
CANADA / JUDGMENT

Venables v. Venables

2018 BCSC 1736

COURT

Supreme Court of British Columbia

DECIDED

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2018 BCSC 1736 Venables v. Venables

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Venables v. Venables,

2018 BCSC 1736

Date: 20181011

Docket: 27769

Registry: Cranbrook

Between:

Edith Irene Venables

Claimant

And

Martin Wayne Venables

Respondent

Before: The Honourable Mr. Justice Marchand

Reasons for Judgment

Appearing on her own behalf:

E.I. Venables

Counsel for the Respondent:

J.G. Hardwick

Place and Date of Trial:

Cranbrook, B.C.

August 28-30, 2018

Place and Date of Judgment:

Cranbrook, B.C.

October 11, 2018

Introduction

- [1] Edith and Martin Venables began a long distance dating relationship in 2007. In July 2008, Ms. Venables quit her job as a classroom assistant and moved from Camrose, Alberta to Grand Forks, British Columbia to begin living with Mr. Venables in the home he owned there (the "home").
- [2] The Venables were married on August 1, 2009. They subsequently completed significant improvements to the home. In 2013, Mr. Venables transferred the title to the home into the joint names of the parties.
- [3] The parties separated in early November 2016 but remained in the home together until Ms. Venables moved to Cranbrook, British Columbia in May 2017.
- [4] Ms. Venables has been employed by Interior Health as a Community Health Worker since 2009. Initially, she was employed on a casual part-time basis but since just prior to her move to Cranbrook, she has been employed on a permanent part-time basis. Ms. Venables is 60 years old.
- [5] Mr. Venables continues to reside in the home. Mr. Venables is employed as a truck driver/equipment operator with Emcon Services Inc. ("Emcon"). Emcon recently lost its road maintenance contract in the Grand Forks area and Mr. Venables will soon be employed by the new contract holder, Yellowhead Road & Bridge (Kootenay) Ltd. ("YRB"). Mr. Venables is 54 years old.
- [6] In this family claim, Ms. Venables seeks an equal division of family property. Specifically, Ms. Venables seeks an equal division of:
- the home;
 - various bank accounts;
 - registered retirement savings plan accounts ("RRSPs");
 - tax-free savings accounts ("TFSAs");
 - the growth in one investment account;

- household effects; and
- Mr. Venables' pick-up truck.

- [7] Ms. Venables also seeks spousal support at the high end of the range under the Spousal Support Advisory Guidelines [SSAG] to be paid in a lump sum. Though not pleaded, Ms. Venables makes an alternative claim in unjust enrichment/constructive trust.
- [8] Ms. Venables acknowledges that any part of an inheritance Mr. Venables received from his mother's estate that was not put into her name or joint holdings is excluded property. Ms. Venables also acknowledges that Mr. Venables' pre-relationship holdings in his RRSPs and his investment account are excluded property.
- [9] Mr. Venables agrees to an equal division of family property but asserts that the home and property traceable to his inheritance should be excluded. Specifically, he claims that neither the home nor any money from his inheritance was ever intended to be a gift to Ms. Venables and, therefore, should be excluded property. Mr. Venables further submits that Ms. Venables has not established an entitlement to spousal support but, if she has, it should be awarded at the low end of the range for a limited duration and be paid in a lump sum.
- [10] Ms. Venables raised division of pension issues during the trial but I ruled that the parties had settled these issues prior to trial and that Ms. Venables was bound by the agreement. I will include the agreed division of both public and private pensions in my order.
- [11] The parties agree to a divorce.
- [12] Fortunately, the parties were debt-free at the time of separation so no issues relating to the division of family debt arise.

The Issues

- [13] For reasons that will become apparent, I have found it unnecessary to address Ms. Venables' alternative claim in unjust enrichment/constructive trust. The issues are:
1. What is family property and what is excluded property?
 2. If the equal division of family property would result in significant unfairness, are the pleadings broad enough for the Court to consider an unequal division?
 3. If so, what is the value of the family property to be divided?
 4. What is the appropriate division of family assets?
 5. Is Ms. Venables entitled to spousal support?
 6. If so, in what form, amount and duration?

Background

[14] Though the parties' testimony diverged at times and there were gaps in the financial documents presented at trial, the relevant background is, for the most part, not in serious dispute.

Ms. Venables' background

[15] Ms. Venables was born on April 9, 1958 in Prince George. She has five adult children from two previous relationships. She largely raised her children as a single parent.

[16] Ms. Venables obtained a diploma in social work from Grant McEwan College in 1986 and a diploma in Residential Care/Home Support from the University College of the Cariboo in about 2002. Between about 2004 and 2007, Ms. Venables took further training to put herself at the highest skill level and pay scale for fostering children in Alberta.

[17] Prior to 2005, Ms. Venables worked mostly in contract positions as a social worker. In 2005, Ms. Venables began working 30 hours per week as a classroom assistant dealing with high-risk youth in Camrose. At the same time, Ms. Venables was a foster parent. Ms. Venables' 2007 Notice of Assessment shows that she had taxable income of \$21,832 that year and cheque stubs from the Kasohkowew Child Wellness Society show that she also received roughly \$3,500 per month tax-free for fostering two high needs indigenous children. By 2008, Ms. Venables' indigenous foster children had been returned to their community. By that time, Ms. Venables had paid off most of her outstanding debts and all student loans, put a substantial down payment on a new car, and was able to travel. Ms. Venables remained eligible to take on foster children in the future.

[18] On arriving in Grand Forks, Ms. Venables was unable to find employment working with high-risk youth. Instead, in 2009, she applied for a home support position with Interior Health and was offered casual employment. Ms. Venables says that she and Mr. Venables decided it would be ideal for her to work three days per week so that she would have one day per week for housework and two or three days per week to dedicate to home renovation projects. Ms. Venables says that, as a result, she passed up employment opportunities. Mr. Venables denies that he ever suggested Ms. Venables not take a full-time position or any extra available shifts.

[19] Just prior to moving to Cranbrook in May 2017, Ms. Venables obtained her permanent part-time position with Interior Health. Since her move, she has continued to work in the same capacity. She would take a full-time position but says that none have been posted in Cranbrook. Interior Health posts available positions internally before posting externally. Any positions filled internally are filled based on seniority. Ms. Venables is aware of one other part-time employee with Interior Health who is looking for a full-time position and who is senior to Ms. Venables.

[20] Based on available income tax returns, Ms. Venables' earnings history, net of union dues, is:

- 2011 - \$17,000
- 2012 - \$16,475
- 2013 - \$15,313
- 2014 - \$17,093
- 2015 - \$14,819
- 2016 - \$19,552
- 2017 - \$30,812

[21] According to a recent pay statement, to August 9, 2018, Ms. Venables earned \$22,751.14, net of union dues. Extrapolated over a full year, Ms. Venables is on track to earn \$37,575, net of union dues, in 2018.

Mr. Venables' background

[22] Mr. Venables was born on February 19, 1964. He has lived all but three years of his life in Grand Forks. He has one adult daughter from a previous relationship.

[23] Mr. Venables graduated from high school on a modified program. He testified that he struggles with reading and writing but that was not readily apparent during the trial.

[24] Prior to obtaining his current position with Emcon, Mr. Venables held a variety of jobs over the years. At different times, he has been employed as a logger, as a sawmill worker and in a crushing plant.

[25] Mr. Venables works for Emcon on a full-time basis. He is paid a base rate plus increased amounts for night shifts, supervision of others, operating certain types of equipment, and overtime. He will have the same base rate when YRB takes over the road maintenance contract but is unsure about other aspects of his employment, such as what equipment he will operate, whether he will continue to supervise others and how much overtime will be available.

[26] Based on available income tax returns, Mr. Venables' earnings history, net of union dues, is:

- 2011 - \$56,000
- 2012 - \$50,000
- 2013 - \$52,429
- 2014 - \$52,689
- 2015 - \$56,943
- 2016 - \$58,177

· 2017 - \$61,416

[27] According to a recent pay statement, to July 20, 2018, Mr. Venables earned \$35,562.50, net of union dues. Extrapolated over a full year, Mr. Venables is on track to earn \$64,579, net of union dues, in 2018.

