Court of Queen's Bench of Alberta

Citation: Rusnak v Covey, 2014 ABQB 390

Date: 20140625
Docket: 4801 142576
Registry: Calgary

Between:

Tracey Lynn Rusnak

Plaintiff

- and -

John Alan Covey

Defendant

Reasons for Judgment
of the
Honourable Madam Justice R.E. Nation

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[1] This trial was originally heard by the late Justice Stevens. Counsel were advised by Chief Justice Wittmann in April, 2014 that Justice Stevens could not render the judgment in this case. By agreement of counsel, under rule 13.1 of the *Alberta Rules of Court*, I was appointed to review all the evidence, exhibits, and argument and act in the place of Justice Stevens to render judgment in this matter.

[2] The parties have been separated for over four years. This trial deals with: some details about the care of their children; the resulting child support; entitlement to and quantum of any further spousal support and the division of matrimonial property.

Issues

[3] The issues before the Court are:

1. The Parenting Arrangement for the Children
2. Support for the Children
3. Property Exempt from Division
4. The Valuation of the Wizard Lake Cabins
5. Property Used During Separation
6. Property Acquired After Separation
7. Other Property in Contention
8. Spousal Support

Facts

[4] The relevant background facts decided from the evidence at trial are:

1. The parties married on April 8, 1995, they have two children, Cassandra and Reid who are currently 16 and 14.
2. At the time of the marriage, Ms. Rusnak had formal training as a secretary and was working in that capacity. She had a child from a previous relationship when she married. Starting during her pregnancy with Cassandra, she stayed at home when the children were young, and ran a registered day home for 5 years. Mr. Covey worked outside of the home as a land man.
3. The parties separated in November, 2009, after 14.5 years of marriage. The marriage was formally dissolved by an order granted in October, 2013.
4. In 2009, Mr. Covey moved out of the matrimonial home. Shortly thereafter, by agreement, he liquidated certain investments in order to buy a home in the same neighbourhood as the matrimonial home.
5. The parties retained joint custody of the children. The children lived alternate weeks with each parent, with some variations due to the children's timetables and wishes, as well as special matters that arose for the parents. Reid has generally stuck to that program. Cassandra has spent slightly more time with her father, than her mother.
6. After the parties' separation, Mr. Covey continued to make the payments in relation to the matrimonial home and the two cottages which the parties jointly own at Wizard Lake. In addition, he covered many other family expenses, up until a court order dealing with support. He paid child support based on his line 150 income from December, 2009 until November, 2012.
7. The first court order in relation to financial matters was granted on June 2, 2011. Justice Horner directed that Mr. Covey pay $10,000 on a without prejudice, uncharacterized basis to Ms. Rusnak, pending the full hearing of her support application. At trial, this amount was characterized as spousal support by agreement.
8. On September 8, 2011 Justice Hunt-McDonald determined that Mr. Covey's guideline income was $185,000 and Ms. Rusnak's guideline income was $24,000. She ordered that Mr. Covey was to pay periodic spousal support of $3,807 a month. $760 a month was to go to the payment of property taxes and property insurance on the matrimonial home and the two cabins, and $3,047 was to be paid directly to Ms. Rusnak. Ms.

Rusnak was directed to pay the utilities for the Wizard Lake cabins, the condominium and the matrimonial home, as she had effective use of those four properties.

9. The parties owned a condominium, which was registered in the name of Mr. Covey, which had been purchased to accommodate Ms. Rusnak's mother. After the latter's hospitalization and ultimate placement in an assisted living situation, Ms. Rusnak had exclusive control of the property. The parties agreed that she could use it as security for a line of credit to access funds after the separation in her efforts to pursue a laser and spa business opportunity. By an order granted November 20, 2012, the condominium was ordered to be listed for sale. It was directed that on a without prejudice basis as to the final division of matrimonial property, Ms. Rusnak was to receive the entire proceeds of the sale as an advance distribution of matrimonial property.
10. The November, 2012 order also directed that $50,000 from Mr. Covey's Devon RRSP was to be transferred to Ms. Rusnak as an advance distribution of matrimonial property. At that time, the spousal support payments directed to be made under the order of Justice Hunt McDonald were suspended. This occurred since Mr. Covey's employment with Devon was terminated in June, 2012. Mr. Covey did not accept the offer of severance made to him at that time. He hired a lawyer to advise him and the quantum of his severance was still outstanding at the time of the trial. He had not found employment up to the date of trial, and was pursuing some consulting work while seeking employment.
11. After the separation, Ms. Rusnak started to live half of her time at Wizard Lake, firstly in the larger cabin and subsequently in the smaller cabin. She rented out the larger cabin starting in February, 2013, for a period of one year, keeping the rental of $1,000 a month. She did renovations on the two cabins to upgrade them, and has looked after their maintenance since separation. The rental and renovations were all done without any prior consultation with Mr. Covey.
12. Ms. Rusnak, after the separation, did some upgrades on the matrimonial home, and cut down several trees in the yard, again without consultation with, or the agreement of, Mr. Covey.
13. Mr. Covey's employment with Devon, up to the point it was terminated, involved a salary, with the potential for a bonus and also stock options and restricted stock units (RSU). His base salary was around $160,700 in 2010, however his declared income includes his salary, bonus, and the proceeds from the disposition of any stock options or RSU's. His income declared on his tax returns was as follows: 2009- $437,922, 2010- $298,789, 2011- $261,247 and 2012- $148,854.
14. Ms. Rusnak at the time of the separation ran a home cleaning business. She declared total income in the range of $16,563 to $27,505 in the years between 2005 and 2009. After separation, Ms. Rusnak stopped cleaning houses and wished to get some training to work in a spa. She purchased some laser equipment with the idea of running a home based business doing laser treatments. This did not come to pass. Later, this machine was rented out and she supported herself by doing casual labour and renovating. She was involved in starting a firewood business at the time of trial.
15. In 2010, Ms. Rusnak declared gross business income of $21,488 (net $17,500), employment T4 income of $7,987, and net rental income of $2,056. In 2011, she declared a negative rental income of $804, and a gross business income of $16,675

(net $3,081). In 2012, she declared a gross business income of $30,293 (net $6,519), as well as net rental income of $1,402. In addition to her business income, she declared the collapse of various RRSP investments and the spousal support payments she received, which put her total income in the last three years between $41,228 and $53, 892.

16. The parties agreed at trial that there would be no retroactive adjustment for child or spousal support prior to November, 2012, the date when the court ordered that Ms. Rusnak be given exclusive use of certain assets and cancelled the support payments. It was agreed that child and spousal support was paid based on the parties' line 150 incomes to November, 2012. In addition the parties agree on the values of some matrimonial property. These values are reflected on the list of property, schedule A, without further comment in this judgment.

Parenting Issues

[5] The mother's position is that the parties should continue to have joint custody of their children, alternating their residential care with each parent weekly. The mother favours this current arrangement, which accommodates the children having input by making some changes depending on their wishes.

