said this might have occurred in 2012. Upper Parcel and the Barn
- [80] The parties agree the respondent took steps to build the Barn in 2011. The claimant admitted they spent no money to improve Sunshine Drive before constructing an upper access road on the Upper Parcel (the "Upper Road") to permit the respondent to build the Barn.
- [81] Photographs of the Upper Road were in evidence. They depict the parties' daughter, an excavator, and various stages of construction of the Upper Road and the Barn. One bears a computer date stamp of May 4, 2011. The respondent initially testified the Upper Road was built in the fall of 2012. When taken to the May 4, 2011 date-stamped photograph of the Upper Road, he accepted that date as accurate. In cross-examination, he agreed that once his mother "said ok" to him receiving the Upper Parcel, he began building the Upper Road as soon as the contractor could get there with his excavator.
- [82] The respondent produced his own cell phone pictures of the Barn's foundation taken in October 2012, and the completed concrete foundation and early framing of the Barn in November 2012. By mid-December 2012, the Barn had an upper floor and a roof; by late March 2013, a Nelson hydro pole and transformer had been installed in preparation for the provision of electricity to the Barn. By the date of separation, the Barn had two levels, lights, electrical outlets, some windows, a roof, a few makeshift doors, and an operational marijuana grow room. It was unheated and had no functional plumbing. By the fall 2019, the respondent had connected a sink to cold water, added insulation, and installed a fireplace.

- [83] Because the respondent was not the registered owner, L.M. needed to sign whatever documents were necessary to allow him to take steps in connection with the Upper Parcel (including, for example, installing electricity at the Barn). The claimant could not recall L.M. ever refusing to sign any documents the respondent required to develop the Upper Parcel after 2011.
- [84] The parties spent about \$70,000 of family money to build the Barn, excluding the respondent's labour. The respondent built it without a permit. By letter dated August 27, 2014, the Regional District of Central Kootenay ("RDCK") informed him it had placed a notice on title indicating the Barn had been built without a permit. The respondent said this precludes borrowing against or insuring the Barn unless it is brought into compliance with the Building Code and inspected.
- [85] According to the claimant, she knew once the parties started spending money on the Barn that the respondent would receive the Upper Parcel and a waterfront lot at Sunshine Drive. The respondent disputes that evidence. In cross-examination, the claimant admitted the respondent's family prefers verbal arrangements to written ones. She conceded she had some concerns about the parties investing in the Barn before title to the Upper Parcel was in their name, admitting they were "fairly casual" about the respondent's legal ownership in Sunshine Drive. Development of Waterfront Lots
- [86] In September 2014, title to Sunshine Drive was amended to reflect the ownership interests of the respondent (of 44/100), and his brothers (of 28/100 each). It is unclear how those percentage shares were determined or whether there was any logical basis for them. L.M. testified she had an abundance of wealth, decided to gift the waterfront portion of Sunshine Drive to her sons, and did not want to be responsible for subdividing it. She said M.A.M., who was older than her brothers and had "her own life", did not want to own any part of Sunshine Drive. L.M. could not recall what happened to the trust interest she had registered in M.A.M.'s name on title to Sunshine Drive, saying it "just came off".
- [87] The claimant introduced into evidence additional photographs depicting construction of the Lower Road in May 2012, a date the respondent agreed could be accurate. The claimant said construction of the Lower Road signalled the beginning of development on the Sunshine Drive waterfront. The respondent agreed this "was the beginning of the concept of what was going to happen there", saying the agreement was finalised in 2014 when title was amended. In cross-examination, he admitted he knew before the Lower Road was built that L.M. was going to gift the waterfront portion of Sunshine Drive to him and his brothers. He thinks they had a discussion about this at her kitchen table. He remembers it as an "epic" moment but did not recall the meeting clearly, saying his understanding of events has evolved over time. The respondent testified he first learned the waterfront portion of Sunshine Drive would be transferred in three equal lots to him and his two brothers in 2012. He said L.M. had decided she wanted her children and grandchildren to enjoy their inheritance while she was still alive. It was unclear to him whether or not M.A.M. was to benefit from this gift, noting L.M. had assisted her previously. Like his brothers, he described L.M. as fair and

generous and said he trusted her and did not closely track what she gave to each of them.

- [88] L.M. and her sons all agreed M.M. was the one most keen to build a waterfront home at Sunshine Drive. J.M. testified M.M. "went into action pretty much immediately" after receiving confirmation he would receive a waterfront lot. According to J.M., M.M. would have loved to start building earlier (using his share of the Proceeds), and was waiting to learn if the gift of Sunshine Drive would be a reality or just talk.
- [89] M.M. recalls that installation of the Lower Road began "pretty much right away" once a final decision was made about L.M.'s gift of Sunshine Drive to her sons. Once M.M. "had a go" from L.M., he pushed to get the preliminary layout approval (the "PLA") for the planned subdivision from the RDCK. On March 27, 2014, the RDCK provided the PLA. Thereafter, M.M. hired a consultant to negotiate with the RDCK to permit a smaller access road. On January 15, 2016, the RDCK issued a second PLA, allowing changes to the Lower Road. M.M. confirmed that there was construction of only one lower access road at Sunshine Drive, in about May 2012. Subdivision Approval
- [90] The respondent learned that subdividing the Upper Parcel would be more complicated and expensive than he had initially anticipated. Accordingly, he decided not to subdivide the Upper Parcel from his waterfront lot. M.M. said finalising an agreement with his brothers and preparing and submitting a development permit plan are the only steps delaying the final subdivision of Sunshine Drive. He agreed he "took the bull by the horns from the beginning" and paid the most significant costs associated with subdividing Sunshine Drive (including upgrading the Lower Road and installing electricity). M.M. started building his waterfront home on July 1, 2014; his family moved in on August 1, 2015. At the time of trial, Sunshine Drive was not yet subdivided. Joint Real Estate Appraisals FFR
- [91] The parties retained Oliver Berkley, a Nelson real estate appraiser, as a joint expert to assess the value of the FFR and Sunshine Drive. Mr. Berkley was qualified as an expert in the appraisal of residential property. He prepared two reports: one dated September 5, 2018 appraising the FFR (the "FFR Appraisal"), the second dated August 22, 2019 appraising Sunshine Drive (the "Sunshine Appraisal").
- [92] The claimant was out of the country when Mr. Berkley completed the FFR Appraisal. The FFR marijuana operation was no longer active. The respondent said the claimant did an incomplete job of concealing it and accordingly, with her permission, he attended to perform additional clean-up and to remove some old equipment. The claimant did not inform Mr. Berkley that no work permit or final inspection had been obtained for the FFR renovations. The respondent was present during Mr. Berkley's appraisal but his input was not requested.

- [93] Mr. Berkley appraised the FFR at \$425,000, effective September 5, 2018. Contrary to what is stated in the FFR Appraisal, the claimant noted the FFR does not have a furnace and is heated by a wood stove; that evidence was not disputed. Mr. Berkley conceded that error would impact value and require a negative adjustment of \$3,000 to \$5,000. For this reason, I have discounted Mr. Berkley's appraised value of the FFR by \$4,000.
- [94] Mr. Berkley was not informed the FFR basement had been used as a commercial marijuana grow operation for about 17 years. If he had been, he testified he would have advised the parties they required the input of a building professional to evaluate the condition of the whole property and to assess contamination and mould issues. He testified the range of possible outcomes would be significant and could result in discounting his assessed value by 0 to 100%. He said stigma is another significant factor which must be considered in valuing a property which has been used as a marijuana grow operation, noting that, in his experience, refitting work at properties used for unlawful activities is often completed by owners who may not be qualified to do it. Ultimately, Mr. Berkley was unable to quantify the cost to cure any latent defect/s that might be present at the FFR given its past use nor could he opine on the negative adjustment required.
- [95] The respondent installed a vapour barrier in the FFR basement and set thermostats to decrease humidity. He noted no sign of mould when he attended to clean and remove equipment before Mr. Berkley's appraisal and said the wood looked dry when he removed the vapour barrier. In cross-examination, he admitted black mould is not always visible and that he is not qualified to perform environmental assessments.
- [96] The evidence is insufficient to permit me to determine the appropriate discount to be applied to Mr. Berkley's appraisal of the FFR given its use as an illegal marijuana growing operation. Both parties utilised the figure contained in the FFR Appraisal. Accordingly, I have done the same, discounted as set out in paragraph 93 herein. Sunshine Drive
- [97] Mr. Berkley was a developer in the Nelson area between 2004 and 2012. Based on that experience, he described market trends for vacant waterfront property on Kootenay Lake. He said the market improved and reached a peak in 2008 which held until 2009 and then started to slide, declining quite steeply between 2010 and 2012, and thereafter stagnating until 2015. He was unable to quantify the percentage decline between 2010 and 2012, noting that would require an empirical analysis. He described the drop in value of properties comparable to Sunshine Drive between 2009 and 2012 as "profound", observing that some properties which had been discounted by more than 10% were not achieving sales and that he did not find the bottom of the market between 2010 and 2012.
- [98] Mr. Berkley valued Sunshine Drive as follows: Parcel Effective Date Value i. Entire Parcel - As Is July 1, 2000 \$200,000 ii. Entire Parcel - As Is July 1, 2012 \$800,000 iii. Entire Parcel - As Is September 1, 2014 \$1,250,000 iv. v. Entire Parcel - As Is August 22, 2019 \$1,940,000 vi. Entire Parcel - As If Vacant August 22, 2019 \$1,500,000 vii. Lot 1 (hypothetical) - As Is September 1, 2014 \$475,000 viii. Lot 1 (hypothetical) - As Is August 22, 2019 \$550,000 ix. Lot 2 (hypothetical)