What each party brought into the relationship

- [28] When Ms. Venables moved to Grand Forks in July 2008, she arrived with her car and personal effects. She had no savings and did not own any property. Mr. Venables, on the other hand, owned the home, a pick-up, a quad, four dirt bikes, two unrestored vehicles and various household effects. He had no debt and in fact had savings, RRSPs and investments.
- [29] Mr. Venables acquired full ownership of the home in 2003 when he bought out his former spouse's interest for \$39,900. This amount is shown as the "declared value" of the property as of November 2003 when Mr. Venables acquired full ownership. The assessed value of the home at the time was \$79,800. Mr. Venables testified he and his former spouse valued the home at \$89,000 and the settlement took into account that he had made the down payment to acquire it.
- [30] The assessed value of the home in 2007 was \$129,300 and in 2008 was \$203,400. Neither party adduced evidence to explain this substantial and sudden jump.
- [31] There are gaps in Mr. Venables' financial records but the following gives a fairly good reflection of the state of Mr. Venables' finances at the time that Ms. Venables moved in:
1. As of December 31, 2006, Mr. Venables had savings at the Grand Forks Credit Union ("GFCU") totalling \$6,295.57;
 2. As of December 31, 2006, Mr. Venables had term deposits at the GFCU totalling \$21,425.55;
 3. As of December 31, 2006, Mr. Venables had RRSPs at the GFCU of \$52,482.20;
 4. In the first 60 days of 2007, Mr. Venables deposited \$5,874 into his GFCU RRSPs;
 5. In the first 60 days of 2008, Mr. Venables deposited \$4,500 into his GFCU RRSPs; and
 6. In mid-2008, Mr. Venables had approximately \$9,300 in a Qtrade investment account.

Home renovations

- [32] Between 2008 and 2016, the Venables completed very substantial renovations to the home. They fully renovated the dining room, living room, kitchen and en suite bathroom. They closed in a porch and joined the new space with what had been a third bedroom. They added a bay window, refinished floors, re-insulated and re-sided the home, upgraded the electrical system, and installed a new fireplace. They also added many aesthetically pleasing features such as river rock on the exterior of the home, "reveal" ceilings in two rooms and a "wavy" wall. They purchased new appliances and some new furniture. They improved the

yard. They did the vast majority of the work themselves and incurred out-of-pocket expenses of tens of thousands of dollars.

- [33] Having looked at the "before" and "after" photographs, I have no hesitation in saying that the Venables did a beautiful job on the renovations. They took a modest home that was close to 100 years old and created a very attractive and fully modern home.

Putting Ms. Venables' name on title and the current value of the home

- [34] On May 6, 2013, Mr. Venables transferred title to the home into the names of both parties with the parties registered on title as joint tenants.
- [35] Ms. Venables says she raised the possibility of holding the property in joint names to take advantage of an earlier increase in the home owner's grant, given that she would turn 65 six years earlier than Mr. Venables. Mr. Venables understood the right of survivorship enjoyed by joint tenants. He says he transferred the property into joint names to "simplify things" in case of a tragedy and also to be able to claim a higher home owner's grant when Ms. Venables turned 65.
- [36] Ms. Venables did not pay Mr. Venables any money in consideration for the transfer. Ms. Venables says she considered the transfer to be a gift. No words of "gift" were expressed by Mr. Venables at the time of the transfer. Mr. Venables says he did not intend a gift.
- [37] After the parties separated, Ms. Venables requested that the British Columbia Assessment Authority reassess the value of the home. The reassessed value of the home in 2017 was \$205,700. A joint appraisal values the home at \$230,000 as of February 27, 2018. There was no evidence to suggest any change in the value of the home since the completion of the joint appraisal.

Financial matters, savings, and bank accounts

- [38] Throughout the relationship, Mr. Venables was in charge of financial matters. His method of budgeting involved keeping a variety of accounts for specific uses. He deposited his paycheques into his personal savings account while Ms. Venables deposited her paycheques into a joint chequing account. After each of his bi-weekly paycheques, Mr. Venables transferred specific amounts from his savings account into separate accounts in his name for "bills", "trips and gifts" and "home renovations". As bills and expenses came due, Mr. Venables determined from which of these separate accounts they should be paid. He then transferred the necessary amounts from the appropriate account into the joint chequing account. The bills and expenses were then paid from the joint chequing account.

- [39] Ms. Venables' paycheque went towards household expenses such as groceries and supplies, as well as for her car payments (when she had them) and her personal items. Mr. Venables' paycheque paid for everything else. When there was a sufficient balance in the joint chequing account, Ms. Venables transferred money from that account into her personal savings account.
- [40] While unorthodox, Mr. Venables' financial management system seemed to work well. The Venables stayed on top of their bills, accumulated no debt and added to their savings.
- [41] Speaking of savings, in the years they were together, Mr. Venables always contributed to his own RRSPs and TFSAs. In 2010, the Venables were in the office of their financial advisor at the GFCU. Mr. Venables told the advisor that he wanted to establish a spousal RRSP and a TFSA in Ms. Venables' name. Ms. Venables was shocked and asked Mr. Venables if he was sure. Mr. Venables replied "yes". When they were home, Ms. Venables asked Mr. Venables why he had established the spousal RRSP and TFSA in her name. Mr. Venables replied "Aren't you worth it?" Ms. Venables agreed that she was but again asked why. Mr. Venables only shrugged.
- [42] In direct, Mr. Venables testified that the establishment of RRSPs and TFSAs for Ms. Venables was for "income-splitting" purposes so that the two would enjoy lower income taxes in their retirement. In cross-examination, Mr. Venables testified that he "did not want to be that guy" who would keep his money in his own name.

Mr. Venables' mother's death

- [43] Mr. Venables' mother died in October 2012. Mr. Venables was the executor of the estate. Prior to her death, Mr. Venables' mother owned her home and had substantial savings. Much of Mr. Venables' mother's savings was held in joint accounts with Mr. Venables and two of his three siblings. There was a clear understanding between all family members that Mr. Venables' mother was the beneficial owner of all the money in the joint accounts. On her death, the siblings were to consider the money in the joint accounts to be part of Mr. Venables' mother's estate and subject to an equal division between them.
- [44] Ms. Venables assisted Mr. Venables with the administration of his mother's estate: the money from the joint accounts was gathered; life insurance proceeds, CPP death benefits and final CPP, superannuation and old age pension payments were received; a sister of Mr. Venables repaid a loan from Mr. Venables' mother to the estate; and, Mr. Venables' mother's home was sold.
- [45] According to a handwritten accounting prepared by Ms. Venables, estate proceeds were divided equally by Mr. Venables and his siblings with the following distributions to each:
- November 17, 2012 - \$6,202.78
 - November 20, 2012 - \$13,754.89

- December of 2012 - \$80,554.99
- September 13, 2013 - \$3,939.90
- December 3, 2013 - \$60,000.00
- Undated - \$93.10 and \$1,365.25

[46] Regarding the December 2012 distribution, it appears that Mr. Venables and his siblings did not receive their full share until his sister repaid the money she had borrowed from her mother. The timing was not entirely clear but this appears to have occurred in the fall of 2013.

[47] The total distributed to each of Mr. Venables and his siblings was \$164,910.94. Mr. Venables appears to have been careful with his inheritance. He invested a good portion of it.

[48] Mr. Venables did not consider seeking compensation for his duties as executor. He acknowledged that Ms. Venables had done about half the work.

Ms. Venables' actions on separation

[49] When Ms. Venables decided to end the relationship in November 2016, she withdrew half of the money from the joint chequing account, the U.S. dollar account and one joint term deposit, totalling a little over \$27,000.

Analysis

Legislative Framework for the Division of Family Property

[50] The regime established under Part 5 of the Family Law Act, S.B.C. 2011, c. 25, [FLA] for the division of family property is, in theory, straightforward. In a case such as this, the basic principles are:

1. All real and personal property that is owned by at least one spouse at the time of separation is family property unless it is excluded property: ss. 84 and 85;
2. Family property includes any increase in the value of excluded property since the later of the date the relationship between the parties began or the acquisition of the excluded property: s. 84(2)(g);
3. Excluded property includes property acquired by a spouse before the relationship began, inheritances to a spouse, gifts to a spouse from a third party, and any property derived from such property: s. 85(1);
4. The onus of proving that property should be excluded is on the party advancing that claim: s. 85(2);

5. Family property is to be divided equally unless it would be "significantly unfair" not to do so: ss. 81 and 95; and
6. Excluded property is not subject to division unless it would be "significantly unfair" not to do so: s. 96.

Issue 1: What is family property and what is excluded property?

[51] The property "owned by at least one spouse at the time of separation" is not in dispute. It consists of:

1. The home;
2. A joint chequing account, joint term deposits and a joint U.S. dollar account at the GFCU;
3. Mr. Venables' personal savings account, RRSPs and TFSAs at the GFCU;
4. Mr. Venables' Qtrade investment account;
5. Ms. Venables' personal savings account, RRSPs and TFSAs at the GFCU;
6. The parties' pensions; and
7. The parties' personal and household effects, including vehicles.