[6] The father's position is that the parties should continue to have joint custody of the children, but he should have residential care. He is willing to give generous access to the mother. He testified to numerous communication problems around parenting. He saw the mother's presence at Wizard Lake as problematic at times in terms of parenting, and he portrayed her as less diligent than himself about insisting the children attend school and sporting events.

[7] The issue in relation to parenting must be evaluated in the context of teenage children. Both children are doing well, and have been able to accommodate the switching back and forth between their parents. Reid has more frequently stuck to the schedule; Cassandra has spent more time with her father, as she wanted to stay in Calgary during some summer time periods, when her mother was living at the Wizard Lake property. Also, there was a short period of friction between Cassandra and her mother, during which time she chose to live with her father.

[8] Both parents love their children, and the children love both parents. The children have managed to navigate their way through the separation and four years post-divorce. It has been no small achievement that this couple has managed to maintain a largely shared parenting regime, as they both acknowledged that they have difficulty communicating. E-mails that were marked as exhibits at the trial confirm this. Ms. Rusnak is opinionated and bold, and clearly wants to live as much as possible at Wizard Lake. She comes to Calgary for the alternate weeks when the children live with her, but has at times asked Mr. Covey to take the children when she felt she needed to stay at the Lake for various reasons. Mr. Covey acknowledged that he has diabetes and stress affects his sugar levels. He has battled depression and stress since the initiation of these proceedings, and dislikes Ms. Rusnak’s confrontational style and her last minute requests to change schedules.

[9] A consideration in looking at joint custody and the day to day residence of children is the level of cooperation and communication between the parties. Often, joint custody cannot be effective without a high level of cooperation and good communication. Here, despite issues in communication, the regime between separation and trial has worked without court involvement.

[10] When I consider the age of the children, it is clear that they will become increasingly involved in any decisions about their residential arrangement. I do not find from the evidence that it is in their best interest to change the arrangement which has been the status quo for the last four years and leaves them in the residential care of both parents, maintaining equal contact with each, and able to negotiate changes to the weekly rotation, if they wish to.

[11] The parents will continue to have joint custody of the children. The children will live with each parent on an alternating weekly schedule. The children are free to stay with their father at times when their mother is at Wizard Lake, if they do not wish to leave Calgary.

[12] All school holidays shall be split equally between the parents. The father and mother shall alternate Christmas holidays, one taking the even years, the other the odd years. They shall also alternate spring school breaks, one taking even years, the other taking odd years. The week to week access is suspended during these periods and will resume after each school holiday period.

[13] The parties shall continue to use e-mail as a way to communicate about the children.

Child Support

[14] The parties will have filed their 2013 tax returns. The section 3 offset payment shall be determined by their line 150 total incomes. Section 7 expenses shall be split in a proportionate share to their incomes. If Mr. Covey has settled his severance claim, and it was not tax sheltered, so that it shows up as income on line 150, it is not to be taken into account as income to determine section 3 or section 7 payments, as a result of the way I have dealt with that settlement later in this judgment.

[15] Each party can expend discretionary section 7 amounts up to $1,000 a year without consultation. After that, section 7 expenses can only be incurred with consultation and agreement, if the party paying expects proportionate sharing of the expense.

[16] The parties will exchange their tax returns by June 1 of each year and will adjust their section 3 amounts and section 7 proportionate ratio of sharing to start on July 1, using the previous year's line 150 declared incomes.

Property Exempt from Distribution

[17] Numerous exemptions were claimed: one by Ms. Rusnak for a gift, and several by Mr. Covey relating to property that he owned at the time of the marriage. This requires a discussion of the law relating to exemptions, and then a discussion of each claim.

1. The Law

1.1 Exempt Property

[18] The *Matrimonial Property Act*, RSA 1980 c M-9 (the *Act*) in section 7 defines exempt property. It can be property that was acquired: by a spouse by gift from a third party; by inheritance; by a spouse before the marriage; from an award or settlement in tort; or from the proceeds of an insurance policy not for property and unrelated to a loss of both spouses. The regime set up under section 7 is that the market value of exempt property at the time of the marriage, or on the date it is acquired, whichever is later, is exempted from distribution under the *Act*. Section 7(3) further provides that the court, in considering any distribution of property,

should distribute in a manner that it feels just and equitable, the difference between the exempted value of the property and the market value at the time of trial of exempt property (or property acquired as a result of an exchange for the original exempt property). The effect of section 7(4) is that the presumption of equal sharing that applies to matrimonial property acquired during the marriage, does not exist in relation to property falling under section 7(3), and the court is to distribute that property in the manner it considers just and equitable, looking at the factors set out in section 8.

[19] It is well established law in Alberta as a result of cases such as *Roenisch v Roenisch*, 115 AR 255 (CA), and *Jackson v Jackson* (1989), 97 AR 153 (CA) that exempt property must be traced to property existing at the time of trial. Also, the onus is on the person claiming the exemption, to prove the tracing. The value of an exemption will be compromised when exempt property is put into property in joint names, or otherwise transferred, lost or used during the marriage. (See: *Harrower v Harrower* (1989), 97 AR 141 (CA)).

1.2 The Increase in Value of Exempt Property

[20] In terms of the increase in value of exempt property, the law is clear that the presumption of equality cannot be applied to this classification of property. A court must look at the full range of the factors set out in section 8, in determining what is just and equitable. In *Sparrow v Sparrow*, 2006 ABCA 155, the Court of Appeal pointed out that, although a factor by factor analysis is not necessary, one has to keep in mind the section 8 factors. This consideration should include an overall view, considering factors such as: the reason for the increase in value of the property, (i.e. was it solely as a result of the type of property or the efforts of the parties?) as well as the specifics of how the property was treated in the matrimonial regime. Every case must be considered on its own merits.

[21] There are many different results in cases which have addressed specifically the increase in value of exempt properties. The Court of Appeal in the *Sparrow* case, decided the appropriate sharing of the increase in value of cottage lake property, which was originally transferred to the couple by the husband's parents was on a 70/30 basis. The property had increased in value from $160,000 at the date of marriage to $1,055,000 at separation. The Court considered that: the parents of the husband and his brother had continued to pay the taxes on the lake property; there had been no renovations; the increase in value was largely due to market forces; and the couple did nothing more than annual maintenance. In another Alberta case, the Court of Appeal in *Mazurenko v Mazurenko*, [1981] 23 RFL (3d) 113 excluded from distribution the increase of value in a quarter section of farm land gifted to the husband after separation, finding it had never been brought into the matrimonial regime, and that it was not used for the mutual benefit of the spouses.