- As Is September 1, 2014 \$475,000 x. Lot 2 (hypothetical) - As Improved August 22, 2019 \$940,000 xi. Lot 2 (hypothetical) - As If Vacant August 22, 2019 \$560,000 xii. Lot 3 (hypothetical) - As Is September 1, 2014 \$515,000 xiii. Lot 3 (hypothetical) - As Is August 22, 2019 \$590,000

- [99] The Sunshine Appraisal does not value Sunshine Drive, either as a vacant parcel, or as three hypothetical subdivided lots, in 2010 or 2011. Mr. Berkley assessed Sunshine Drive as an entire parcel in 2012, in 2019 (when he completed the Sunshine Appraisal), and in 2014 (when title was formally amended to reflect a transfer in ownership from L.M. to her sons). The preponderance of evidence at trial, including that of the respondent, indicates he received an ownership interest in the Upper Parcel and a waterfront lot well before 2014. This disconnect between the evidence and the Sunshine Appraisal created significant challenges in determining accurate valuations for Sunshine Drive on the relevant dates.
- [100] Both parties offered suggestions about how to address the deficiencies in the Sunshine Appraisal, urging me to do the best I could on the available evidence. Accordingly, that is what I have done. Subdivision
- [101] Mr. Berkley testified the Sunshine Drive waterfront lots would have riparian rights permitting water access from Kootenay Lake and the septic system requirement could readily be satisfied with a letter from a qualified professional indicating a suitable system was in place. The 2014 PLA required a road which met standards equivalent to a public roadway; the 2015 PLA permitted what Mr. Berkley described as, in effect, a shared driveway.
- [102] Mr. Berkley testified a more prudent investor would have opted to subdivide Sunshine Drive into more than three lots, saying 75' lots would be more profitable than 150' lots, if all could be supported by the same septic system. In this case, he considered only the three-lot subdivision. He agreed that, once subdivision approval is granted, it removes significant development risk and affects the underlying property value. He was unable to determine whether a six-lot subdivision would have been more valuable than the three-lot subdivision he considered as he did not know what the PLA would have looked like for that proposal, noting the common driveway option contemplated by the 2015 PLA has limited utility when a subdivision has multiple lots. He did not know if a six-lot subdivision would have permitted this less onerous roadway option, saying that would be pure speculation on his part. The Barn
- [103] Because the Barn was built without a permit, Mr. Berkley assessed it as having no value. He did not know if it could be brought into compliance with the Building Code, saying secondary shop structures rarely contribute significant value to the property on which they are built and that Code infractions and the Barn's incomplete status would "further deter the market". He noted the inside and outside of the Barn were both incomplete and testified that, when significant detriments are present, the cost to cure them may exceed the structure's contribution value, in which case remedying defects adds no value.

- [104] According to Mr. Berkley, appraising the Barn would involve assessing the contribution value of an unfinished secondary building on the difficult to access Upper Parcel. Ultimately, he said he would be uncomfortable opining the Barn would add any significant contributing value to the property as a whole, even if it was a lawful structure. He testified the cost approach (typically used in the insurance industry to obtain a replacement value) is fraught with danger in this context and distorts the outcome. He suggested one might consider the value of a finished barn and subtract the cost of completing the Barn to arrive at an estimate of its residual contribution value. He gave no evidence about the cost of either building a comparable structure to the Barn on the Upper Parcel or completing the Barn.
- [105] Mr. Berkley was asked if it would be appropriate to consider the revenue-generating potential of the Barn as a commercial marijuana grow operation when appraising it. He said an appraiser will not value illegal activity but agreed the Barn might have some inherent value for the right buyer.
- [106] The respondent testified he would need to take the following steps to bring the Barn into compliance:
- a) Apply for a permit;
 - b) Have a building inspector identify deficiencies;
 - c) Address those defects (which he anticipated would involve x-raying the foundation and upgrading exterior siding); and
 - d) Install a septic system.
- [107] The respondent said he could do all of this work, except for x-raying the foundation and installing a septic system. He said his financial situation has been difficult of late and addressing deficiencies at the Barn has not been a priority. CREDIBILITY AND RELIABILITY OF EVIDENCE
- [108] The relevant principles to be applied when assessing the credibility of interested witnesses are discussed in the frequently cited passages of Justice O'Halloran in *Faryna v. Chorny*, [1952] 2 D.L.R. 354 (B.C.C.A.), at para. 357, and Justice Dillon in *Bradshaw v. Stenner*, 2010 BCSC 1398, at para. 186. I have applied those principles here.
- [109] I conclude both parties did their best to provide forthright and responsive answers to the questions they were asked. Neither seriously challenged the other's credibility. There were obvious frailties in the evidence of both parties which I generally ascribe to the imperfections of memory, the lack of written documentation, and the passage of time.
- [110] There were notable gaps in the claimant's knowledge about when the respondent received an ownership interest in Sunshine Drive, the trust interest registered in his name on title to Sunshine Drive, and his ownership interest in NRA. She was not a party to any of those agreements and much of her evidence was based on a loose understanding of matters

which she admitted the parties treated fairly casually. I did not find her general recollection of the respondent referring to Sunshine Drive as the "boys" property to be persuasive evidence of when he acquired an ownership interest in it. J.S. was a credible witness whose loyalty clearly rests with both parties, but her evidence on this point relied heavily on information from the claimant and, accordingly, is subject to the same limitations. I found P.S. to be a frank and fair witness.

- [111] While to a lesser extent than the claimant, the respondent was similarly vague about his understanding of the trust registered in his name on title to Sunshine Drive and its undocumented "transfer" to NRA in or about 1996. While I found J.M. and M.M. to be thoughtful, responsive, and candid witnesses, I conclude they too had an imperfect understanding about precisely what was done in connection with their interests in Sunshine Drive and NRA in the 1980s and 1990s. Ultimately, I conclude the evidence of the respondent and his brothers on these points is somewhat unreliable.
- [112] I accept that I must carefully scrutinise the evidence regarding undocumented verbal agreements and be alert to the potential for revisionist theories. However, I find the same caution applies equally to the evidence of both parties. It was my general impression that, where there were gaps in the documentary record, both parties construed the facts in a manner most consistent with their own theory of what transpired. Ultimately, I conclude the parties' conduct is the most reliable indicator of their intentions.
- [113] L.M. was cross-examined at length. There were obvious discrepancies between her evidence, her actions, and the documentary record. I accept the undisputed evidence that the respondent's family prefers "loose" verbal arrangements to formal written agreements. It is clear L.M. did not consistently conduct herself in accordance with the documents which, on their face, purport to record her intentions. Ultimately, I am unable to reconcile her actions with the flawed documentary record. On all the evidence, I conclude the documents do not consistently record her intentions or the informal agreements reached among the members of the Respondent family.
- [114] It is clear L.M. is a generous woman and that her children have benefited from her generosity. At a certain point during her cross-examination, she became somewhat defensive, abrasive, and combative. In my view, it is important to consider the context when assessing her demeanour in the witness box. I conclude the most plausible explanation for her adversarial response to some questions she was asked in cross-examination is that she perceived her maternal motives, actions, and love for her children were being challenged. Ultimately, I conclude L.M.'s allegiance to the respondent may have coloured some of her evidence.