[52] I will address each of these in turn.

The Home

[53] The question of whether the value of the home at the time the parties began living together is excluded property is complicated by Mr. Venables' decision to transfer the title into joint tenancy with Ms. Venables in 2013. If he had not done that, the value of the home at the time the parties began living together would have been excluded and only the gain in the value of the home would be subject to equal division.

[54] The parties spent a great deal of time during submissions on whether Mr. Venables did or did not make a gift of an interest in the home to Ms. Venables and whether the "presumption of advancement" has or has not survived the adoption of the property division regime in Part 5 of the FLA. Under the presumption, a transfer from one spouse to the other is presumed to be a gift unless the other spouse can demonstrate otherwise.

[55] There appear to be two lines of authority.

[56] In what may be considered obiter, in *V.J.F. v. S.K.F.*, 2016 BCCA 186, Newbury J.A. for the Court held that Part 5 of the FLA is not a complete code that eliminated the presumption of advancement and other common law and equitable principles. Rather, Newbury J.A., held that Part 5 "builds on those principles, preserving concepts such as gifts and trusts, and evidentiary presumptions such as the presumption of advancement between spouses": para. 74. [Emphasis in original.]

- [57] On the other hand, in the subsequent decision in *H.C.F. v. D.T.F.*, 2017 BCSC 1226, Voith J. concluded that "the presumption of advancement has no ongoing application under the FLA": para. 184.
- [58] The Court of Appeal has recently recognized that the law in this area is "in a state of flux": *Pisarki v. Piesik*, 2018 BCCA 326 at para. 26.
- [59] Regardless of whether the presumption of advancement continues to have ongoing application under the FLA, courts have continued to consider the impact of gifts on the division of property. I must confess it is difficult to reconcile the various approaches in the cases cited to me. While the approaches vary, each is reasoned and leads to a fair outcome. I will outline the approaches in a sampling of these cases below.
- [60] In *V.J.F.*, the husband had received a \$2 million dollar gift from a third party, which was excluded property. The husband purchased a property with the excluded property and placed the new property exclusively in the wife's name to protect himself from creditors. The Court of Appeal upheld the decision of the trial judge that this was a gift to the wife and therefore lost its status as excluded property. At para. 70, Newbury J.A. held "it would be hypocritical at best if Mr. F. were able to assert at separation that the gift to his then wife is effectively meaningless as between them, but that as against creditors the asset was put beyond their reach."
- [61] In *H.C.F.*, a variety of property was in dispute, including property owned by the husband at the start of the relationship (the "Leger Property"). The husband sold the Leger Property during the relationship and applied the net proceeds from the sale of that property (approximately \$240,000) to the "Connaught Property" that he held as a joint tenant with his wife. At paras. 183-184, Voith J. concluded that the husband was entitled to the \$240,000 as excluded property and held that the presumption of advancement had no ongoing application under the FLA. Voith J. did not conduct a fact-specific inquiry into whether any portion of the \$240,000 used to pay down the mortgage or complete renovations was a gift from the husband to the wife.
- [62] Voith J reached a different conclusion with respect to certain other property, namely the proceeds from the sale of the husband's "book of business", which was developed in part prior to the relationship. The sale of the husband's book was structured such that the proceeds flowed to both the husband and wife as a part of an income-splitting strategy. Despite later finding that the presumption of advancement had no ongoing application under the FLA, Voith J. held at para. 98 that proceeds from the sale of the husband's book were family property. The husband could not "have it both ways". By choosing to place a portion of the proceeds of the sale into the wife's name for tax or income-splitting purposes, the entirety of the proceeds appears to have lost its character as excluded property. Voith J. did not attempt to determine how much of the husband's book related to his pre-relationship employment or consider whether the husband's remaining portion of his book was excluded property.

- [63] In *C.J.B. v. A.R.B.*, 2017 BCSC 1682 at paras. 386-387, Gray J. held that, whether or not the presumption of advancement has ongoing application, property derived from excluded property retains its character and may itself be excluded, even if the derived property is transferred into joint tenancy. The transfers into the joint names of the parties at issue did not appear to have any tax or income-splitting advantage. Gray J. did not conduct a fact-specific analysis into whether the husband intended a gift.
- [64] Finally, in *S.E.V. v. T.M.V.*, 2018 BCSC 30 at para. 96, Abrioux J. concluded that, rather than apply a presumption, the proper approach was to consider the transferor's intention. At paras. 100-101, Abrioux J. conducted a fact-specific inquiry and determined that each party intended to give 50% of their property to the other. Even though certain funds could be traced to the sale of excluded property, Abrioux J. considered all of the parties' property to be family property and divided it equally. In the alternative, at para. 104 Abrioux J. found that it would be significantly unfair not to divide the funds at issue equally.
- [65] Though the different approaches are difficult to reconcile, one principle seems clear. If one spouse transfers property to the other to derive a benefit such as creditor protection or a tax reduction, the property transferred becomes family property. This appears to be so whether the property is transferred into the sole name of the recipient spouse (as in *V.J.F.*) or not (as with the proceeds from the sale of the husband's book in *H.C.F.*).
- [66] Like Abrioux J. in *S.E.V.*, in the circumstances of this case, I find that I do not need to wade into the question of whether the presumption of advancement has survived the adoption of Part 5 of the FLA. I will instead conduct a fact-specific inquiry into Mr. Venables' intentions at the material time, namely the time of the transfer of the home into joint tenancy.
- [67] At the time of the transfer, Mr. Venables thought the relationship with Ms. Venables would last. He did not foresee a future separation. He made the transfer to simplify estate administration if a tragedy were to occur and to derive a financial benefit for the couple by way of reduced property taxes when Ms. Venables turned 65.
- [68] Respectfully, as was the case in *V.J.F.* and *H.C.F.*, Mr. Venables cannot have it both ways. Mr. Venables cannot have been prepared to say to the property taxation authority that he had given an interest in the property to Ms. Venables but maintain on separation that, really, that is not what happened.
- [69] Further, though said in relation to Mr. Venables' establishment of RRSPs and TFSAs for Ms. Venables, Mr. Venables "did not want to be that guy". In other words, when he made a transfer, he intended a transfer, without reservation.
- [70] The fact that Mr. Venables did not express words of gift to Ms. Venables is far from determinative. I accept Ms. Venables' testimony that Mr. Venables is not an overly demonstrative and communicative person. In somewhat similar circumstances, when Mr. Venables used some of his inheritance to help his daughter out financially, he did not use words of gift. Mr. Venables tried very hard not to characterize the financial help to his

daughter as a gift but he clearly did not expect to be repaid. Whether he expressed the word to his daughter or not, the financial help he offered to her was a gift.

- [71] Mr. Venables submits that I should contextualize my analysis by considering what Mr. Venables' intention would have been if he had received legal advice regarding the consequences of making a gift. I disagree that I should do so. Intention is subjective and Mr. Venables cited no authority otherwise.
- [72] In any event, even if I did contextualize my analysis, I would come to the same conclusion. Having been through a prior separation, Mr. Venables was already aware that family property is subject to division. He did not need any advice about that. As well, if Mr. Venables had legal advice, that advice would surely have been that, to derive the intended future tax benefit, the transfer would need to be absolute. Mr. Venables thought the marriage would last. He wanted to simplify estate administration and derive a tax benefit. He did not want to be that guy. I am not persuaded he would have done anything differently with legal advice.
- [73] Finally, though he did not say so, by 2013, I am quite sure that Mr. Venables thought Ms. Venables "deserved" an interest in the property. By that time, she had worked extremely hard on improving the property and had made financial and other contributions to the financial wellbeing of the parties.
- [74] Having given an interest in the home to Ms. Venables with the intention of deriving a tax benefit, the home is family property that is subject to division.

Joint Accounts

- [75] Mr. Venables acknowledges that the joint chequing and U.S. dollar accounts are family property.
- [76] Mr. Venables submits, however, that the \$48,378 held in joint term deposits at the date of separation is excluded property. He submits that this money is derived from his inheritance. While I agree that most of this money can be traced to his inheritance, Mr. Venables has not discharged his onus of establishing that the traceable money is excluded property. Rather, on a fact-specific inquiry, it is clear that Mr. Venables intended to give an interest in this property to Ms. Venables to derive a variety of future tax benefits, some of which were realized.
- [77] Of the \$48,378 in joint term deposits at separation, roughly \$42,600 is readily traceable to Mr. Venables' inheritance.
- [78] Mr. Venables deposited \$90,000 into a joint term deposit on December 6, 2013. This was three days after the \$60,000 distribution from the estate on December 3, 2013 and soon after his sister had repaid the loan to Mr. Venables' mother's estate. This evidence satisfies me on a balance of probabilities that Mr. Venables' inheritance was the source of the \$90,000. There was no evidence of any other realistic source.