[22] At the trial level, Alberta Courts have decided on various percentages of sharing, depending on the situation. In *Gardiner v Gardiner*, (1996) 191 AR 139 (QB), the increase of value in investments that were exempt to the wife were divided equally, despite the fact that they were held in her name, or jointly with her father. In *Hopwood v Hopwood* (1983) 37 RFL (2d) 81, (Alta QB), a trial judge divided unequally the large increase in the value of the exempt property after separation as well as the increase in the value over the marriage of the law practice, owned by the husband at marriage. In *Kremp v Kremp* (1988), 92 AR 188 (QB) there was an unequal division of the increase in value in a rental home held by one party. In *Peters v Peters* (1999), 253 AR 167 (QB) the increase in value of US investments held by the wife was

completely excluded from division, on the basis that it was essentially the wife's inheritance, and she did not stand to benefit from any inheritance by the husband, among other considerations.

[23] The cases related to the increase of value of an exempt asset are many and varied, fact dependent and are based on the question of what is just and equitable in all the circumstances of the case.

2. The Matrimonial Home

[24] Mr. Covey owned the matrimonial home at the time of the marriage, and it remained registered in his sole name throughout the marriage. Mr. Covey purchased the home for $180,900 in March, 1992. He took out a mortgage to help finance the purchase. The only evidence of the value of the home is the amount paid for its purchase and a market valuation done for the vendor by the realtor in May 1991, suggesting a list price of $189,900 and a selling price in the range of $185,000 to $187,000. No specific valuation was done as at the date of marriage. The evidence is clear that the mortgage at December 31, 1995 was $93,752. Mr. Covey asked for an exemption of $93,248, the difference between $187,000 (an upside for the four years since purchase) less the mortgage of $93,752.

[25] Counsel for Ms. Rusnak argued that although there was equity in the home brought into the marriage by Mr. Covey, the exact value in 1995 was not proven, so there is a basis to reject the exemption. Mr. Covey testified that he did not think the value changed materially between 1991 and 1995. This was not challenged in cross examination, nor was any contradictory evidence called. In the circumstances, I will allow Mr. Covey an exemption of the amount of $87,148 in the matrimonial home, being the value paid ($180,900) less the mortgage at the time of marriage ($93,752).

[26] Further, Mr. Covey argued that any increase in the value of the equity of the home should not be divided equally, but rather on a 70/30 basis. The increase in value of the matrimonial home is not known, as the parties agree that it should be sold to determine its equity, because neither of them wish to retain the property. The parties lived in this home as their residence, and raised their children there. Ms. Rusnak testified that she made renovations to the home after separation. No evidence was called as to why the matrimonial home stayed in the name of Mr. Covey, as opposed to the joint names of the couple. All the evidence suggested that the parties pooled their resources and fortunes throughout the marriage. The matrimonial home is generally considered a core asset of the marriage. Any increase in value will be largely market driven. The mortgage has been treated as a matrimonial expense, and Ms. Rusnak contributed capital to pay it down.

[27] In the circumstances, especially when one considers the use of the asset and that it was not segregated but became the family home, it is just and equitable that any increase in value be divided equally between the parties. The exemption is limited to the equity held in the residence when the couple married, which is set at $87,148.

3. The RBC RRSP

[28] Mr. Covey had an RRSP account at the time of his marriage. Statements of this account indicated that the value in June, 1995 was $114,894. The documentation entered into evidence clearly traced the RRSP and the shares in it, as it moved from Moss Lawson to HSBC to its current placement with RBC Dominion Securities. The value at trial of the RRSP was $998,648. As well as tracing the actual account from one institution to another, Mr. Covey was able to

show that it was a number of investments, especially the Nu-Sky Energy Ltd. shares and Quebec Hydro securities, that continued to be the majority of the contents of the RRSP accounts until 2003. The dramatic increase in value in the RRSP was largely through the increase in value of these particular equities. For example, the Nu-Sky shares valued at $14,550 in 1995 had risen to $543,045 by June of 2003 when a corporate reorganization meant they were converted to cash. Mr. Covey established that nothing was taken out of the RRSP until 2013, after separation. He argued that little of the increase in value could be attributed to new contributions over the marriage. The statements show that contributions to the RRSP were: $14,067 for 1996; $15,220 for 1997; $3,400 for 1998; and $66.51 for 1999. Thus the contributions to the RRSP were minor in terms the increase of value of the RRSP, which was largely as a result of the increase of value of some specific shares in the RRSP.

[29] Mr. Covey's counsel argued that most of the increase in the value of the RRSP should be disproportionately divided between the parties on a 70/30 split in favour of Mr. Covey up to 2003, and after the cash in of the Nu-Sky shares, when the tracing of value could not be attributed to Nu-Sky, a 50/50 sharing would be just and equitable. There was no involvement by Ms. Rusnak in this account, and a large part of the increase in value was the growth of particular investments originally in the account at the time of marriage.

[30] Ms. Rusnak was willing to acknowledge an exemption for the value of the RRSP at the time of marriage ($114,894) but opposed any uneven split of the increase in value, arguing that it was not just and equitable to do so, in light of the length of marriage and the matrimonial regime. In addition, it was shown that some matrimonial funds went into the RRSP after marriage and were co-mingled. She argued any increase in value should be shared on a 50/50 basis.

[31] It is clear from the evidence that the RRSP was owned by Mr. Covey at the time of the marriage. The detailed tracing carried on here, shows a tracing of the actual original shares of Nu-Sky and Int-Quebec in the RRSP. The Nu-Sky shares had a particular connection to Mr. Covey's work product (being a director) before marriage. The total value of the RRSP in 2003, when NuSky had to be converted to cash due to a takeover, came to a total of $580,910. Mr. Covey argued that if one deducted known and possible contributions during the marriage to 2003 of roughly $32,400 and the original exemption of $114,894, one would clearly show an increase in value of $433,616 due to the original shares, before the cash was mixed into new assets in the RRSP. He proposed to receive 70% of that amount.

[32] The uneven split suggested by Mr. Covey's counsel would mean he would receive: (1) the first $114,894 as exempt; (2) 70% of the traced growth attributable to specific shares until converted to cash in the RRSP in 2003 - $303,531 (70% of $433,616); and (3) $220,276 (50% of $440,553 - the contributions and growth after 2003) for a total of $638,286. Ms. Rusnak would receive $130,085 (30% of $433,616) and $220,276 (50% of $440,553) for a total of $350,361. This would be in contrast to the split suggested by Ms. Rusnak's counsel that recognized the original exemption, but divided any growth equally, which would result in a split of the original $114,894 plus $441,877 (50% of the increase over the marriage of $883,754) for a total of $556,771 to Mr. Covey and $441,877 to Ms. Rusnak.

[33] What makes this case unique, is that generally such dramatic growth in a RRSP cannot be traced to certain shares that stayed intact from the exempt property. It is clear that the substantial basis of the growth in this RRSP between the marriage and 2003 was on account of the growth of the Nu-Sky shares. Any contributions of cash to the RRSP made by Mr. Covey during this period

were not significant. The use of a certain percentage to 2003, and another percentage after, is not supported in case law. The *Act* talks about the increase in value between marriage and trial as being distributed in a way that is just and equitable. This does not usually include an uneven percentage on a specific increase in value to a date, and an even percentage thereafter. The cases generally look at the whole increase in value of an exempt property over the marriage. Rather than concentrating on tracing distinct shares, the court considers the section 8 factors to arrive at a just and equitable division of the whole increase of value to trial. The use of differing percentages is unnecessarily complex.