- [115] I found Mr. Berkley to be a credible witness. Through no fault of his own, there were obvious deficiencies in his evidence, which he acknowledged. Mr. Berkley was not given all the information he required to determine accurate property values on the relevant dates. Accordingly, his evidence was not as helpful as it might otherwise have been. LAW AND ANALYSIS Income Determination and Child Support
- [116] The claimant seeks retroactive and prospective child support. Assessing this claim requires me to determine the parties' incomes. By their own admission, the parties' tax returns are inaccurate and unhelpful. Accordingly, I have considered whether it is appropriate to impute income to either one or both parties.
- [117] Section 19 of the Federal Child Support Guidelines, SOR/97-175 (the "CSG") states, in part, as follows: 19 (1) The court may impute such amount of income to a spouse as it considers appropriate in the circumstances, which circumstances include the following:
- (a) the spouse is intentionally under-employed or unemployed, other than where the under-employment or unemployment is required by the needs of a child of the marriage or any child under the age of majority or by the reasonable educational or health needs of the spouse;
 - (f) the spouse has failed to provide income information when under a legal obligation to do so.
- [118] A payor spouse is required to work to full capacity, whether in the context of determining child or spousal support: *P.K.C. v. J.R.R.*, 2014 BCSC 932 at para. 99. A parent from whom child support is sought bears an onus and responsibility to adduce evidence to justify a failure to work to capacity: *Reggelsen v. Reggelsen*, 2007 BCSC 219 at para. 18. The courts have a broad discretion to impute income to one or both spouses for the purposes of determining child and spousal support. A party seeking to have income imputed to the other spouse bears the onus of establishing the evidentiary foundation to ground such a finding by the Court: *Marquez v. Zapiola*, 2013 BCCA 433 at para. 36.
- [119] The test for imputing income for intentional under-employment or unemployment is reasonableness, having regard to the individual's education, health, work history, and work availability: *Marquez* at para. 37; *Van Gool v. Van Gool* (1998), 113 BCAC 200 at paras. 28 - 31. While the legal foundation for an award of child support is different than that for an award of spousal support, the test for imputing income for the calculation of both is one of reasonableness.
- [120] In *M.A.G. v. P.L.M.*, 2014 BCSC 126 the court held three fundamental principles are applicable to all applications for child support:
- a) Parents have a joint legal obligation to support their children;
 - b) It is the child, not the custodial parent, who has the right to child support; and

- c) Support payments are based on earning capacity and not only actual earnings. Parents have an obligation to earn as much as they are reasonably capable of earning: M.A.G. at para. 52.

[121] In *Hanson v. Hanson*, [1999] B.C.J. No. 2532 (S.C.), the court applied the following principles in assessing capacity to earn income:

- a) There is a duty to seek employment: *Van Gool* at para. 30;
- b) If income is to be imputed on the basis of intentional under-employment, a court must consider what is reasonable in all the circumstances including the parent's age, education, experience, skill, health, and factors such as the availability of work;
- c) Limited work experience and job skills will not justify a parent's under-employment; parents cannot avoid supporting their children because they cannot find "interesting" or highly paid work;
- d) When a parent persists in "un-remunerative employment", the court may be entitled to impute income;
- e) Parents cannot be excused from their child support obligations because they have "unrealistic or unproductive career aspirations"; and
- f) A parent will not, as a general rule, avoid child support obligations by a "self-reduced" decline in income": *Hanson* at para. 15.

[122] It is with those principles in mind that I consider the parties' earning capacity. Respondent

[123] The respondent's current income is unclear. On all the evidence, it is apparent he has a broad range of marketable skills in the area of general construction. While I accept he received some counselling in 2016 or 2017, there is no medical evidence before me to support the conclusion he is, or has been, unable to work.

[124] While the claimant initially suggested I impute an income to the respondent based on his capacity to harvest and sell marijuana, her counsel conceded in closing submissions that it would be appropriate for me to do so based on his capacity to work in construction. The claimant argues this imputed income ought to equal the respondent's share of revenue from the family marijuana business when it was in "full flight" at two locations (i.e., \$30,000/year) plus his "high water mark" for annual construction earnings in 2016 (i.e., \$25,319), for a total of \$55,319/year.

[125] The respondent says he never worked full-time hours in construction during the parties' marriage and that his longest jobs were contract, and not employed, positions. He argues an annual income of \$50,000 ought to be imputed to both parties for 2017, and from January to August 2018, when they were equal partners in the family marijuana business. The respondent proposes \$50,000 be imputed to him for the period September 2018 to December 2019 and \$55,000/year thereafter, accepting it would be appropriate to do so based on his capacity to work in construction.

- [126] I have imputed income to the respondent based on his capacity to work in the construction business. I am satisfied on the evidence that he has not been employed to his full capacity since the date of separation.
- [127] Assuming he could earn \$25/hour (as he has in the past) and work 40 hours/week for 50 weeks a year, he could earn a gross annual income of \$50,000; applying the same assumptions but substituting an hourly rate of \$30 (representing the hourly rate he was paid to do construction work from 2016 to 2019), he could generate a gross annual income of \$60,000. A mid-range estimate would result in gross annual income of \$55,000. On all the evidence, I conclude it is reasonable to impute a gross annual income of \$55,000 to the respondent from 2017 forward, based on his capacity to do construction work. Claimant
- [128] The claimant currently works five months of the year (from December to April) as a pastry chef, earning \$250/day. She collects EI for the balance of the year. She argues she has lost the benefit of revenue from the FFR marijuana business and, accordingly, has suffered significant financial hardship since the end of the parties' marriage.
- [129] The claimant, whose mother works in a retail store in Nelson, says she lacks the robust family support available to the respondent. She said the parties' separation has become the subject of local gossip in Nelson and that she has been openly ostracized and now feels isolated, alone, and unsafe in her own community. J.S. corroborated that evidence and testified she has heard others disparage the claimant for leaving the respondent.
- [130] Having chosen to leave the marijuana business, the claimant wishes to upgrade her education and improve her income-earning potential. On her evidence, her plan to become a psychotherapist will involve several years of post-secondary education, with corresponding limitations on her ability to work and earn an income.
- [131] The claimant proposes her income be assessed as follows:
- a) 2017: \$50,341 (\$30,000 marijuana sales and \$20,341 business income);
 - b) 2018: \$28,292 (\$14,948 business income, \$9,600 net rental income and \$3,744 EI); and
 - c) 2019: \$26,497 (\$22,848 employment income and \$4,649 EI).
- [132] The respondent argues additional income is properly imputed to the claimant based on her capacity to work, which he says ought to include an acknowledgement of the skills she acquired while working in the family marijuana business. He says both parties have an obligation to maximise their earnings and suggests income be imputed to the claimant as follows:
- a) 2017: \$50,000 (marijuana sales)
 - b) 2018:

i. \$50,000 (January to August, while the parties were equal partners in the marijuana business); and ii. \$30,000 (September to December); and

c) 2019: \$30,000

[133] In 2020 and thereafter, the respondent proposes an annual income of \$45,000 be imputed to the claimant on the following basis:

a) Lodge: \$24,139 (projected to increase to \$30,173.75 given pay raise to \$250/day)

b) EI (based on EI paid in 2019): \$10,855

c) Catering (based on 2019 income): \$893.75

d) Total: \$41,922.50

[134] The respondent argues an annual income of \$45,000 is comparable to what the claimant earned when they were partners in the marijuana business and would be sufficient to meet her current expenses and to service her debts.

[135] The claimant says the respondent's analysis is flawed as it contemplates the ongoing payment of EI, despite the fact her projected increased earnings will disentitle her to those benefits. I agree.

[136] Both parties admit the marijuana business was not full-time employment. I therefore conclude that, like the respondent, the claimant had residual income-earning capacity from 2017 to 2018, when both agree they were equal partners in the marijuana business.