- [79] From the available bank records, it is easy to see how the \$90,000 was subsequently "spread out" into RRSPs, TFSAs and further joint term deposits to advance Mr. Venables' income-splitting tax strategy. The joint term deposit worth approximately \$42,600 at separation was one of the investments that was derived from the \$90,000 from Mr. Venables' inheritance.
- [80] Mr. Venables could have but did not keep the \$90,000 in his personal savings account or a personal term deposit. Mr. Venables may have been the financial decision maker but he was aware that both parties had equal access to any money held in a joint account or term deposit. Unlike the situation with his mother (where she remained the beneficial owner of money held in joint accounts), there was no clear understanding that the money was in the joint term deposit for convenience and/or that he remained the beneficial owner. In 2014, Ms. Venables claimed some and, in 2015, all of the interest earned on the money held in joint term deposits on her income tax returns to reduce the Venables' overall tax burden. Having derived a financial benefit from the joint holdings, Mr. Venables cannot now say that the money in the \$90,000 joint term deposit was really his all along. Finally, Mr. Venables "did not want to be that guy". It does not matter that he never used words of gift.
- [81] With respect to the remaining roughly \$5,800 in joint term deposits at separation, Mr. Venables could have but failed to produce financial records to show how this amount was derived from his inheritance. I really have no idea where the money came from. It could just as easily be the type of savings the parties were able to accumulate prior to Mr. Venables' mother's death. In any event, if Mr. Venables deposited further money from his mother's estate into joint term deposits, in my respectful view, he did so intending a gift to Ms. Venables.
- [82] All of the money in the joint term deposits was family property and is subject to division.

Mr. Venables' personal savings account, RRSPs and TFSAs

- [83] Mr. Venables submits that the \$15,550 in his personal savings account at separation is excluded property. Ms. Venables does not contest that this is roughly what Mr. Venables brought into the relationship and I agree that it is excluded property.
- [84] Mr. Venables submits that roughly \$68,000 of the \$90,299 that was in his GFCU RRSPs at the date of separation is excluded property. I agree.
- [85] As of December 31, 2006, Mr. Venables had \$54,482 in his RRSPs. In the first 60 days of 2007 and 2008, he invested a further \$5,874 and \$4,500 respectively into his RRSPs. He, therefore, brought \$64,856 in RRSPs into the relationship. An additional \$3,183 was sourced to a deferred benefit from an International Woodworkers of America ("IWA") pension he earned prior to the relationship. The pre-relationship and IWA sourced RRSPs totalling \$68,039 are excluded property. The remaining \$22,260 in Mr. Venables' RRSPs is family property.
- [86] Mr. Venables did not endeavour to trace any money from his inheritance into his RRSPs.

- [87] Mr. Venables submits that the entirety of the \$50,314 in his GFCU TFSAs at the date of separation is excluded because it was derived from his inheritance. I disagree. Only a fraction of the \$50,314 is traceable to Mr. Venables' inheritance and the entirety of that amount flowed through the parties' joint term deposits. As those deposits were intended as a gift to derive certain tax benefits, they lost their character as excluded property.
- [88] In the event I am wrong, I will set out my findings regarding how much of the \$50,314 in Mr. Venables' TFSAs at separation can be traced to his inheritance.
- [89] Ms. Venables produced GFCU statements that show that Mr. Venables held \$15,480.16 in TFSAs in January 2012. This amount was comprised of non-redeemable investments purchased in 2009, 2010 and 2011, all well before Mr. Venables' mother's death. These TFSAs are clearly family property.
- [90] Regarding the balance, Mr. Venables has produced documents to demonstrate that \$5,500 of the \$90,000 joint term deposit that derived from his inheritance made its way into his TFSAs on February 2, 2016.
- [91] Mr. Venables also produced documents to demonstrate that \$51,323.80 was withdrawn from the \$90,000 joint term deposit on September 11, 2015 and temporarily deposited into the parties' joint chequing account. Of that amount, \$42,323.80 was immediately used to purchase the joint term deposit that was worth roughly \$42,600 at separation. On September 18, 2015, the remaining \$9,000 was used to purchase two non-redeemable investments of \$4,500, one for Mr. Venables' TFSAs and the other for Ms. Venables' TFSAs. I agree with Mr. Venables that these amounts are traceable to his inheritance.
- [92] Finally, Ms. Venables introduced a GFCU statement for Mr. Venables from January 2015. This statement shows that \$9,150 was withdrawn from the \$90,000 joint term deposit that derived from Mr. Venables' inheritance and was deposited into the joint chequing account on January 29, 2015. On the same date, Mr. Venables transferred \$3,500 from his savings account into the joint account. These two amounts totalled \$12,650.
- [93] Mr. Venables' January 2015 GFCU statement shows that on January 29, 2015, \$5,500 was withdrawn from the joint chequing account to purchase a non-redeemable investment for Ms. Venables' TFSAs. The statement also shows that on January 30, 2015, \$5,500 was withdrawn from the joint chequing account to purchase a non-redeemable investment for Mr. Venables' TFSAs and \$2,150 was withdrawn to purchase a non-redeemable investment for Ms. Venables' RRSPs. These RRSP and TFSA contributions totalled \$13,150, which was \$500 more than the deposits made on January 29, 2015.
- [94] Given the co-mingling of money in the joint chequing account, I consider it appropriate to determine how much of Mr. Venables' January 2015 TFSA investment derived from excluded property by taking a pro rata approach: *Gavriel v. Gavriel*, 2017 BCSC 1653 at para. 63. In this case, \$9,150 of the \$13,150 used to purchase RRSPs and TFSAs for the parties in late January 2015 was derived from Mr. Venables' inheritance. I, therefore, find that $\$5,500 \times \$9,150 /$

\$13,150 = \$3,827 of the amount used to invest in Mr. Venables' TFSAs in January 2015 derived from his inheritance.

- [95] Mr. Venables could have but did not produce financial documents to trace further TFSA investments back to his inheritance. In the absence of that documentation, there is no reason for me to believe that Mr. Venables was not contributing to his TFSAs from his regular earnings as he had been doing prior to his mother's death.
- [96] Accordingly, I find that a total of $\$5,500 + \$4,500 + \$3,827 = \$13,827$ [1] in Mr. Venables' TFSAs derived from his inheritance. As noted, however, as this money came from a joint term deposit which lost its character as excluded property, it is not excluded property.
- [97] In the result, \$15,550 of Mr. Venables' personal savings and \$68,039 in Mr. Venables' RRSPs are excluded property. All of Mr. Venables' TFSAs are family property.

Mr. Venables' Qtrade investment account

- [98] When Ms. Venables came to live with Mr. Venables, he had approximately \$9,300 in his Qtrade investment account. At separation, the balance was \$17,515.47. I agree with Mr. Venables that \$9,300 in his Qtrade account is excluded and the balance is family property.

Ms. Venables' personal savings account, RRSPs and TFSAs

- [99] At the time of separation in November 2016, Ms. Venables held \$4,850 in her personal savings account, \$47,794 in her RRSPs and \$49,212 in her TFSAs. Mr. Venables submits that roughly half of the balance in Ms. Venables' RRSPs and TFSAs was derived from his inheritance and should be excluded property. I disagree.
- [100] Only a fraction of the money in Ms. Venables' RRSPs and TFSAs is traceable to Mr. Venables' inheritance but the entirety of that amount flowed through the parties' joint term deposits. As those deposits were intended as a gift, they lost their character as excluded property.
- [101] Further, even if I had found that the \$90,000 joint term deposit was excluded property, I would not have found the subsequent purchases of RRSPs and TFSAs for Ms. Venables to be excluded property. Specifically, I would have found that Mr. Venables intended any amount derived from the \$90,000 that was used to purchase RRSPs and TFSAs for Ms. Venables to be a gift. Without repeating all of the reasons for finding gifts earlier in my analysis, the key points are that Mr. Venables "did not want to be that guy" and Mr. Venables cannot say that the amount used to purchase TFSAs and RRSPs for Ms. Venables were gifts for income tax purposes but say to the Court otherwise.
- [102] In the event I am wrong, I will set out my findings regarding how much of the money in Ms. Venables' RRSPs and TFSAs at separation can be traced to Mr. Venables' inheritance.