[34] One has to review the factors in section 8, as well as the asset and its use in the marriage (saving for retirement), and decide what is just and equitable? The section 8 factors when reviewed, especially factors (a), (d) and (e), trend toward an equal division of property. Factors (b) and (c), when applied to the activity in this RRSP until 2003, trend towards an uneven split. I have to consider the unique evidence in this case, and especially the tracing that can be done to specific shares converted into cash, where the large increase in value occurred to 2003 and then the shares were converted to cash and re-invested in the RRSP. There was some co-mingling of funds. This was the vehicle for retirement saving for the couple until Mr. Covey's employment with Devon in 2001 when contributions were restricted.

[35] As a result of the above analysis, I find it is fair and just to distribute the increase in value of the RRSP 60% to Mr. Covey and 40% to Ms. Rusnak. Accordingly, the RRSP will be distributed $114,894 plus $530,252 (60% of $883,754) = $645,146 to Mr. Covey and $353,501 (40% of $883,754) to Ms. Rusnak.

4. Inheritance from Shirley Covey

[36] Mr. Covey proved that he received $50,000 in November, 2012 as a bequest from the estate of his Aunt. $15,560 can be traced to a RBC TFSA Account, with a current value of $16,240. The balance was placed in an RBC Canadian Dollar Account with a current value of $34,500. This exemption has been proven. The inheritance money was received after separation and the small increase in value is post separation also. Both of these accounts shall be the sole property of Mr. Covey.

5. Collier Painting

[37] The evidence established that Mr. Covey received this painting as a gift from his parents. It still exists, and is therefore exempt property. No evaluations were presented at trial, either of its value at the time of the gift or currently. In the circumstances, the painting will remain the sole property of Mr. Covey.

6. Gift to Ms. Rusnak

[38] Ms. Rusnak testified that she received a gift of $30,000 from her father, and she used this money to pay down the mortgage on the matrimonial home. Mr. Covey admitted that he was aware she received monies of between $20,000 and $30,000 and he knew of the use made of the funds. Ms. Rusnak argued that she is entitled to $30,000 from the proceeds of the sale of the home as an exemption.

[39] I find that Ms. Rusnak has proven that she did receive $30,000 by way of a gift and it went to pay down the debt on property which still exists, specifically in the matrimonial home. However, I must consider that the matrimonial home was registered in the sole name of Mr. Covey, and whether that affects the exemption claimed. There is no evidence about any

discussions at the time of the pay down of the mortgage and no evidence it was intended as a gift. As a result, Ms. Rusnak is entitled to an exemption of $30,000 for these funds.

Valuation of the Wizard Lake Cabins

[40] During the marriage, the parties bought two cabins, which are side by side at Wizard Lake. The larger cabin (#100) was purchased in July 2001, largely due to Mr. Covey's attraction to the area and his wish to have a family cabin. Shortly afterwards, the owner of a smaller cabin (#120) next door indicated a wish to sell his property, and the couple decided to purchase it. Both cabins were placed in the parties' joint names and are free from any financing.

[41] The couple used the Wizard Lake properties as a holiday place. Upon separation, Ms. Rusnak had the exclusive use of the properties. Mr. Covey attempted to access them on a few occasions, but it was clear from the evidence that Ms. Rusnak took charge of them. She started to live in the large cabin, and then did renovations to both, living in one during the renovations on the other. Ultimately by 2013, Ms. Rusnak was occupying the small cabin and renting out the larger cabin.

[42] The properties were evaluated by two appraisers, both of whom were qualified as experts in the field of property appraisal, and both of whom testified at trial. Mr. Jeffrey testified as part of Ms. Rusnak's case. He valued the larger cabin at June 25, 2013 at $380,000, and the smaller cabin at $375,000 at the same date. Mr. Brooker was called as a witness in Mr. Covey's case. He valued the larger cabin at February 6, 2013 at $455,000 and the smaller cabin, at the same date, at $425,000.

[43] Both appraisers had evaluated the two cabins in 2010, the year of separation, and again in 2013. They disagreed on the value of the cabins, but both agreed that the values had gone down between 2010 and 2013, due to a weakening of the market for cottages. Both appraisers agreed that there are not many sales at Wizard Lake; therefore both used one or more properties from Pigeon Lake as comparables. Mr. Brooker testified that in 2012 there were only two properties that sold on Wizard Lake and in 2013, there was only one sale.

[44] One of the major differences between their valuations was how to adjust the few sales at Wizard Lake to make them comparable to these properties, and also, the use of comparables from Pigeon Lake. Neither appraiser used the same comparables, making the comparison of their reports more challenging. Mr. Jeffrey used two sales on Wizard Lake and one on Pigeon Lake as comparables. Mr. Brooker used three properties from Pigeon Lake in the evaluation of both cabins. He discounted Mr. Jeffrey's "Enchantment" comparable as he did not think it representative as a result of personal information he knew about the circumstances of the sale. Also, he testified that the only other sale on Wizard Lake, which was used by Mr. Jeffrey, was not a good comparable for these cabins.

[45] There was a difference between the appraisers as to how they viewed the comparables in terms of being lakeside, or fronting onto Crown land before the lake. They disagreed on the discretionary adjustments made for things like a garage, and a location at the end of the lake, as opposed to the middle. Mr. Jeffrey adjusted values downwards, as he was of the opinion that where these two cabins were situated, the lake was a bit weedy and the beach not as sandy as at other cabins at Wizard Lake. Mr. Brooker testified that there are no sandy beaches at Wizard Lake and the weeds in Wizard Lake must be raked, so most property owners find that it is a weedy lake. Thus, he did not agree with the negative adjustments made by Mr. Jeffrey.

[46] The difference in the effective date of the appraisals (February 6 or June 25) is of little significance, as all comparables relate to sales in the previous spring to autumn, the period when cottage properties are usually sold. It is clear that the value of the cottages is difficult to determine, due to the lack of sales in a depressed market. Mr. Brooker had a more personal knowledge of the Wizard Lake area, and that was reflected in how he viewed the comparables. I preferred his assessment of how values are affected by the property being directly lakeside as opposed to abutting on a Crown portion of land before the lake. In addition, after reviewing the attributes of the property, I had difficulty accepting that there would only be a difference of $5,000 between the two cabins, as suggested by Mr. Jeffrey. As a result of the above discussion, I accept Mr. Brooker's valuations and hold that for the purpose of the matrimonial property division, $425,000 is the value of the smaller cabin and $455,000 is the value of the larger cabin.

[47] The sale of the Wizard Lake cabins will trigger some tax consequences. No direct evidence was called in relation to this, but clearly whether upon disposition between the parties, or by sale to a third party, each party as a joint owner will suffer tax consequences. Some suggestion was made in argument that Ms. Rusnak might be in a position to declare a cabin as a principle residence, but no evidence was lead about what property she could or would be declaring as her primary residence for tax purposes.