[137] The claimant has gardening skills and experience as a homemaker, waitress, and baker/pastry chef. Her oldest daughter, J.J., is now 25. R.M. is 18; P.M. is 11 and in school full-time. J.J. and R.M. are both old enough to make a financial contribution if they are not in school and are living at the FFR. None of the Children requires any daytime care. Accordingly, I conclude the claimant could find work in the retail, service, or hospitality industry earning minimum wage, thereby generating a gross annual income of approximately \$30,000.

[138] On all the evidence, I am satisfied it is reasonable to impute an annual income of \$50,000 to the claimant for the years 2017 to 2018, consistent with her past income as follows:

a) 2017: \$50,000 (marijuana sales and business income)

b) 2018:

i. January to August: \$25,000 (based on marijuana sales of \$50,000 for half the year) ii. September to December: \$15,000 (based on 50% of imputed minimum wage earnings of \$30,000) iii. Rental Income: \$9,600 iv. Total: \$49,600

[139] Commencing January 2019 and thereafter, I impute an annual income to the claimant in the amount of \$30,000, based on her capacity to work full-time in a minimum wage position.

Retroactive Child Support

[140] Applying the above-noted imputed incomes, and taking into account the residences of the Children since the date of separation, as set out in the schedule prepared by the claimant and not challenged by the respondent (i.e., that R.M. has generally lived with the claimant and P.M. has gone back and forth between the parties' homes), retroactive child support is payable by the respondent, as follows:

- a) 2017: \$8,540 (\$854/month x 10 months)
- b) 2018: \$2,959
- i. Period of Split Custody: \$250 (\$50/month x 5 months) ii. Period of Shared Custody: \$2,709 (\$387/month x 7 months)
- c) 2019: \$6,900 (\$575/month x 12 months)
- d) Total: \$18,399

[141] The respondent is entitled to a credit of \$900 for past child support payments, leaving a balance of \$17,499 payable by him to the claimant for retroactive child support. In light of the parties' financial picture, it may be that a payment plan over time would be appropriate, a matter I leave to counsel to consider. Prospective Child Support

[142] Based on the incomes I have imputed to the parties, as set out herein, I order the respondent to pay prospective child support to the claimant, in the amount of \$575 per month, effective January 1, 2020, payable on the first of each month until further agreement of the parties or court order. Spousal Support

[143] The claimant seeks compensatory and non-compensatory spousal support. The respondent disputes the claimant's entitlement to spousal support on any basis. Compensatory Support

[144] The claimant says she is entitled to compensatory spousal support because:

- a) The parties had a lengthy and traditional relationship;
- b) She assumed the roles of primary caregiver and domestic labourer, devoting all her time and energy to raising the Children throughout the parties' relationship, thereby allowing the respondent to further his contracting and marijuana businesses;
- c) She had no opportunity to develop her own career and, when she attempted to do so by attending culinary school in 2005, she was required to return home to attend to her family's needs; and
- d) The parties agreed it was important for the claimant to stay home, especially when the Children were young.

- [145] The claimant argues she stands at the precipice of the next chapter in her life and, while she does not want to be a low wage service industry worker forever, she cannot afford to return to school and reposition herself in the workforce without support and additional resources. She says spousal support to help facilitate retraining is an appropriate remedy: *E.E.C. v. M.A.C.*, 2004 BCSC 589 at para. 99.
- [146] According to the respondent, both parties left their relationship on a similar footing in terms of past and future income-earning capacity. He says both were required to forego career opportunities because of their shared decision to focus on the illegal marijuana business instead of more conventional careers, a decision he says conferred disadvantages on both. The respondent argues this choice provided the parties with sufficient income to sustain their family while accommodating their preference for more leisure time than they would otherwise have enjoyed. While the respondent acknowledges the claimant's significant contribution to the domestic economy during their relationship, he says both were fully integrated partners in the marijuana business in the 18 months following their separation. He argues the only thing that has changed for the claimant is her decision to abandon the marijuana business and her stated wish to return to school.
- [147] Spousal support is governed by s. 15.2 of the Divorce Act, R.S.C., 1985, c.3 (2nd Supp.), and ss. 161 and 162 of the Family Law Act, S.B.C. 2011, c. 25 ["FLA"] which provide as follows:
- 161 In determining entitlement to spousal support, the parties to an agreement or the court must consider the following objectives:
- (a) to recognize any economic advantages or disadvantages to the spouses arising from the relationship between the spouses or the breakdown of that relationship;
 - (b) to apportion between the spouses any financial consequences arising from the care of their child, beyond the duty to provide support for the child;
 - (c) to relieve any economic hardship of the spouses arising from the breakdown of the relationship between the spouses;
 - (d) as far as practicable, to promote the economic self-sufficiency of each spouse within a reasonable period of time.
- 162 The amount and duration of spousal support, if any, must be determined on consideration of the conditions, means, needs and other circumstances of each spouse, including the following:
- (a) the length of time the spouses lived together;
 - (b) the functions performed by each spouse during the period they lived together; and
 - (c) an agreement between the spouses, or an order, relating to the support of either spouse.
- [148] Entitlement to spousal support was canvassed by the Supreme Court of Canada in *Bracklow v. Bracklow* (1999), 1 S.C.R. 420. Justice McLachlin, writing for the Court, set out the three conceptual models for entitlement to spousal support as follows:

- a. Compensatory, to redress economic disadvantage as a result of the breakdown of the marriage;
- b. Contractual; and
- c. Non-compensatory, based on the needs of the recipient spouse.

[149] A trial judge must consider all models, any or all of which may factor in the ultimate order, as appropriate in the circumstances: Bracklow at para. 37. Spousal support is determined by examining the objectives in s. 15.2(6) of the Divorce Act and by considering the factors in s. 15.2(4) as the "conditions, means, needs and other circumstances of each spouse." The parties agree the contractual model has no application here.

[150] I am satisfied the claimant is entitled to compensatory spousal support given her primary role in raising the Children, and her disproportionate share of the domestic economy, during the parties' relationship. She is now in her mid-forties and, apart from some part-time waitressing and baking, has been largely absent from the conventional workforce most of her adult life. I accept those facts will impair her ability to earn an income and place her at a significant competitive disadvantage.

[151] However, I do not agree the claimant's current situation is as dramatically different from the respondent's as she asserts. Neither completed high school. While both have acquired practical skills which render them capable of generating an income, neither party is formally trained or certified. Both have comparable abilities in the growing and harvesting of marijuana. On all the evidence, I conclude the respondent had more opportunities than the claimant to hone his marketable skills during the parties' relationship. I accept his diverse talents in construction better equip him to find work and to earn more money than the claimant.

[152] The claimant seeks lump sum spousal support of \$50,000. Based on the incomes I have imputed to the parties, as set out herein, application of the Spousal Support Advisory Guidelines ("SSAG") results in a range of spousal support payable to the claimant of \$0 to \$235/month for eight to 16 years, with \$22,698 representing the high end of a lump sum spousal support award.

[153] On all the evidence, having regard to the length of the parties' marriage, the claimant's foregone opportunity to upgrade her vocational skills, and the SSAG, I award lump sum spousal support of \$20,000 to compensate the claimant for the disproportionate economic disadvantage she has experienced as a result of her involvement in childcare and domestic duties and her contributions to the family unit during the parties' 16-year relationship. I am satisfied a lump sum award is preferable to ordering monthly spousal support given the respondent's inherently unpredictable income. Non-Compensatory Spousal Support