- [103] As of January 31, 2012, Ms. Venables held \$4,551 in her savings account, \$26,940 in her registered plans (meaning her RRSPs and TFSAs combined), and \$2,000 in a term deposit. The Venables were able to achieve these savings without any inheritance money and there is no reason for me to think that they would not have continued to build their savings at a similar pace without dipping into Mr. Venables' inheritance.
- [104] The only amounts that can be specifically traced to Mr. Venables' inheritance derive from the \$90,000 joint term deposit. The contributions made to both Mr. and Ms. Venables' RRSPs and TFSAs from this money are set out earlier in this judgment. Mr. Venables could have, but did not, provide available financial documentation to enable me to trace any other money in Ms. Venables' hands back to his inheritance.
- [105] Based on the available documentation, I find that a \$4,500 contribution to Ms. Venables' TFSAs on September 18, 2015 and a \$5,500 contribution to Ms. Venables' TFSAs on February 2, 2016 derived from Mr. Venables' inheritance. Further, I find that $(\$5,500 + \$2,150) \times \$9,150 / \$13,150 = \$5,323$ of the \$7,650 used to purchase RRSPs and TFSAs for Ms. Venables in late January 2015 was also derived from Mr. Venables' inheritance.
- [106] While a total of \$15,323[2] of Ms. Venables' RRSPs and TFSAs was derived from Mr. Venables' inheritance, for the reasons I have expressed, this amount is not excluded property.
- [107] All of the amounts held by Ms. Venables in her personal savings, RRSPs and TFSAs are family property.

The parties' pensions

- [108] The parties have agreed that Ms. Venables is entitled to a credit of \$29,246 in relation to the parties' private pensions. The parties also agree to divide CPP credits according to the statutory scheme for the period they lived together from July 1, 2008 to November 5, 2016.

The parties' personal and household effects

- [109] Ms. Venables seeks \$1,000 to account for the difference in value between the personal and household effects in the hands of each of the parties following their separation, including vehicles.
- [110] Ms. Venables introduced no reliable evidence of the value of these items and, in my view, the asserted difference in values does not rise above the de minimus level. I make no order in relation the parties' personal and household effects. They may keep whatever personal and household effects they now have in their possession.

Issue 2: If the equal division of family property would result in significant unfairness, are the pleadings broad enough for the Court to consider an unequal division?

- [111] As noted above, s. 95(1) of the FLA empowers the Court to order an unequal division of family property if it would be "significantly unfair" to equally divide that property. Neither of the parties, however, pleaded s. 95(1) or claimed for an unequal division of family property.
- [112] Perhaps in anticipation of a more favourable finding regarding excluded property, when I raised the topic of a possible unequal division of family property during submissions, Mr. Venables submitted that it would be prejudicial to do so when that relief was not pleaded. On the other hand, Ms. Venables noted that her Notice of Family Claim includes claims for "such further and other relief as to this Honourable Court may seem meet and just" and "such further and other relief as may be available pursuant to the Family Law Act." She also notes that she broadly raised issues of "fairness" as part of the unjust enrichment/constructive trust claim identified in her trial brief. I note that Mr. Venables' counterclaim also included a general claim for "such further and other relief as to this Honourable Court may deem meet and just." Ms. Venables submits that it is open to me to consider an unequal division of family property if necessary "to find a way to fair."
- [113] In my view, the pleadings are broad enough for me to consider an unequal division of family property in order to do justice between the parties. Ms. Venables represented herself and may not have appreciated that her pleadings were somewhat deficient in relation to the issues she wished to have addressed. Nevertheless, she raised the issue of fairness in her trial brief and the parties canvassed fairness issues in the evidence. In these circumstances, I do not agree with Mr. Venables that considering an unequal division of family property would be prejudicial to either party. Contrary to Mr. Venables' submission, there can be no prejudice to him. Based on my findings to this point, Mr. Venables can only benefit from and not be harmed by a consideration of an unequal division of family property.

Issue 3: What is the value of the family property to be divided?

- [114] In order to determine if it would be significantly unfair to divide family property equally, the starting point is to "notionally divide family property equally, taking into account exclusions, in accordance with the provisions in the FLA": *Remmem v. Remmem*, 2014 BCSC 1552 at para. 47 and *Blair v. Johnson*, 2015 BCSC 761 at para. 74.
- [115] It is open to the Court to globally pool the value of the family property rather than divide each piece of family property: *Jaszczewska v. Kostanski*, 2016 BCCA 286 at para. 49. In the straightforward circumstances of this case, I consider it appropriate to do so.
- [116] Based on my findings, the following table summarizes the value of the excluded property in Mr. Venables' possession, the total value of family property, the value of family property in Mr. Venables' possession and the value of family property in Ms. Venables' possession:

Value of Family Property to Be Divided

Asset

Value of Assets

Value of Excluded Property in Mr. Venables' Possession

Value of Family Property

Value of Family Property in Mr. Venables' Possession

Value of Family Property in Ms. Venables' Possession

Home

\$230,000

0

\$230,000

\$230,000

0

Joint Term Account

\$48,378

0

\$48,378

\$27,079

\$21,299

Joint Chequing Account

\$5,778

0

\$5,778

\$2,889

\$2,889

Joint U.S. Dollar Account

\$5,890

0

\$5,890

\$2,945

\$2,945

Mr. Venables' Savings Account

\$15,550

\$15,550

0

0

0

Mr. Venables' RRSPs

\$90,299

\$68,039

\$22,260

\$22,260

0

Mr. Venables' TFSAs

\$50,314

0

\$50,314

\$50,314

0

Mr. Venables' Qtrade Account

\$17,515

\$9,300

\$8,215

\$8,215

0

Ms. Venables' Savings Account

\$4,850

0

\$4,850

0

\$4,850

Ms. Venables' RRSPs

\$47,794

0

\$47,794

0

\$47,794

Ms. Venables' TFSAs

\$49,212

0

\$49,212

0

\$49,212

\$565,580.00

\$92,889.00

\$472,691

\$343,702

\$128,989

[117] The total value of family property is \$472,691. An equal division of family property would result in each of the Venables having family property worth \$236,345.50. Based on the value of the family property in each of their possession, to equally divide family property, Mr. Venables would have to pay Ms. Venables \$107,356.50.

Issue 4: What is the appropriate division of family assets?

[118] Section 95(2) of the FLA sets out the non-exhaustive list of factors that the Court may consider in making an unequal division of family assets. In the context of this case, the only two factors that are relevant are "(a) the duration of the relationship between the spouses" and "(c) a spouse's contribution to the career or career potential of the other spouse".

[119] In appropriate circumstances, the Court has held that other factors may be taken into account in determining whether it would be significantly unfair to equally divide family property. Examples include:

- the use of an inheritance for family purposes that is no longer traceable into other assets: *McGrail v. McGrail*, 2016 BCSC 104 at para. 85;
- unequal contribution to the acquisition, preservation, maintenance or improvement of family property: *Jaszczewska* at paras. 43-44; and
- the full spectrum of contributions provided by spouses, including those that negatively affected one spouse's career but enhanced the career of the other: *Nearing v. Sauer*, 2015 BCSC 58 at para. 141.

[120] The jurisprudence cautions against departing from the default scheme of equal division of family property in an attempt to achieve "perfect fairness": *G.(L.) v. G.(R.)*, 2013 BCSC 983 at para. 71, and recognizes that the Court's power to depart from an equal division of family property is constrained. On this latter point, the Court in *Jaszczewska* noted at para. 41 as follows:

[41] Clearly, the statutory intent is to constrain the exercise of judicial discretion. The test of "significant unfairness" imposes a more stringent threshold than the mere "unfairness" test of the FRA to allow unequal division by a court. As Mr. Justice Butler observed in *Remmem v. Remmem*, 2014 BCSC 1552, "significant" is defined as "extensive or important enough to merit attention" and the term refers to something that is "weighty, meaningful or compelling." He concluded that to justify an unequal distribution "[i]t is necessary to find that the unfairness is compelling or meaningful having regard to the factors set out in s. 95(2)": *Remmem* at para. 44. As the judge here noted at para. 162 of her reasons, the Legislature intended the general rule of equal division to prevail unless persuasive reasons can be shown for a different result. I agree.

[121] At para. 42, the Court added that "reapportionment will require something objectively unjust, unreasonable or unfair in some important or substantial sense."

[122] After carefully considering all of the circumstances, I have concluded that an equal division of family property would be manifestly unjust.