[48] At trial both parties were of the opinion that the larger cabin would have to be sold, but both wanted to retain the smaller cabin if financially possible, once the distribution of property was known. As both cabins have been evaluated, they should be dealt with on those values for consistency in valuation. Also, on the evidence, I cannot determine the tax effect to each party if one cabin is sold and one kept. I have to also consider the difficulty in communications between the couple if they had to agree on a realtor, and the timing and details of a sale. I find the fairest and best way to deal with the two cabins is to direct an immediate transfer at the values set in this judgment of one cabin to one party, and the other cabin to the other party. This will likely trigger capital gains to both parties on each transfer. Each party can then make their own separate decision to keep or sell, and if they sell, decide when and how, without the need to consult the other. As a result, the larger cabin is to be transferred from the parties jointly to Mr. Covey at a value of $455,000 and the smaller cabin shall be transferred from the parties jointly to Ms. Rusnak at a value of $425,000.

[49] Both properties share a well. The properties were valued by the appraisers on the basis that the small cabin would continue to share the well on the larger cabin property. Both counsel indicated their clients agreed that a caveat, or a written agreement, was necessary to legally protect the right of the user of the small cabin to access the well on the larger property. Apparently from the evidence, this type of sharing of wells is not unusual at Wizard Lake, and can be legally protected.

[50] Within 30 days of this decision, both parties are to take the appropriate steps to assure that the right of the small cabin property to share the well on the larger cabin property is protected. Obviously, this must occur before either cabin property can be transferred between the parties or listed for sale. If it is determined that this cannot be done, the cost of a well or cistern or other water source on the small cabin property will have to be addressed between the parties.

Property Used During the Separation

[51] Courts are generally loath to involve themselves in a detailed accounting of the use of income by spouses once child and spousal support is in place. This is because the income situation is set, and parties have discretion to use funds as needed. The same does not apply to the liquidation and use of matrimonial property during separation. A party with sole control over an asset cannot use it, without the consent of the other, and avoid the need to account for that asset, in any sharing of matrimonial property.

[52] In this trial, much time and emphasis was put on the paperwork relating to assets liquidated by each party during separation. To an extent, this was because of the length of time between the separation and trial, and also the fact that Mr. Covey lost his job in June of 2012. As a result, support payments for both Ms. Rusnak and the children were terminated in November, 2012. After this, both parties lived off capital assets to a large extent, although they each had some income; Mr. Covey from consulting and Ms. Rusnak from her renovating/odd job endeavors. Various interim orders arranged for assets, all termed as advances on matrimonial property, to be provided to Ms. Rusnak after November, 2012.

[53] The parties went to great length to justify the use of funds, and in argument, both counsel notionally put the value of certain property back into the matrimonial regime, subject to division, even though the property no longer exists. The valuation of matrimonial property is generally done at the date of trial. That should be the case here. As both parties collapsed substantial amounts of matrimonial property, a review of the relative use of those funds is necessary.

[54] Mr. Covey cashed in some stock options and RSUs after separation, and before any support order was in place. Tab 17 of exhibit 27, volume 2, page 1 demonstrates that Mr. Covey received $560,154 from the sale of various RSUs, Itrade stocks, and etrades between November 2009 and December 2010. From this, $360,000 went into his new home, which remains an asset today and subject to division. He accounted for the $116,791 that was paid for taxes on the RSU trades which left a net of $83,363 in his hands. Exhibit 5 is a detailed explanation of the amount Mr. Covey spent not only in formal child and spousal support payments, but also approximately $86,357 that was paid between separation and the summer of 2011, including advances, insurance, car repairs, and dental costs to name a few. I am satisfied that these monies were paid into the matrimonial regime, for the use of the parties, and reallocation of those funds as matrimonial property is not required.

[55] After Mr. Covey lost his job, and support payments were terminated, he was living largely on assets, as was Ms. Rusnak. They were both supporting the children while in their care, again, largely on the disposition of assets or their separate income, as section 3 amounts were not paid and section 7 expenses not shared after November, 2012. After he lost his job, Mr. Covey liquidated a total of $107,048 in matrimonial assets: $57,169 from an RRSP; $12,000 from a TFSA, $26,000 from the sale of Canaccord stock; and $11, 879 from the sale of some First Energy shares. These monies were not used in the matrimonial regime, and must be accounted for between the parties.

[56] Ms. Rusnak received various monies as support, and it was agreed by the parties that support between the separation and November, 2012 would not be revisited. In addition to any spousal support paid, Ms. Rusnak testified that she cashed in and spent a RRSP with a value of $45,086. She could not recall when this occurred, but the sums were declared in her 2010 and 2011 tax returns, so I find they were used before Mr. Covey's lay off. In addition, after Mr.

Covey was laid off and spousal support ceased, Ms. Rusnak received the proceeds from the sale of the condo ($173,178), and $50,000 from another RRSP. She also testified that she cashed in $10,000 in the Canaccord TFSA. Money was also borrowed against the cash values of various life insurance policies on the children and herself, for a total of $19,037, substantially reducing their cash values. Thus she received a total of $297,301 in assets. Whether these funds were used pre and post loss of Mr. Covey's employment is not easy to delineate from the evidence at trial. Clearly the $45,086 RRSP was cashed-in and used pre-layoff, as were some of the condominium proceeds, obtained through the line of credit.

[57] In general, Ms. Rusnak indicated that she used these monies to live on. She paid expenses for the children while they were in her care. She did renovations on the matrimonial home and also the two cabins. She had a line of credit on the condominium before 2012. Some of the funds drawn down on the line of credit went to pay for the laser machine that Ms. Rusnak bought in 2010 for $40,000 when she was contemplating setting up a laser and spa business. Ms. Rusnak also received the rent on the larger Wizard cabin for the one year that it was rented. She provided various invoices and receipts for the material and work done on the home and the two cabins after separation. She was not claiming these funds should be repaid or credited, rather she was demonstrating that she had not dissipated all these funds, but paid some into the matrimonial regime. Several of the invoices were challenged by Mr. Covey, as they came from a company operated by a man with whom Ms. Rusnak had a relationship and for which she worked at times. In addition, it was admitted that none of the renovations were undertaken upon consultation with, or the agreement of Mr. Covey. Mr. Jeffrey testified that the renovations to the cabins were largely cosmetic, and could have added value of $10,000 to $15,000. However, as the market had weakened, there was no tangible increase of value in the cabins as a result of the renovations.

[58] In considering this evidence, it is fair to treat the $45,086 from the RRSP and one half of the proceeds of the condominium as used before Mr. Covey's layoff and generally used for the matrimonial regime. That leaves: (1) $50,000 from the RRSP; (2) $10,000 from the cash in of Canaccord; (3) $19,037 borrowed against the whole life insurance policies; and (4) 50% of the condominium proceeds of $173,178 ($86,589); as used post layoff and not for matrimonial purposes. Thus a total of $165,626 is to be accounted for by Ms. Rusnak in the matrimonial property distribution.