- [154] The claimant says her current income is insufficient to meet her expenses and, accordingly, she seeks non-compensatory spousal support. When the claimant prepared her April 2019 financial statement, she was not paying the line of credit on the FFR. Accordingly, she says that cost needs to be included in her living expenses going forward. The 2019 TD bank statements indicate the outstanding balance owed on this line of credit as of October 31, 2019 was \$137,353.65, with monthly payments of \$684.62.
- [155] The respondent says the claimant has the capacity to earn more income and argues she is currently working only five months a year because she receives the equivalent of spousal support from her friend, K.L. The claimant identified K.L. as the man she is dating. He lives in Jakarta, Indonesia. She was unable to say with certainty what, if any, future they have together. They have not comingled their finances or lived together on a permanent basis at any time since 2016. The claimant is committed to remaining in Nelson until P.M. finishes high school. She described her relationship with K.L. as something of a fantasy, saying that, if they ever formalise it, it will be "quite a ways down the line". In cross-examination, she agreed she has received loans in the form of wire transfers and cash payments from K.L., in addition to gifts of jewellery and other things. K.L. has paid for her trips to Indonesia and continues to give her money. The claimant admits he provides her with help when she needs it and, to date, has not refused her or insisted on any repayment deadlines. The claimant testified she intends to repay him once this litigation is resolved.
- [156] The respondent argues it is open to me to reject the claimant's evidence that these payments represent debts she will be required to repay, suggesting all are gratuitous gifts more akin to support than genuine monetary obligations. The respondent does not suggest the claimant has re-partnered but argues her relationship with K.L. is clearly more than a friendship and is relevant to an assessment of non-compensatory support. The respondent testified L.M. has loaned him about \$30,000 since the date of separation to help him meet expenses. The claimant observes that, while the respondent characterises K.L.'s payments to her as support, he construes L.M.'s payments to him as loans.
- [157] When assessing non-compensatory spousal support, the marital standard of living must be considered; "means" will include all capital and other sources of income: *Marquez* at para. 38; *P.K.C.* at para. 86.
- [158] On all the evidence, I conclude both parties have generous benefactors: the respondent in L.M. and the claimant in K.L. Both parties characterise payments from these individuals as legitimate debts. L.M. has forgiven debts in the past; it is open to her and K.L. to do so in the future. I conclude the availability to both parties of comparable "loans" from these sources effectively neutralises their significance in the context of assessing non-compensatory spousal support.

- [159] Having regard to the parties' financial situations, the claimant's residual capacity to work, and considering the SSAG formula for spousal support based on the incomes I have imputed to both (as set out herein), I conclude a total lump sum payment of \$20,000 adequately addresses both compensatory and non-compensatory spousal support claims. Family Property What is the current market value of the FFR?
- [160] For the reasons set out above, I assess the current market value of the FFR to be \$421,000. When did the respondent acquire an ownership interest in Sunshine Drive?
- [161] The claimant argues the respondent had a beneficial 1/6th interest in Sunshine Drive from 1989 until either 2010 or 2011, when he received a waterfront lot. Adopting this theory requires me to:
- Accept the irrevocable trust agreement registered in the respondent's name on title to Sunshine Drive in 1989 accurately reflected an ongoing beneficial interest and the intentions of L.M. and her sons until 2010 or 2011, despite their evidence to the contrary;
 - Reject the evidence of L.M., J.M., M.M., and the respondent regarding their intended "transfer" of the trust interests registered on title to Sunshine Drive for an ownership interest in NRA in 1996; and
 - Reject (as an inaccurate date) the September 3, 2014 transfer registered on title to Sunshine Drive confirming a transfer from L.M., in her personal capacity and as trustee, to the respondent of a 44/100th share (and to each of his brothers a 28/100th share) in Sunshine Drive.
- [162] Alternatively, the claimant suggests L.M. retained complete ownership of Sunshine Drive until 2010, following the dissolution of NRA after the Fire.
- [163] The respondent initially took the position he had no beneficial or legal ownership interest in Sunshine Drive after 1996 (following "transfer" of his trust interest to NRA) until 2014, when title to Sunshine Drive was formally amended. He retreated from that position at trial, admitting he knew shortly before the Upper Road was built in May 2011 that he would receive the Upper Parcel and, by the time the Lower Road was under construction in May 2012, that he would receive a waterfront lot. He now takes the position he acquired the Upper Parcel in May 2011, and a waterfront lot in May 2012. Documentary Record
- [164] There is no dispute the documentary record is profoundly flawed. Ultimately, for the reasons that follow, I conclude it is inherently unreliable and largely unhelpful. Both parties embrace the documents that, on their face, advance their own position and reject those that do not. For example, the claimant relies on the trust agreement registered on title to Sunshine Drive in the respondent's name in 1989 as an accurate representation of his ownership interest, while disputing the 2014 transfer registered on title accurately reflects the date this transfer of interest took place. Up to the date of trial, the respondent effectively did the opposite. Title to Sunshine Drive

- [165] I accept the evidence of the respondent, L.M., J.M., and M.M. that the respondent inherited \$40,000 from L.S. and L.M. invested those funds in trust for him in a 1/6th share of Sunshine Drive in 1989. That evidence was not seriously challenged and is partially corroborated by the trust agreement registered in his name on title to Sunshine Drive. However, the trust agreement makes no reference to this \$40,000 contribution. The respondent's 1/6th share in Sunshine Drive does not correspond with his percentage contribution to the \$180,000 purchase price in 1989. It is unclear why he ultimately received a 44/100th share in Sunshine Drive (with J.M. and M.M. each receiving a 28/100th share) when title was formally amended in 2014. Those figures were not adequately explained. It is clear on the evidence that the Respondent family preferred informal verbal arrangements to written agreements and adopted a casual approach to legal documents.
- [166] L.M.'s actions suggest she did not consider herself constrained by the registration of trusts on title to Sunshine Drive. I accept she did not amend title to Sunshine Drive in 1996 when she and her sons say they agreed to transfer their trust interests in Sunshine Drive to NRA because she wanted to save legal fees, avoid capital gains tax, and understood (admittedly, perhaps in error) that she would thereby facilitate its transfer to them on her death.
- [167] In 2006, L.M. transferred a 1/6th share from her own undivided one-half interest in Sunshine Drive to M.A.M., despite M.A.M. having already received and spent her \$40,000 inheritance. An irrevocable trust agreement was registered on title to Sunshine Drive in M.A.M.'s favour on August 2, 2006. The term which required distribution of half of its principal to M.A.M. on her reaching age 35 was not observed given M.A.M.'s age when the trust was settled. For reasons L.M. could not explain, this trust interest was removed from title for no apparent reason. While L.M. said she added M.A.M.'s name on title to Sunshine Drive and NRA to equalise her children's interests, that statement overlooks the fact M.A.M. had already received and spent her inheritance and ultimately received no part of Sunshine Drive. While L.M. testified she intended all of her children to inherit her entire estate on her death, she did not amend her 1996 or 1999 wills to accomplish that result.
- [168] On all the evidence, I conclude the documents produced did not consistently reflect L.M.'s stated intentions and that she did not approach her estate planning or family gifting with mathematical precision. I accept L.M.'s sons trusted her and were confident she would make decisions in their collective best interest. It is clear L.M.'s children have all benefited greatly from her generosity. I do not accept the respondent acquired an ownership interest in Sunshine Drive in 2014 when title was formally amended. That conclusion is inconsistent with the preponderance of evidence to the contrary. Ultimately, I find the parties' conduct to be more persuasive than the documentary record which I conclude is unreliable and not determinative. Dissolution of NRA

- [169] L.M. and her sons all testified their trust interests registered on title to Sunshine Drive were "transferred" to NRA in or about 1996. It is common ground this agreement was not documented. Title to Sunshine Drive was not amended to reflect it. However, for the reasons set out herein, I accept that is likely what they intended and what probably occurred, despite the flawed documentary record.
- [170] The claimant argues it is open to me to conclude that L.M., who had a long history of generous gifts to her children, gave the respondent a 1/6th interest in NRA, in addition to the 1/6th interest she held in trust for him in Sunshine Drive. That theory was not supported by the preponderance of evidence. In order to accept it, I would have to disregard the evidence of the respondent, L.M., J.M., and M.M. to the contrary. I am not inclined to do so. While I accept their evidence was imperfect, I am not of the view it was fabricated or rehearsed. All were quite candid about the limitations of their memories, including the circumstances surrounding the creation of the Note which, on its face, appears to compare the values of Sunshine Drive and the NRA Properties.
- [171] The claimant argues it is open to me to draw an adverse inference from the respondent's failure to call M.A.M. at trial. I am not persuaded her evidence would have been expected to favour the respondent or that she would have had knowledge of the facts in dispute between the parties: *Rohl v. British Columbia (Superintendent of Motor Vehicles)*, 2018 BCCA 316 at para. 1. Accordingly, I decline to do so.
- [172] I appreciate the Upper Parcel (which, based on the Sunshine Appraisal, was worth about \$40,000 in 2014) was not comparable in value to the NRA Properties given to M.M. and J.M., or the Orchard Street land sale proceeds given to M.A.M. after the Fire. However, I accept the evidence of L.M., J.M., M.M., and the respondent that he was "happy enough" with the post-NRA distribution of property. The parties agree he wanted to build a second indoor marijuana grow room and it is clear the respondent was considering the income-generating potential of the Upper Parcel when he secured this deal for himself. The Upper Parcel was relatively remote and not readily accessible, features I infer would have made it suitable for his intended purpose. For these reasons, I conclude the Upper Parcel had inherent value for the respondent that it did not hold for his siblings. On all the evidence, he wanted out of NRA after the Fire and I infer that too may have influenced his decision to prefer the Upper Parcel to one of the NRA Properties, regardless of its market value. Upper Parcel
- [173] For the reasons set out herein, I conclude L.M. and the respondent intended to "transfer" his trust interest in Sunshine Drive to NRA in 1996 and thereafter L.M. understood she retained sole ownership of Sunshine Drive until NRA was dissolved following the Fire. I appreciate that conclusion is inconsistent with the legal title to Sunshine Drive which was not amended until 2014. However, on all the evidence, including that of the respondent, it is clear he acquired an ownership interest in Sunshine Drive well before 2014. M.A.M. received the Orchard Street land sale proceeds in 2010; the Silca Street properties were transferred to M.M. and J.M. in October 2011 and February 2012, respectively. I conclude the parties' investment of their own money to construct the Upper Road, improve the Upper