[123] There is no doubt that Ms. Venables gave up her job as a classroom assistant and walked away from the opportunity to earn additional income as a foster parent to move to Grand Forks. I also accept her testimony that the Venables agreed that she would work three days per week in order to be able to do housework one day per week and contribute to the renovations on the home for two or three days per week - which is consistent with what actually occurred. Finally, it is clear that she worked extremely hard to improve the home and made other contributions such as looking after the household and assisting Mr. Venables with the administration of his mother's estate.

- [124] On the other hand, I have no reason to think that Ms. Venables' contributions enabled Mr. Venables to advance his career. Mr. Venables impressed me as the type of hard worker who is highly valued by employers. In my view, he would very likely be in the same position career-wise, with or without the household and other contributions of Ms. Venables. Without wishing to diminish Ms. Venables' contributions, the evidence satisfies me that Mr. Venables' career trajectory was well established before Ms. Venables' arrival and did not change as a result of her contributions.
- [125] Further, as hard as Ms. Venables worked and as much as she contributed, Mr. Venables worked just as hard and made even greater contributions. He contributed the value of the home, a good portion of his inheritance and his much higher salary to advancing the family interests.
- [126] If the family property were divided equally, as a result of their eight years together, Mr. Venables would largely be in the same financial position as when the parties began living together while Ms. Venables would be in a substantially better position.
- [127] When Ms. Venables moved to Grand Forks, Mr. Venables owned a home valued at, on the best evidence, \$203,400, and had excluded savings and investments of \$92,889, for a total of \$296,289. During the marriage, he inherited over \$160,000, much of which went into joint savings and became family property.
- [128] On an equal division of family property, Mr. Venables would end up with one-half of the family property worth \$236,345.50 plus his excluded savings of \$92,889, for a total of \$329,324.50, plus half of the pension benefits accumulated by the parties during the relationship (which were mostly his).
- [129] As a result, in spite of all his contributions and inheritance, Mr. Venables would have roughly \$33,000 more in assets and savings than he did coming into the relationship[3] plus his share of the parties' pension benefits.
- [130] On the other hand, Ms. Venables moved to Grand Forks with no savings, a car loan, and some personal property of unknown value. Her personal property was probably worth less than Mr. Venables' personal property. On an equal division of family property, she would end up with one-half of the family property worth \$236,345.50 plus half of the pension benefits accumulated by the parties during the relationship (which were mostly Mr. Venables').
- [131] Bearing in mind the caution against tinkering to achieve an elusive "perfect fairness", in my view, I should adjust the division of family property as far as necessary so as not to create a "significant unfairness", but no further. This is the best way, in my view, to respect the intention of the legislation to divide family property equally without creating significant unfairness.

- [132] Taking this approach, I award Ms. Venables \$134,989 of the family property and Mr. Venables the remaining \$337,702 of the family property.
- [133] With this division, Mr. Venables' share of the family property (\$337,702) plus his excluded savings (\$92,889) gives him a total of \$430,591 in assets and savings. Accordingly, he will have \$134,302 more in assets and savings than he did coming into the relationship.[4] He will also receive half of the pension benefits accumulated by the parties during the relationship. He can continue to live in and enjoy the vastly improved home. He will remain steadily employed and earn a good income. He can continue to build his retirement savings.
- [134] With this division, Ms. Venables will likewise be in a more secure financial position than when she moved to Grand Forks. She will have \$134,989 more than she did coming into the relationship, plus half of the pension benefits accumulated by the parties during the relationship. Ms. Venables will remain steadily employed, with the opportunity and ability to continue to increase her earnings and plan for her retirement.
- [135] As should be apparent from the numbers presented, with this division of family property, the parties' positions will be roughly equally better off as compared to when they entered the relationship. In my respectful view, anything less than an equal benefit as compared to Mr. Venables' starting position would be significantly unfair given his contributions of: the home; a good portion of his inheritance; his superior earnings; and his work on the renovations.
- [136] To effect the division of family property, Mr. Venables can simply pay \$6,000 to Ms. Venables and the parties can otherwise retain all of the family property currently in their hands.
- [137] If I had sided with Mr. Venables and found that the home and the amounts in joint accounts or exclusively in his hands that could be traced to his inheritance were excluded property, the total value of family property would have been:[5]
- Family home: $\$230,000 - \$203,400 = \$26,600$
 - Joint term account: $\$48,378 - \$42,600 = \$5,778$
 - Joint chequing account: \$5,778
 - Joint U.S. dollar account: \$5,890
 - Mr. Venables' savings account: $\$15,550 - \$15,550 = \$0$
 - Mr. Venables' RRSPs: $\$90,299 - \$68,039 = \$22,260$
 - Mr. Venables' TFSAs: $\$50,314 - \$13,827 = \$36,487$
 - Mr. Venables' Qtrade account: $\$17,515 - \$9,300 = \$8,215$

- Ms. Venables' savings account: \$4,850
- Ms. Venables' RRSPs: \$47,794
- Ms. Venables' TFSAs: \$49,212
- Total value of family property: \$212,864

[138] In this alternative scenario, on an equal division of family property, Mr. Venables would have excluded property valued at \$352,716 plus one-half of the family property valued at \$106,432 for a total of \$459,148. Ms. Venables would have one-half of the family property valued at \$106,432. As such, she would have to pay Mr. Venables the difference between the value of the family property in her possession and one-half of the value of the family property, namely \$22,557.

[139] In the alternative scenario, Mr. Venables would be about \$163,000[6] further ahead in relation to his position at the commencement of the relationship while Ms. Venables would be \$106,432 further ahead (with each also entitled to half of the parties' accumulated pension benefits).

[140] In my view, such a division would not be significantly unfair. Though Ms. Venables gave up good work when she moved to Grand Forks and made substantial contributions during the relationship, Mr. Venables also made substantial contributions, brought the home into the relationship and inherited a substantial amount of money from his mother. Both parties would be significantly better off than at the commencement of the relationship.

Issue 5: Is Ms. Venables entitled to spousal support?

[141] Ms. Venables claimed for spousal support under both the Divorce Act, R.S.C. 1985, c. 3 [DA] and the FLA. Generally, when the same relief is sought under both legislative schemes, the DA is considered "paramount" and is "preferred": *Hansen v. Mantei Hansen*, 2013 BCSC 876 at paras. 89-90 and *Kraft v. Kraft*, 2018 BCSC 496 at para. 71. I will analyze spousal support issues under the DA, but given the similarities between the statutory regimes, the result would be the same regardless of whether the DA or FLA is applied.

[142] Ms. Venables seeks retroactive and prospective spousal support. Perhaps because she seeks a lump sum award, neither party asked me to go through the formal retroactive support calculation analysis set out in *Kerr v. Baranow*, 2011 SCC 10 at paras. 208-212. If I find that Ms. Venables is entitled to spousal support, I will simply make an award that I consider to be appropriate in all of the circumstances, including the fact that no spousal support has been paid to date.

[143] Spousal support is dealt with under s. 15.2 of the DA. For the purposes of this case, the relevant subsections provide as follows:

Spousal support order

15.2 (1) A court of competent jurisdiction may, on application by either or both spouses, make an order requiring a spouse to secure or pay, or to secure and pay, such lump sum or periodic sums, or such lump sum and periodic sums, as the court thinks reasonable for the support of the other spouse.

Terms and conditions

- (3) The court may make an order under subsection (1) for a definite or indefinite period or until a specified event occurs, and may impose terms, conditions or restrictions in connection with the order as it thinks fit and just.

Factors

- (4) In making an order under subsection (1) or an interim order under subsection (2), the court shall take into consideration the condition, means, needs and other circumstances of each spouse, including
- (a) the length of time the spouses cohabited;
 - (b) the functions performed by each spouse during cohabitation; and
 - (c) any order, agreement or arrangement relating to support of either spouse.

Objectives of spousal support order

- (6) An order made under subsection (1) or an interim order under subsection (2) that provides for the support of a spouse should
- (a) recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown;
 - (c) relieve any economic hardship of the spouses arising from the breakdown of the marriage; and
 - (d) in so far as practicable, promote the economic self-sufficiency of each spouse within a reasonable period of time.

[144] Mr. Venables did not concede but did not seriously contest Ms. Venables' entitlement to spousal support.

[145] Ms. Venables is clearly entitled to spousal support on a compensatory basis under s. 15.2(6) (a) of the DA. She gave up her job as a classroom assistant and the opportunity to earn income as a foster parent to relocate to Grand Forks. The parties also agreed that Ms. Venables would not work full-time in order to have time for housework and to work on the renovations.