[59] The difference in value between the funds used by each party to be accounted for in the matrimonial property division is $58,578 ($165,626-$107,048). This difference has to be considered in the property division between the couple, as otherwise, there would have been an uneven use of matrimonial property by the parties for their own purposes. In the circumstances, Ms. Rusnak shall pay Mr. Covey $29,289 for his one half share in the excess property that she collapsed during the marriage.

[60] Evaluated in a different light, as the severance settlement is dealt with below in a manner that acknowledges Ms. Rusnak had a right to spousal support during the post 2012 period, it is appropriate to equalize the use of assets post November, 2012 as a property matter.

Property Acquired After Separation

[61] There was argument about property acquired after the separation. The major focus was on money which was contributed to the Devon RSP and LIRA and retirement funds (the RRSP) by Mr. Covey. There was a monthly payment from the date of separation until November 2012, the

details of which were set out at tab 22 (e) of exhibit 27. There are other amounts that can be put into this category, for example contributions made by Mr. Covey to Ms. Rusnak's TFSA of $9,200 identified in exhibit 31.

[62] The *Act* does not exempt property acquired after separation from distribution. In fact, property acquired after separation is referenced in section 8(f): whether the property was acquired when the spouses were living separate and apart. Thus, it is one of the factors in deciding a just and equitable division, but it is property that the *Act* puts under a presumption of equal distribution, unless it appears to the court that it would not be just and equitable to do so.

[63] I do not find that there is anything so different about the assets acquired post separation in this case, that they should be excluded from division under the *Act*. This is very similar to pension contributions that may be made by one or both parties during a marriage. Generally, the value of a pension is divided as of the date of trial, not as at the date of separation. The value of assets acquired post separation is important in assessing whether the equal presumption of sharing set out in section 7(4) is suitable considering the section 8 factors.

[64] Here, the indication is that the presumption, a 50/50 split of non-exempt property, is fair and just, and I see no reason to make adjustments for post separation contributions to retirement saving, or to change the 50/50 split because of them.

Other Property in Contention

1. Whirlwind Energy Resources Ltd.

[65] Mr. Covey owns 100% of the shares in this company. It was started by him in 1998 to take advantage of opportunities in some overriding royalty interests. It currently holds: some royalties on which payments still occur; shares in Greengate, a wind power generation company; and shares in a company called Gear Energy.

[66] An expert report prepared by Carolyn Baird of GLJ Consulting, which was a reserves assessment effective March 31, 2013 prepared for Mr. Covey, was marked as an exhibit. It was entered in evidence as a result of a notice of intention to have the report entered without calling the expert as a witness. This was served on the other side, and no objection was filed by Ms. Rusnak's counsel. The report is highly technical, and regrettably without the benefit of the expert in attendance to discuss the report's meaning and especially the assumptions made, it is not possible to use the report to determine with any precision the value of reserves held in Whirlwind. Mr. Covey did testify about his interpretation of the report, but he is not neutral on this issue, nor was he qualified as an expert.

[67] Mr. Covey's counsel took the position the company should be valued by the amount of its retained earnings at the 2013 year end, which was $137,939 (which included as an asset the shareholder's loan to Mr. Covey in the amount of $19,433). Further, it was argued that the $137,933 needs to be tax impacted. It was argued that a notional tax should be applied as if that amount was taken out by way of dividends, which it was suggested in argument would be roughly $40,000 for a net value attributable to Mr. Covey's holdings in Whirlwind of $97,939.

[68] Ms. Rusnak's counsel argued that the value of Whirlwind should be between $137,939 (the retained earnings in 2013) and $330,000. The $330,000 figure was apparently an evaluation done in 2010 by GLJ of the reserves in Whirlwind. Mr. Covey admitted in cross-examination

that such an evaluation had been done, but as no evidence of any details of that study was lead at trial, the basis of that evaluation was not before the Court.

[69] It is clear that Mr. Covey wants to retain the shares in Whirlwind. Ms. Rusnak has no interest in owning the shares, nor does she have the technical expertise to deal with Whirlwind's assets. In addition, Mr. Covey testified that some of the income he earned between the termination of his employment with Devon and trial had flowed through Whirlwind, so he does have a use for this corporate vehicle. On the evidence it is difficult to assess the exact value of the shares. I find the only realistic way to value the shares, is to use the total of the retained earnings in the last financial statement produced, which are $137,939.

[70] Although Mr. Covey calculated an estimated tax on those retained earnings, no evidence was lead about his intention to liquidate the company, and in fact, it will likely continue as he is using it for work. He will have total control over the removal of funds (or not) from the corporation. In light of this and as there may be a substantial upside in value depending on the valuation of the reserves; I do not find that Mr. Covey has established that a tax reduction on the value of this asset should occur.

[71] Mr. Covey pointed out that he owed $19,433 to Whirlwind as at the March 31, 2013 year end, and that debt had been stated as an asset of the company, and taken into account in the calculation of retained earnings. As a result, it is proper that this debt be reduced from the value of the company attributed to him. Accordingly, the value of Whirlwind for the purposes of the matrimonial property distribution will be $137,039 less $19,433 for a value of $118,506.

2. Navarro Resources 1992 Ltd.

[72] Mr. Covey testified that this company holds some cash, and a 4% interest in a non-producing well in Pembina. Mr. Covey owns 50% of this company with another individual, Mr. Penner.

[73] The financial statement of the company for the year end December 31, 2012 was tab 24 of exhibit 27. There was very little other evidence given about this company, other than the fact that Mr. Covey did do some work with Mr. Penner since the termination of his employment with Devon, and used Navarro as a vehicle for at least some of that work. Thus, he has a reason for the ongoing use of this asset.

[74] Ms. Rusnak's counsel took the position that the value of this asset should be between $71,943 and $99,000. The $71,943 figure is 50% of the retained earnings in 2012 of $143,886. The $99,000 figure was apparently based on an evaluation done in 2010 by GLJ of the reserves in Navarro. Mr. Covey admitted in cross-examination that such an evaluation had been done, but no evidence of any details of that study was lead at trial, so the basis of that valuation was not before the Court.

[75] Mr. Covey takes the position that the value of Navarro should be one half of the 2012 retained earnings, which he rounded to $72,000, less 26% if taxed as dividends ($18,720), for a net of $53,280.

[76] I find the only realistic value that can be given to this company is based on the retained earnings, so it will be set at $71,943. I will not impact it for notional tax, for the same reasons I refused to do so on the Whirlwind company.

3. Personal Injury Lawsuit

[77] Mr. Covey was injured in a car accident during the marriage. A statement of claim has been filed in that matter and litigation is ongoing. The injuries claimed are personal injuries arising from an alleged tort. There was a discussion of any loss of consortium claim that Ms. Rusnak may have, but the evidence indicated that she had consulted independent counsel to advise her in that regard.