Parcel, and build the Barn in 2011, is the clearest evidence of when the respondent acquired an ownership interest in Sunshine Drive. I conclude neither would have spent \$70,000, a substantial sum for them relative to their incomes, doing so if they were not confident the respondent then owned the Upper Parcel. Waterfront Lot

[174] M.M. remembered drawing straws with his brothers to decide who would own which waterfront lot in late 2011 or early 2012. That is consistent with construction of the Lower Road commencing in early 2012, which, on all the evidence, M.M. took steps to build without delay once he "had a go" from L.M. and knew he and his brothers could deal with Sunshine Drive as if they owned it. M.M. was the one most motivated to start building on the Sunshine Drive waterfront; it is clear he did not hesitate once he knew L.M. had gifted the Sunshine Drive waterfront to him and his brothers. Ultimately, I find the preponderance of evidence supports the conclusion that the respondent acquired an ownership interest in a waterfront lot at Sunshine Drive in or about May 2012 when construction of the Lower Road began as a precursor to the development and subdivision of the three waterfront lots. What is the value of the respondent's interest in Sunshine Drive? Deficiencies in Joint Appraisal Evidence

[175] Both parties rely on the Sunshine Appraisal to determine the value of the respondent's ownership interest in Sunshine Drive. Despite its deficiencies, as set out herein, they urged me to do the same.

[176] Based on the Sunshine Appraisal, the entire, as is, parcel of land at Sunshine Drive increased in value by \$600,000 from July 1, 2000 (when it had a value of \$200,000) to July 1, 2012 (when it had a value of \$800,000). The claimant says this represents an average increase of \$50,000 per year and that Sunshine Drive can be assessed over time on this basis. Adopting this approach requires me to overlook Mr. Berkley's evidence that:

- a) Market trends for comparable properties did not reflect a consistent "arc of increase" in value during this 12 year interval; and
- b) He could not value Sunshine Drive in 2010 or 2011 without an empirical analysis and doing so would represent nothing more than a guess on his part.

[177] Based on Mr. Berkley's oral evidence about general market trends in the Nelson area, the respondent asks me to assume the value of Sunshine Drive as an entire vacant parcel in 2012 (valued in the Sunshine Appraisal at \$800,000) was at least equal to its value in 2014 (valued in the Sunshine Appraisal at \$1,250,000) and that the Upper Parcel did not increase in value between 2010 and 2014. In doing so, the respondent effectively discards portions of the Sunshine Appraisal and endorses an approach expressly rejected by Mr. Berkley at trial.

[178] The claimant objects to the respondent doing so, at trial and without notice, particularly as Mr. Berkley was the parties' only joint expert. The claimant says it is not open to the respondent to ask the court to re-write a flawed expert report. However, for different reasons and to varying degrees, that is effectively what both parties ask.

- [179] Mr. Berkley does not value the Upper Parcel in 2010, 2011, or 2012. Accordingly, the claimant says I am not equipped to do so. By contrast, the respondent urges me to do what the claimant rejects as untenable, namely, extrapolate the value of the Upper Parcel over time as a percentage of the respondent's hypothetical Lot 3, based on Mr. Berkley's oral evidence regarding general market trends.
- [180] The appraisal evidence does not directly address the questions I am required to answer. While that presents obvious difficulties, both parties have asked me to do my best on the available evidence to value the respondent's interest in Sunshine Drive, citing *Boynton v. Boynton*, 2014 BCCA 142, at paras. 23, 25, 47-51 and *Dosanjh v. Liang*, 2015 BCCA 18:
- [61] In family law cases, a court is often faced with having to assess the value of real property in a situation where neither side is clearly subject to any burden of proof. Rather, the court is simply required to estimate the value of property for the purpose of dividing a family asset. It is not surprising, in such situations, that a court may "grasp at straws" in an attempt to reach a just result. It is simply a matter of doing the best job possible with limited evidence. Sunshine Appraisal
- [181] Sunshine Drive is described in the Sunshine Appraisal as a +/- 12.442 acre parcel of land, split by Highway 3A, with the lower portion fronting on the north shore of Kootenay Lake between Balfour and Nelson in an area known as Longbeach. It is irregular in shape and split by two public roads into three parcels (i.e., the Upper Parcel, a pie-shaped wedge in the middle, and three "piano key" hypothetical waterfront lots). The Upper Parcel above Wightwick Road is described by Mr. Berkley as steep and improved with an unfinished shop (i.e., the Barn) that was built without the appropriate permits. Mr. Berkley notes the lower parcel of Sunshine Drive has subdivision potential into three separate waterfront parcels, one of which is proposed to include the Upper Parcel (i.e., hypothetical "Lot 3").
- [182] The stated purpose of the Sunshine Appraisal is to "[e]stimate current and retrospective market values of the existing parcel and hypothetical subdivision into three separate titled lots". Mr. Berkley considered and valued the whole parcel and the three hypothetical waterfront lots as of August 22, 2019. Market value is defined in the Sunshine Appraisal, based on the Canadian Uniform Standards of Professional Appraisal Practices, as "[t]he most probable price which a property would bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus".
- [183] Given my findings that the respondent acquired an ownership interest in the Upper Parcel in about May 2011, and in Lot 3 by about May 2012, I consider the value of both parcels on those dates. Value of the Upper Parcel in 2011

- [184] The Sunshine Appraisal values hypothetical Lots 1, 2, and 3 effective August 2019 at \$550,000, \$560,000, and \$590,000, respectively. On all the evidence, these waterfront lots are comparable in size; Lot 3 includes the Upper Parcel. On page 60 of the Sunshine Appraisal, Mr. Berkley assesses the value of the "upland portion" of Lot 3 (i.e., the Upper Parcel) to be \$40,000, effective August 22, 2019. That equals 2.35% of 1.7 million (i.e., the total of Lots 1, 2, and 3 as of that date).
- [185] Mr. Berkley values the entire vacant parcel of land at Sunshine Drive as of July 1, 2012 to be \$800,000. I reject the respondent's suggestion that this figure represents a gross undervaluation and should be replaced with a value of \$1.25 million. I have done my best to assess Sunshine Drive on the available evidence where there are obvious gaps in the Sunshine Appraisal, as requested by both parties. However, I agree it is not open to me to substitute different values for those that are set out in the Sunshine Appraisal.
- [186] Using the percentage set out in paragraph 184 herein (i.e., 2.35%), I value the Upper Parcel as of July 1, 2012 to be \$18,800. Based on Mr. Berkley's evidence about general market trends for comparable properties, I conclude the value of the Upper Parcel in 2011 would have been at least equal to its value in 2012. On that basis, I assess the value of the Upper Parcel in May 2011 to be \$18,800, with a net increase between 2011 and 2012 of zero. Value of Hypothetical Lot 3 in 2012
- [187] I have followed a similar approach in assessing the value of hypothetical Lot 3 in 2012. Mr. Berkley assesses the value of the entire parcel, as if vacant, to be \$1,500,000 as of August 22, 2019. As set out in paragraph 184, the total value of the three hypothetical waterfront lots as of that date was \$1,700,000. On that basis, the value of Lot 3 is 34.7% of \$1.7 million.
- [188] Mr. Berkley values Sunshine Drive, as an entire vacant parcel, at \$800,000, effective July 1, 2012. Based on the best available evidence, I assess the value of Lot 3 on July 1, 2012 to be \$277,600 (i.e., 34.7% of \$800,000). The value of Lot 3 in August 2019 (based on the Sunshine Appraisal) was \$590,000. Accordingly, I find the value of Lot 3 increased between 2012 and 2019 by \$312,400 (i.e., \$590,000 minus \$277,600). On that basis, I find the respondent is entitled to an exclusion of \$277,600 and assess the value of family property in Sunshine Drive to be \$312,400. Other Excluded Property
- [189] The respondent seeks the following additional exclusions pursuant to s. 96 of the FLA, saying these funds can be traced and therefore ought to be excluded:
- \$25,038.11: the respondent's share of the Proceeds used to pay down the mortgage on the FFR;
 - \$2,500: the depreciated value of the Toyota Sienna purchased by the parties with the Proceeds; and
 - \$3,873.33: the amount gifted to the respondent by L.M. on his birthday in 2016 and used to discharge the mortgage on the FFR.