[146] Ms. Venables is also entitled to spousal support on a non-compensatory basis under s. 15.2(6)(d). Ms. Venables had only casual part-time work when the parties separated. She has since obtained a permanent part-time position. Nevertheless, she has had to pledge her TFSA's to make a down payment on her condominium and dip into her RRSPs to meet some living expenses. While she may not have experienced "hardship", she has certainly needed some support while taking steps to become truly self-sufficient.

Issue 6: If Ms. Venables is entitled to spousal support, in what form, amount and duration?

[147] If entitlement was established, the parties both submitted that spousal support should be determined under the SSAG.

[148] The SSAG generate ranges for spousal support based on the age of the parties, the length of their marriage, and their incomes. The SSAG also set out a number of factors to assist the Court in determining where within the range an award of spousal support should be made. Though not mandatory, the SSAG have long been recognized as providing useful guidance to courts in determining fair spousal support awards: *Yemchuk v. Yemchuk*, 2005 BCCA 406 at paras. 62-64; *Redpath v. Redpath*, 2006 BCCA 338 at para. 38 and *Chutter v. Chutter*, 2008 BCCA 507 at paras. 100-101.

[149] At s. 6.1, the SSAG expressly state that "[t]he starting point for the determination of income under the [SSAG] is the definition of income under the Federal Child Support Guidelines" [Guidelines]. In this case, I have already set out the parties' past and current incomes as would be determined under the Guidelines.

[150] Specifically, I consider the parties' projected earnings for 2018 to reflect what they can realistically expect to earn this year. Both have been steadily increasing their incomes since 2015, and I have every confidence that trend will continue.

[151] Using Mr. Venables' projected 2018 earnings net of union dues of \$64,579 and Ms. Venables' projected 2018 earnings net of union dues of \$37,575, the "Without Child Support" formula from the SSAG for an eight-year relationship generates the following results:

- Low - \$270 per month
- Mid - \$315 per month
- High - \$360 per month

[152] I note that the marriage was actually slightly longer (by four months) than eight years so these values slightly undervalue monthly spousal support amounts.

[153] In terms of duration, the "Rule of 65" provides for spousal support of indefinite duration in cases like this where the years of marriage (eight) plus the age of the support recipient at the time of separation (58) equals or exceeds 65. This "Rule" is intended to respond to the situation of an older spouse who is economically dependent during a medium length marriage and may have difficulty becoming self-sufficient, given his or her age.

[154] The authors of the SSAG note at s. 7.5.2 that "indefinite" support does not mean "permanent" support. The term simply means that, although support will continue without a time limit, it will still be subject to review and possible variation. Frequently, a review occurs upon the retirement of the payor spouse. The authors note that "indefinite" often means that support will continue until the payor spouse turns 65. In this case, that would be roughly 11 years from now.

[155] Part 9 of the SSAG sets out a number of factors which may either drive up or drive down the appropriate amount of spousal support. Of relevance to this claim are the following factors:

Strength of Any Compensatory Claim

[156] Section 9.1 of the SSAG provides, in part, as follows:

A strong compensatory claim will be a factor that favours a support award at the higher end of the ranges both for amount and duration. A spouse who has suffered significant economic disadvantage as a result of the marital roles and whose claims are based on both compensatory and non-compensatory grounds may have a stronger support claim under the without child support formula than a spouse whose economic circumstances are not the result of marital roles and who can only claim non-compensatory support based upon loss of the marital standard of living.

[157] While Ms. Venables gave up her employment as a classroom assistant and the opportunity to continue fostering children, she found casual part-time employment with an excellent public sector employer in Grand Forks. Ms. Venables earned about the same income in her casual part-time position in Grand Forks as she did in her pre-marital position as a classroom assistant in Camrose. She did not, however, replace her earnings as a foster parent. Soon after the parties separated, Ms. Venables obtained her current permanent part-time position.

[158] Had Ms. Venables not been the person primarily responsible for the housework, it is likely that she would have advanced to a permanent part-time position sooner or perhaps even a full-time position. As it is, I consider Ms. Venables to be in an excellent position to obtain full-time employment in the future. The date when that may occur is, however, uncertain.

[159] Clearly, Ms. Venables has suffered some economic disadvantage as a result of her marital role. At the same time, she has remained in the paid workforce and has advanced in a new career.

[160] In the circumstances, Ms. Venables has a mid-range compensatory claim.

Recipient's Needs

[161] Section 9.2 of the SSAG provides, in part, as follows:

In a case where the recipient has limited income and/or earning capacity, because of age or other circumstances, the recipient's needs may push an award to the higher end of the ranges for amount and duration.

Conversely, the absence of compelling need may be a factor that pushes an award to the lower end of the range, for example, where the recipient already has a solid base of employment or other income. Or the recipient spouse may have reduced living expenses, living in a mortgage-free matrimonial home or subsidized housing or family-provided housing. Or the recipient may be cohabiting with a new partner, thereby reducing her or his expenses.

[162] To her credit, Ms. Venables is not leading an extravagant lifestyle. She has purchased a condominium and is making her mortgage payments. To purchase her condominium, she had to pledge all of her TFSAs. By doing so, she has compromised her ability to support herself in her retirement years. Ms. Venables has stable employment with a public sector employer that offers benefits such as a pension. She is, for the most part, meeting all of her expenses. Her income has been steadily rising and she has the opportunity to obtain a permanent full-time position in the future. She is fast approaching the normal retirement age of 65. She has a workable plan to be secure in her retirement, though it may well require her to work past the age of 65. If so, Ms. Venables is in excellent health and fully willing and capable of doing so.

[163] This factor favours an award of spousal support in the middle of the range.

Needs and Ability to Pay of the Payor

[164] Section 9.4 of the SSAG provides, in part, as follows:

Need and limited ability to pay on the part of the payor spouse may push an award to the lower ends of the ranges. These factors will clearly have special importance at the lower end of the income spectrum. In some cases where the need of the lower-income recipient spouse is pressing, the lower-income payor spouse may also be struggling to maintain some modest standard of living.

Even though the without child support formula uses gross incomes to work out the amounts, it is always important to look at the net income consequences of any particular amount of spousal support, especially for the payor. In longer marriages under this formula, where the formula percentages are higher, this is critical, especially where the payor has large mandatory deductions, including any pension deductions, compared to the recipient. These deductions may be a factor in going lower in the range for amount.

[165] Like Ms. Venables, Mr. Venables does not lead a lavish lifestyle. He earns a decent income that is neither at the very high nor very low end of the income spectrum. He is living mortgage-free in the home and is not struggling to make ends meet. His income is subject to the usual mandatory deductions and pension deductions. Mr. Venables is in a position to support himself now and during his retirement, even if ordered to pay lump sum spousal support.

[166] I consider this factor to be relatively neutral.

Work Incentives for the Payor

[167] Section 9.5 of the SSAG provides, in part, as follows:

The previous factor focussed upon the needs and ability to pay of the payor. Here we want to isolate a separate concern, the need to preserve work incentives for the payor. This concern will be particularly important in long marriages under the without child support formula... The problem will be most acute at low-to-middle income levels.

Here we are not speaking about employment deductions from the payor's pay, discussed immediately above. One obvious concern here is the additional out-of-pocket costs of going to work every day, not covered by any employer and not reflected in income or deductions from pay, e.g. clothing, commuting to work, parking, tools, etc

A less precise, but perhaps more important, concern under this heading is the payor's net income after payment of taxes, deductions, child support (if any) and spousal support, and the marginal gain in this remaining income from any additional gross income earned. This more nebulous work incentive concern will come to the fore where the payor is working in the paid labour market and the recipient is not, especially under the without child support formula. In longer marriage cases under this formula, the percentages of gross income will be high enough to raise this issue, making it a factor to go lower in the range for amount.

[168] In this case, there are no additional costs associated with Mr. Venables' employment beyond the usual mandatory deductions. Further, both Mr. and Ms. Venables are in the paid workforce. Any payment of lump sum spousal support will not discourage Mr. Venables from maximizing his income.

[169] This factor is also relatively neutral.

Property Division and Debts

[170] Section 9.6 of the SSAG provides, in part, as follows:

Underpinning the Advisory Guidelines is a basic assumption that the parties have accumulated the typical family or matrimonial property for couples of their age, incomes and obligations, and that their property is divided equally under the matrimonial property laws. Significant departures from those assumptions may affect where support is fixed within the ranges for amount and duration.

An absence of property to be divided might suggest an award at the higher end of the range. If the recipient receives a large amount of property, the low end of the range might be more appropriate

[171] In this case, Ms. Venables will be receiving a meaningful award from the division of family property. Though she will be in a much better financial position than when she entered the relationship, the division of family property alone is inadequate to make Ms. Venables self-sufficient and secure in her retirement.