[78] This lawsuit and any settlement received from it, is exempt as set out in section 7(2)(d) of the *Act*.

4. Severance Issue

[79] At the time of trial, Mr. Covey was still in discussion with Devon about the settlement of severance issues arising from the termination of his employment at Devon. He had retained legal counsel. A settlement will have to be reached by June, 2014, or a lawsuit must be commenced. Litigation or settlement of the claim is in the complete control of Mr. Covey. Exhibit 27, tab 3 indicates that the dismissal was not for cause, so it is a reasonable inference from the letter and the evidence that severance is owing, and will ultimately be determined and paid. An offer of settlement was made at the time of the termination, although the details of the offer were not disclosed at this trial. Mr. Covey had worked for Devon for approximately twelve years, at the time Devon unilaterally ended his employment. It was admitted by Mr. Covey that some part of any settlement may include some amount for any entitlement to RSU and pension benefits accruing during the notice period.

[80] The issue is classification of the proceeds. Ms. Rusnak takes the position that she is entitled to part of the settlement, as it is matrimonial property. Mr. Covey argues that this is income, not property, and thus should not be subject to division.

[81] The cases are clear that severance pay is classified as one or the other; it cannot be both property and income at the same time. The concern is to avoid the risk of double counting. The characterization affects how the settlement is viewed: is it property, to be considered under the provisions of the *Act*; or is it income, and thus to be considered only in the context of any support obligations that may attach?

[82] The Court of Appeal in the case of *Sutton v Davidson*, 1999 76 Alta LR (3d) 216 held that severance payments received by a spouse on termination of employment may be characterized as property subject to division under the *Act*. In that case, the parties were married in 1985 and separated in 1995. The employment was terminated in 1987. The severance was placed in an RRSP and was held to be compensation for the loss of the right to earn income within the duration of the marriage. That case in paragraph 18 through 30 discusses various cases where termination payments were characterized. What is clear is that they are either income, or property, and the court must consider: to what period they relate; how they were characterized; whether they were earned during the cohabitation or not; and the circumstances of the parties.

[83] Here, any settlement will be for income that would have been earned post separation. After November, 2012, the parties stopped any formal support payments, but matrimonial property was cashed in by both of the parties to finance their living. Thus, the income Mr. Covey would have received after November, 2012, which is to be replaced by an unknown severance payment, would have been the basis for a child support payment and a spousal support payment, neither of which were made or assessed after November, 2012. Each party largely lived off

assets since 2012. However, had the income continued, the assets would not have been used and would be available to be divided at trial.

[84] In the circumstances, any settlement should not be viewed as property, but income replacement for the period after November, 2012, for a reasonable period while Mr. Covey sought re-employment. The evidence is clear that Mr. Covey did not find re-employment at the level or type he would have liked before trial, in September 2013. Thus, the sums should be viewed as replacement for the income stream which, had it been received during the period, would have been subject to a child and spousal support assessment. In the circumstances, that sum should be available for the support obligation which, would clearly have flowed, if Mr. Covey had continued working, as there was a substantial spousal support award in place prior to his termination.

[85] If Mr. Covey were allowed to keep the complete severance payment, it would be unfair to Ms. Rusnak, as both parties used matrimonial property to live after November, 2012. Had the income been available, that property would still exist and be divided equally. Instead it was used to support both parties.

[86] In the circumstances, Mr. Covey is to pay Ms. Rusnak a sum which would recognize her right to spousal and child support after November, 2012, up until trial, had the income been received during that period. As a result, Mr. Covey shall pay Ms. Rusnak 30% of the net proceeds (being the total amount of any settlement, less the actual income tax paid on the settlement, less actual legal fees paid to counsel for that matter). If the settlement is rolled into a tax sheltered investment, so taxes are deferred, a rollover of 30% of that total amount sheltered is to occur. Mr. Covey is to advise Ms. Rusnak within 15 days of settlement or judgment of the details of what he is to receive, along with any relevant documentation. If the settlement was made between trial and this judgment, he is to provide the documentation in relation to that settlement within 15 days of the date of this decision.

5. Tools and Furniture

[87] The parties have not divided their furniture, which exists at the two cabins, and the two homes. Mr. Covey purchased some furniture for his home post separation. Both parties were anxious to have certain tools, which are currently in Ms. Rusnak's exclusive possession. No effort was made to evaluate the furniture or tools for the purpose of trial. Mr. Covey did testify about specific items that he wanted.

[88] Obviously these items will have to be divided. Although generally most couples could work this out, I am not optimistic that a general direction for a 50/50 division will be sufficient in this case. Ms. Rusnak "dumped" some furniture from the cabins on Mr. Covey's driveway just before trial, there had been no discussion in advance of her doing this, and it is a classic example of some of her behavior which has occurred since the separation.

[89] If the parties cannot agree on the division of these items equally between them, an auction company is to do an inventory of all the furniture and tools that the parties own and assign a fair market value (for auction purposes) to each item. The parties can then alternately pick one item at a time, until each reaches one half the total value of the aggregate appraisals. The cost of the appraisal process is to be shared equally between the parties. Each party is restrained from moving, or relocating any of the tools or furniture from either house or either

cabin until the evaluation and division has been effected, or they have both confirmed in writing that an agreeable division has been effected.

6. The RESP

[90] The couple have an RESP for the children. It is matrimonial property, but held for the children's education under the terms of the plan. Mr. Covey currently directs its investment.

[91] Mr. Covey wants final say about the use of RESP funds for the children, as he is concerned about the difficulty with communication between the couple. Ms. Rusnak wants input on how it is used.

[92] At the point the RESP is used, at least one child will be finished high school, and having to deal with the parties about help for post-secondary education. The availability or use of the RESP will be relevant to any funding by the parents, and also any right to child support.

[93] As these matters are all combined, the parties will have to communicate. If agreement is not reached, a support application may well be brought before the Court. In the case of disagreement, I will give Mr. Covey the final say in the use of the RESP funds. Any use of those funds will be relevant evidence in any child support application brought after either of the children is eligible to receive funds from the RESP.

7. Property Taxes and Insurance.

[94] Mr. Covey paid the insurance and taxes on the matrimonial home, and these amounts were later continued as spousal support by order of Justice Hunt-McDonald. This continued until November, 2012, when the payments were suspended after Mr. Covey lost his employment. Mr. Covey has continued to pay those expenses; the costs for the house to the date of trial were $232 a month for property taxes and $65.75 a month for insurance for 11 months for a total of $3,275. Likewise a calculation for the two cabins of the amounts paid from November, 2012 to October, 2011 amounts to $2,216.32 and $2,356.33 respectively. These three amounts total $7,847.90. There likely will have been a continued payment of insurance and taxes on the matrimonial home and that will have to continue until sale. In addition the insurance and taxes on the two cabins will have been paid since trial. The $7,847.90 is to be shared jointly, so Ms. Rusnak owes Mr. Covey one half of that amount. In addition, any amounts paid for taxes and insurance on the large and small cabin are to be equalized to June 30, 2014, after which time Ms. Rusnak is to be responsible for all taxes and insurance on the small cabin, and Mr. Covey is responsible for those on the large cabin. Any further payments for the insurance or taxes on the matrimonial home are to be equalized from the time of trial until sale of the home.