- [190] Section 85 of the FLA states, in part, as follows: 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; . . .
- (2) A spouse claiming that property is excluded property is responsible for demonstrating that the property is excluded property.
- [191] The respondent bears the onus to prove these exclusions on the basis of "clear and cogent evidence": *Shih v. Shih*, 2017 BCCA 37, referred to with approval and applied in *Pisarski v. Piesik*, 2019 BCCA 129, where the Court considered the relationship between the evidentiary record, oral evidence, and credibility and the deferential standard of review.
- [192] If documentary evidence is not available, the party bearing the onus of proof must testify as to their recollection of the transactions in dispute; while that evidence will be scrutinised for credibility, the trial judge must be permitted to draw reasonable inferences from evidence that is less than certain or precise in order to do justice between the parties: *Pisarski* at paras. 42 - 43. If the respondent proves the exclusions, the onus shifts to the claimant to challenge the factual basis for them. Insurance Proceeds
- [193] The parties agree they used a substantial portion of the respondent's share of the Proceeds to reduce their mortgage on the FFR. The respondent introduced a TD account deposit history confirming a deposit of \$57,166 on November 24, 2009, which is consistent with the claimant's recollection of the approximate amount of the Proceeds the respondent received after the Fire. The same account history records a debit of \$25,038.11 on November 30, 2009, which the respondent testified represents the payment both parties agreed was made towards the FFR mortgage from the Proceeds.
- [194] The category of "excluded property" established by s. 85 of the FLA carves out certain types of property from family property and is meant to cover property a spouse acquired to which the other spouse did not contribute, including an inheritance, third party gift, settlement of a claim, property derived from excluded property, and insurance proceeds: *Venables v. Venables*, 2019 BCCA 281 at para. 86. Section 85(1)(d) of the FLA expressly states that "money paid or payable under an insurance policy, other than a policy respecting property" is excluded. Accordingly, I conclude the respondent's share of the Proceeds does not fall within this definition of excluded property. Significantly, the parties used this money during their relationship to pay a shared family debt; I conclude that is *prima facie* evidence the respondent intended to make a gift of the Proceeds to the claimant, thereby rendering the Proceeds family property: *T.M.V. v. H.M.V.*, 2020 BCSC 78 at para. 21. Like Justice Smith in *T.M.V.*, I conclude that, in the absence of evidence to the contrary (there being none here), the manner in which the Proceeds were used to retire family debt is evidence of a donative intent at the time the funds were contributed.

- [195] I conclude the Proceeds used by the parties to pay down the mortgage on the FFR are not excluded property. Toyota Sienna
- [196] This vehicle was purchased using the Proceeds. The respondent assesses its current depreciated value to be \$3,000; the claimant says it is now worth \$2,000. I have assessed its current value to be \$2,500, the mid-point between the parties' estimates.
- [197] For the reasons set out in paragraph 194 herein, I conclude the Proceeds are not excluded property, as defined in s. 85 of the FLA. The Proceeds were used, in part, to buy the Toyota Sienna as a new family vehicle. The claimant has retained it. Because this vehicle is not traceable to excluded property and was purchased for the family's benefit during the parties' relationship, I conclude it is not excluded property. Gift from L.M.
- [198] L.M. and the respondent both testified she gave him a gift in the amount required to discharge the mortgage on the FFR on his March 2016 birthday, one month before the parties separated. That evidence was corroborated by a TD mortgage discharge statement dated March 21, 2016. I accept this payment was intended as a gift from L.M. to the respondent. However, the respondent used it to retire a family debt. Accordingly, for the same reasons set out in paragraph 194 herein, I conclude those funds are not excluded property.
- | Parties' Net Financial Positions | Asset Value | Excluded Property | with Respondent | Value of Family Property | Value of Family Property with Claimant | Value of Family Property |
|----------------------------------|-------------|-------------------|-----------------|--------------------------|--|--------------------------|
| with Respondent | FFR | \$421,000 | 0 | \$421,000 | \$421,000 | 0 |
| Sunshine Drive, Lot 3 | | \$590,000 | | | | |
| | | \$277,600 | | \$312,400 | 0 | \$312,400 |
| GMC Silverado | | \$15,000 | 0 | \$15,000 | 0 | \$15,000 |
| U-Built Trailer | | \$800 | 0 | \$800 | 0 | \$800 |
| 2009 Honda | | \$2,500 | 0 | \$2,500 | 0 | \$2,500 |
| Starcraft Boat | | \$2,000 | 0 | \$2,000 | 0 | \$2,000 |
| Kubota Tractor | | \$15,000 | 0 | \$15,000 | 0 | \$15,000 |
| Tools | | \$4,000 | 0 | \$4,000 | 0 | \$4,000 |
| Toyota Sienna | | \$2,500 | 0 | \$2,500 | 0 | \$2,500 |
| SUBTOTAL | | \$1,052,800 | | \$277,600 | \$775,200 | \$423,500 |
| DEBTS | | | | | | |
| TD LOC on FFR | | [\$137,353] | 0 | [\$137,353] | 0 | [\$137,353] |
| Net Equity in FFR | | \$283,647 | 0 | 0 | \$283,647 | 0 |
| GMC Loan | | [\$15,000] | 0 | [\$15,000] | 0 | [\$15,000] |
| Total Net Assets | | \$900,447 | | \$277,600 | \$622,847 | \$286,147 |
| | | \$336,700 | | | | |
- [199] Based on the above-noted valuations and the parties' agreed distribution of family property, the difference between their respective positions is \$50,553. Accordingly, I conclude the claimant is entitled to an equalisation payment pursuant to s. 97 of the FLA in the amount of \$25,276.50. Thereafter, the claimant's net financial position is increased to \$311,423.50. While I appreciate this division does not result in the parties' net positions being exactly the same, I have endeavoured to divide family property as close to equally as possible. In doing so I have notionally taken into account that the claimant will retain the contents of the FFR which I infer have some value, although not quantifiable on the evidence. Reapportionment of Family Property