[172] This factor, therefore, favours an award in the middle of the range.

Self-Sufficiency Incentives

[173] Section 9.7 of the SSAG provides, in part, as follows:

Self-sufficiency incentives may push in different directions. As often happens under the current case law, support might be fixed at the lower end of the ranges to encourage the recipient to make greater efforts to self-sufficiency, although imputing income also goes a long way towards responding to this concern. On the other hand, the need to promote self-sufficiency might lead to an award at the higher end of the range where this could mean that a recipient spouse obtains re-training or education leading to more remunerative employment and less support in the long term

[174] Ms. Venables is already highly trained. She does not require support to pursue further education or training. She has secure employment with a public sector employer. She is healthy and able to hold full-time employment. Part of Ms. Venables' plan to be secure in her retirement is to work full-time. To date, I have to say, that her efforts to find full-time employment have been half-hearted. She has heard about full-time positions "through the grapevine" but has not closely monitored the posting of positions, as she should have been doing to fulfill her obligation to become self-sufficient. In the circumstances, it is important to maintain self-sufficiency incentives for Ms. Venables.

[175] This factor favours a somewhat reduced award of spousal support.

Conclusion on Spousal Support

[176] Having set out and analysed various relevant factors, I now turn to make an award of spousal support that I consider appropriate in the circumstances.

[177] The law is clear that all of the objectives set out in s. 15.2(6) of the DA must be taken into account in determining an appropriate award of spousal support and that no one objective is paramount over the others: *Moge v. Moge*, [1992] 3 S.C.R. 813 at para. 53.

[178] The law is also clear that making an award of spousal support is not a mechanical task. In *Bracklow v. Bracklow*, [1999] 1 S.C.R. 420, McLachlin J., as she then was, put it this way at para. 36:

There is no hard and fast rule. The judge must look at all the factors in light of the stipulated objectives of support, and exercise his or her discretion in a manner that equitably alleviates the adverse consequences of the marriage breakdown.

[179] While the "Rule of 65" provides for indefinite spousal support, both parties have asked for a lump sum award to enable them to make a "clean break". Given the length of the marriage, Ms. Venables' needs, the results of the division of family property, and Ms. Venables' plan and ability to become self-sufficient, I agree that a lump sum award is appropriate.

[180] Regarding quantum, I have run a number of net present value calculations to determine lump sum awards under the SSAG based on a mid-range award for five, ten and 13 years[7], as well as to the end of Ms. Venables' life expectancy, as determined by the software I used for the calculations.[8] The results of the net present value calculations are as follows:

- Five years - \$14,005
- Ten years - \$27,597
- 13 years - \$35,558
- To Ms. Venables' life expectancy - \$65,856

[181] After carefully considering all of the circumstances, I consider that a lump sum award of spousal support of \$25,000 will "equitably alleviate the adverse consequences of the marriage breakdown" by recognizing that:

1. there are both compensatory and non-compensatory bases for awarding spousal support to Ms. Venables;
2. Ms. Venables will retain her personal savings, RRSPs, TFSAs and the money she withdrew from the parties' joint accounts, and will also receive a payment from Mr. Venables of \$6,000 and half of the pension benefits accumulated by the parties during their relationship. As such, she will be able to meet her needs through a combination of continuing to increase her earnings, and judiciously using her share of the family property and this award of spousal support; and
3. Mr. Venables will continue to be in a good financial position.

[182] Had I divided the family property with the additional exclusions set out earlier in these reasons, Ms. Venables would have had to pay Mr. Venables \$22,557. To do so, Ms. Venables would have had to cash her RRSPs or offset the division of family property with her spousal support award. Either way, her ability to meet her needs and be secure in her retirement would have been significantly compromised. To make up for this deficit, I would have awarded Ms. Venables spousal support higher in the range.

[183] I ran a number of further net present value calculations for spousal support at the high end of the range. The calculations produced the following results:

- Five years - \$16,015
- Ten years - \$31,556
- 13 years - \$40,660
- To Ms. Venables' life expectancy - \$75,303

[184] After weighing all the factors, if I had excluded additional property as set out earlier in these reasons, I would have awarded Ms. Venables lump sum spousal support of \$40,000 to ensure her ability to be secure in her retirement, without compromising Mr. Venables' ability to the same.

[185] In the result, the final outcome would be about the same[9] regardless of how I determined exclusions and the division of family property.

Conclusion and Order

[186] For all of these reasons, I make the following orders:

1. Subject to s. 12 of the DA, the claimant, Edith Irene Venables, and the respondent, Martin Wayne Venables, are divorced from each other. The divorce takes effect on the 31st day after the date of this order.
2. Mr. Venables shall retain ownership of the following excluded property:
 - a. Portion of Mr. Venables' RRSPs valued at \$68,039;
 - b. Portion of Mr. Venables' Qtrade account valued at \$9,300; and
 - c. Mr. Venables' savings of \$15,550.
3. The following is family property:
 - a. The family home at 7229 12th Street, Grand Forks, BC, with a current value of \$230,000;
 - b. Joint term account with a balance at separation of \$48,378;
 - c. Joint chequing account with a balance at separation of \$5,778;
 - d. Joint U.S. dollar account with a balance at separation of \$5,890;
 - e. Portion of Mr. Venables' RRSPs valued at \$22,260;
 - f. Mr. Venables' TFSAs valued at separation at \$50,314;
 - g. Portion of Mr. Venables' Qtrade account valued at \$8,215;
 - h. Ms. Venables' savings at separation valued at \$4,850;
 - i. Ms. Venables' RRSPs at separation valued at \$47,794; and
 - j. Ms. Venables' TFSAs at separation valued at \$49,212.

4. The family property shall be divided unequally.
5. Mr. Venables shall be entitled to family property valued at \$337,702.
6. Ms. Venables shall be entitled to family property valued at \$134,989.
7. The unequal division of family property shall be effected by Mr. Venables paying \$6,000 to Ms. Venables and each party otherwise retaining all of the family property currently in her or his possession.
8. Each party shall transfer any interest she or he may have in any family property in the other party's possession to the other party.
9. Under s. 15.2 of the DA, Mr. Venables shall pay lump sum spousal support to Ms. Venables of \$25,000.
10. By consent, the equal division of the parties' private pension benefits accumulated during the relationship shall be effected by Mr. Venables paying to Ms. Venables \$29,246.
11. By consent, the parties will divide Canada Pension Plan credits in accordance with the applicable legislation for the period commencing July 1, 2007 and ending on November 5, 2016.

[187] The parties have had divided success before me. Unless the parties raise costs issues within the next 30 days, each party shall bear their own costs.

[188] I wish the parties the best and thank counsel for his able assistance throughout.

"L.S. Marchand J."

MARCHAND J.

- [1] (the amount derived from his inheritance that made its way into the TFSAs on February 2, 2016) + (the amount derived from his inheritance used to purchase a non-redeemable investment in his name on September 18, 2015) + (the pro rata amount derived from Mr. Venables' inheritance that was used to invest in his TFSAs in January 2015)
- [2] \$4,500 + \$5,500 + \$5,323
- [3] \$33,000 is roughly the difference between the value of the home at the commencement of the relationship + Mr. Venables' excluded savings, namely \$296,289, and his one-half interest with an equal division of family property + his excluded savings at the end of the relationship, namely \$329,234.50.
- [4] \$134,302 is the difference between the value of the home at the commencement of the relationship + Mr. Venables' excluded savings, namely \$296,289, and his one-half interest in the family property + his excluded savings at the end of the relationship, namely \$430,591.

- [5] Where calculations are shown, they have been completed by subtracting excluded amounts from the value of family property set out in the table of the Value of Family Property to be Divided above.
- [6] \$163,000 is roughly the difference between value of the home at the commencement of the relationship + Mr. Venables' excluded savings, namely \$296,289, and his one-half interest with an unequal division of family property + his excluded savings at the end of the relationship, namely \$459,148.
- [7] I chose five and ten years to take into account that Ms. Venables has a reasonable plan to become economically self-sufficient. I chose 13 years because Mr. Venables was 52 when the parties separated and will turn 65 roughly 13 years later.
- [8] DivorceMate
- [9] With my order, Ms. Venables will receive half the value of the family property (\$134,989) + spousal support (\$25,000) + pension equalization (\$29,246) = \$179,235. If I had excluded additional property, Ms. Venables would have received half the value of the family property (\$106,432) + spousal support (\$40,000) + pension equalization (\$29,246) = \$175,678.

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