- [200] The claimant seeks an unequal division of family property and/or division of excluded property in her favour pursuant to s. 95 of the FLA on two grounds: (i) by \$50,000 in lieu of a lump sum spousal support award; and (ii) by \$35,000 (i.e., 50% of what the parties spent to build the Barn) to reflect her contributions to the family's illegal marijuana business, including her assumption of risk. She argues courts regularly reapportion family property to ameliorate disadvantage on marriage breakdown.
- [201] The respondent says the claimant has not met the high bar required to support a reapportionment of family property, noting neither party made any substantial contribution to the waterfront portion of Sunshine Drive during the relationship and that its increase in value was due solely to market forces. He acknowledges her contribution to the domestic economy but argues that alone is insufficient to justify reapportionment. He says any risk associated with the parties' illegal marijuana business was assumed by both. Finally, he observes the claimant will end up with the FFR while he is currently living in a basement suite at his mother's house and will retain the Barn (an uninsurable structure which has no occupancy permit and no appraised value).
- [202] Section 95 of the FLA provides, in part, as follows: 95 (2) For the purposes of subsection (1), the Supreme Court may consider one or more of the following:
- (a) the duration of the relationship between the spouses;
 - (c) a spouse's contribution to the career or career potential of the other spouse;
 - (i) any other factor, other than the consideration referred to in subsection (3), that may lead to significant unfairness.
- (3) The Supreme Court may consider also the extent to which the financial means and earning capacity of a spouse have been affected by the responsibilities and other circumstances of the relationship between the spouses if, on making a determination respecting spousal support, the objectives of spousal support under section 161 [objectives of spousal support] have not been met.
- [203] The equal division of family property is the general rule unless persuasive reasons can be shown for a different result; unequal division requires something objectively unjust, unreasonable, or unfair in some important or substantial sense: *Jaszczewska v. Kostanski*, 2016 BCCA 286 at paras. 41 - 42. The requirement for a finding of significant unfairness was intended as a caution against trying to accomplish "perfect fairness": *L.G. v. R.G.*, 2013 BCSC 983 at para. 71.
- [204] Several cases have been decided under s. 95(3) since the FLA came into force. In *Polard v. Polard*, 2017 BCSC 1963 at paras. 27 - 30, a case involving a 20-year marriage, the court ordered proceeds from the sale of the former family home be allocated 70/30 in favour of the wife, given her contributions to her husband's career, the fact her earning potential had been compromised, and the husband would remain the owner of significant excluded property. In *Delaurier v. Massicotte*, 2018 BCSC 1857 the court reapportioned equity in the

former family home to overcome economic disadvantage and to promote economic self-sufficiency, finding the spousal support objectives would otherwise not be met.

[205] In *Xu v. Chu*, 2018 BCSC 2222, aff'd 2019 BCCA 414, in the context of a 16-year relationship where the parties' incomes were difficult to determine, the Court noted as follows:

[116] Given that the parties appear to have underreported their incomes relative to the assets they have acquired during the marriage, any spousal support award based on these incomes would likely not compensate Ms. Chu adequately and would, for that reason, fail to achieve the objectives under s. 161. In light of the uncertainty surrounding the parties' actual incomes and the level of those incomes relative to the value of the family property subject to division, I am ordering that Mr. Xu pay a further lump sum of \$25,000 out of the family property subject to division which, together with the unequal division of the family property that I am also ordering, will suffice to compensate Ms. Chu, both retroactively and prospectively.

[206] In *Brody v. Brody*, 2019 BCSC 1950, another case involving a 16-year relationship, Mrs. Brody argued she was entitled to compensatory and non-compensatory spousal support and sought reapportionment pursuant to s. 95(3) to ensure the objectives of spousal support were met. Mr. Brody argued the parties were in the same position after the dissolution of their marriage and no support was owed. The Court found the evidence established a significant difference in the parties' post-separation standard of living and reapportioned family property in the wife's favour. Lump Sum Spousal Support

[207] I am not persuaded it is feasible to order payment of the \$20,000 lump sum spousal support award I have ordered by giving the claimant an ownership interest in the respondent's share of Sunshine Drive. Sunshine Drive is not owned solely by the respondent, is not yet subdivided, and is not property which can be readily converted to cash. My division of family property contemplates the claimant will retain sole ownership of the FFR. Contributions to Family Marijuana Business

[208] The claimant argues there are at least four "any other factors", as contemplated by s. 95(2) (i), which favour reapportioning family property by an additional \$35,000 in her favour as follows:

- a) The parties spent \$70,000 on the Barn, which the respondent will retain and continues to use to generate income;
- b) The value of the family marijuana business cannot be assessed and will now benefit the respondent exclusively;
- c) The claimant's contributions to the illegal family marijuana business included an assumption of risk; and
- d) The respondent will retain substantial excluded property: *Hefti v. Hefti*, (1998), 57 B.C.L.R. (3d) 171 (C.A.).

- [209] By asking me to reapportion family property in her favour by an additional \$35,000, the claimant effectively asks me to value the Barn at \$70,000, based on the parties' cost to build it. The respondent says the Barn has no value, based on the Sunshine Appraisal. The claimant says it is not open to the respondent to argue the Barn has no value when he could have obtained a permit and remedied its defects before trial. It is unclear why the parties did not inform Mr. Berkley the Barn had been used as a marijuana grow operation, or ask him to estimate the value of an equivalent complete, properly permitted structure. There was no evidence about its value if it were to be demolished and sold as salvage.
- [210] I am not prepared to value the Barn using the cost analysis suggested by the claimant. That approach was soundly rejected by Mr. Berkley as one likely to distort the outcome. While I accept the parties spent \$70,000 to build it, I do not agree that figure reflects its contribution value. Based on Mr. Berkley's evidence, the Barn may be more of a liability than an asset to a potential buyer. It is unclear on the evidence what it would cost to remedy deficiencies and complete the Barn, leaving aside any potential problems attributable to latent defects arising from its use as an illegal marijuana growing operation. Those costs may exceed what it cost to build the Barn.
- [211] The evidence does not permit me to assess any potential stigma associated with the Barn given its past use or its possible appeal to a prospective purchaser as an ongoing marijuana business. I am similarly unable to assess the value, if any, of the parties' marijuana business. The parties operated this business at the FFR (which the claimant will retain) and the Barn (which the respondent will retain). The respondent removed some old, unspecified equipment from the FFR basement before Mr. Berkley completed the FFR Appraisal. It is unclear what, if any, value might be assigned to this equipment (which the respondent said he would willingly return to the claimant, who no longer has any use for it). I accept the claimant made significant contributions to the family business, including an assumption of risk, during the parties' relationship. I have ordered substantial lump sum spousal support to compensate the claimant for those contributions and her resulting competitive disadvantage in the work force, in part for that reason.
- [212] I have considered the fact the respondent will retain the Barn which I accept has some inherent, albeit unquantifiable, value to him. I have considered the parties' net financial positions, including the s. 97 compensation payment and lump sum spousal support award I have ordered. I have also taken into account the excluded property the respondent will retain: Hefti at para. 34. Ultimately, on all the evidence, I am not persuaded an equal division of family property would be significantly unfair. SUMMARY

[213] I make the following orders:

1. Pursuant to section 39 of the FLA, the parties are joint guardians of the Children.

2. Pursuant to the CSG, the respondent shall pay the sum of \$575 per month in child support effective January 1, 2020 and on the 1st day of each month until further agreement of the parties or court order.
3. Pursuant to the CSG, the parties shall share special and extraordinary expenses for the Children on a 50/50 basis until further agreement of the parties or court order.
4. The parties shall:
 - a. Once per year and not later than May 1st, exchange tax returns and other income information relevant to the determination of child support;
 - b. Review support; and
 - c. Vary the amount payable effective July 1st.
5. The claimant shall retain:
 - i. The FFR (title to which shall be transferred into her sole name); and ii. The Toyota Sienna.
6. The claimant shall be solely responsible for paying the outstanding line of credit on the FFR, effective immediately.
7. By consent, the respondent is entitled to a credit for one-half of the interest component of the FFR line of credit payments made since the date of separation, to be calculated by counsel for the parties.
8. The respondent shall retain:
 - a. His interest in Sunshine Drive,
 - b. The GMC Silverado (and assume responsibility for the associated loan);
 - c. The U-Built Trailer;
 - d. The 2009 Honda Motorcycle;
 - e. The Starcraft Boat;
 - f. The Kubota Tractor; and
 - g. The respondent's tools.
9. The respondent shall pay to the claimant:
 - a. The sum of \$17,499 in retroactive child support;
 - b. An equalisation payment of \$25,276.50, pursuant to s. 97 of the FLA; and
 - c. Lump sum spousal support in the amount of \$20,000.
10. By consent, the respondent shall be entitled to a credit for family MSP payments he has made, to be calculated by counsel for the parties.

11. The parties are divorced, the divorce to be effective 31 days after the release of these reasons for judgment, pursuant to s. 12 of the Divorce Act.
 12. If the parties are unable to agree on costs, or there are any other matters arising from these reasons, they may apply to speak to those issues within 30 days. "Douglas J."
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