Spousal Support

1. Positions of the Parties

[95] Ms. Rusnak has advanced a claim for spousal support. She is requesting a lump sum. Her counsel suggested that this is the best way to affect a clean break between the couple, and also in the circumstances, it is a reasonable way to promote Ms. Rusnak's self-sufficiency. Counsel suggested a lump sum in the range from $165,000 to $334,000. It was argued that according to the spousal support guidelines, a range of $3,602 to $4,213 a month would be considered if one takes Mr. Covey's historical earning patterns, for a period of between 8 and 16 years from

separation. Her counsel suggested that the net sale proceeds from the condo, in the amount of $173,178 which were already paid to Ms. Rusnak should be given to her as lump sum support.

[96] Mr. Covey opposes any support being payable. His counsel argued that his future earnings are uncertain - he was in the process of looking for a job at the time of the trial, or looking for ways to earn money as a consultant. He felt that his health issues (stress and diabities) may affect his continued work situation. His counsel argues that any award of lump sum support would really be a matrimonial property redistribution, and that is not the purpose of support. Mr. Covey paid support as ordered, until he lost his job. Mr. Covey's counsel points out the lump sum figures provided by the "calculator" figures advanced by Ms. Rusnak's counsel do not take into account that household expenses and then spousal support has already been paid for several years.

2. The Law

[97] The relevant law in determining entitlement and quantum of spousal support is section 15.2 of the *Divorce Act*, RSC, 1985, c 3 (2nd Supp). It provides in subsection 4 that the court must take into consideration the condition, means, needs and other circumstances of each spouse including the amount of time the spouses cohabited, the functions performed by each spouse during cohabitation and any order, agreement or arrangements relating to the support of either spouse.

[98] Section 15.2(6) sets out the objectives of a spousal support order. It must recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown, apportion between the spouses any financial consequence arising from the care of any child over and above an obligation for the support of any child of the marriage, relieve any economic hardship of the spouses arising from the breakdown of the marriage and in so far as practicable, promote the economic self-sufficiency of each spouse within a reasonable period of time.

3. Application of the Law to the Facts

[99] The parties cohabited for 14.5 years; Ms. Rusnak was primarily responsible for the children during that time, while Mr. Covey worked outside of the home, and was the primary breadwinner for the family. Ms. Rusnak at one point ran a day home during the marriage and she was also involved in a cleaning business.

[100] At separation, Mr. Covey originally paid the household expenses, and then spousal support according to the order of Justice Hunt-McDonald, until he lost his job in 2012. At that time, by court order, an RRSP was provided to Ms. Rusnak, which she collapsed. As well, the money from the sale of the condominium was provided to her for her use. As a result, Ms. Rusnak has had the benefit of support from Mr. Covey for a period of 3 years from separation, and both parties supported themselves after November, 2012, by using family assets. When Mr. Covey's severance is settled, a percentage will be received by Ms. Rusnak for her support after November, 2012 during the notice period.

[101] Both parties suffer an economic disadvantage when the marriage breaks down, it costs more money to run two households, compared to one. As a result, the standard of living of both parties decreases. Each party will receive substantial property by way of division of the matrimonial home proceeds, division of the RRSPs and division of other assets, details of which are attached in exhibit A to this decision. Ms. Rusnak was out of the formal workforce for a

period of time due to the children. She is resourceful, and has several business ideas. She did not present any definitive plan for re-training, but rather hopes to have the assets to maintain a smaller residence in Calgary as well as a cabin at Wizard Lake, and spend one week in each place. She intends to run a business: she has skills in renovating, and is involved in a firewood business. She loses the ability to share Mr. Covey's income, which has been historically much higher than hers. Ms. Rusnak was 49 years old at the date of trial.

[102] Mr. Covey at the time of trial had not found employment to his potential, and was doing some consulting and managing assets while looking for more steady employment. Although he raised his stress and diabetes as possible obstacles to future employment, no medical evidence was called to suggest that these are or will be significant barriers to him in his employment, nor have they been so in the past. Mr. Covey was 55 years old at the time of trial.

[103] Spousal support has been provided to Ms. Rusnak for a period of three years, at first by Mr. Covey paying expenses, and later by court order. When Mr. Covey receives a settlement arising from his layoff in 2012, Ms. Rusnak will receive a share which will in essence cover the time until the trial. Ms. Rusnak is resourceful and wants a clean financial break from Mr. Covey. There has been a high level of tension between the parties which meant they were unable to work co-operatively on property matters. Mr. Covey's future income is hard to determine, and depends largely on his choices. It makes sense in this situation to set a lump sum amount. This enables the parties to make financial decisions knowing the matrimonial property settlement and also the support obligation that exists between them, and end future economic ties that are not related to the children's needs.

[104] In light of the fact that Ms. Rusnak has received support, in one manner or another for 4 years post-separation, and taking into account that lump sum support is not taxed to her, nor deductible to Mr. Covey, as would be the case with periodic support, and mindful of the objectives of spousal support set out in the *Divorce Act*, I direct that Mr. Covey pay Ms. Rusnak a lump sum support payment of $75,000.

Conclusion

[105] The matrimonial property is to be divided as set out in schedule A, which also incorporates the payment for the lump sum support and the payment of one half of the mediation costs that Ms. Rusnak agreed at trial was to be reimbursed to Mr. Covey.

[106] The parties are to provide the Court with a caveat or agreement in relation to the water supply for the smaller Wizard Lake cabin within 60 days.

[107] Either party may bring an application in relation to costs, if that cannot be resolved by agreement between the parties.

Heard on the 23rd day of September, 2013 to the 27th day of September, 2013 and the 9th day of October, 2013 and the 24th day of October, 2013 by Stevens, J. Further submissions the 5th day of June, 2014 before Nation, J.
Dated at the City of Calgary, Alberta this 25th day of June, 2014.

R.E. Nation
J.C.Q.B.A.

Appearances:

Lesley A. Cooney-Burk,
Lesley Cooney-Burk Professional Corporation
and Sonja Lusignan, Campbell O'Hara
for the Plaintiff

Elaine L. Lenz, Q.C., Soby Boyden Lenz LLP
for the Defendant

Schedule A

Property to be Divided *in Specie* on set values

Property	Value	Tracey Lynn Rusnak	John Allan Covey
Hawksdale Home	$360,000		$360,000
Small Cabin	425,000	$425,000	
Large Cabin	455,000		455,000
TFSA	888		888
RBC Canadian Account	8,904		8,904
First Energy Account	5,893		5,893
Boat	15,000	15,000	
Quad	4,250	4,250	
Mustang	19,500	19,500	
Volvo	Nil		Nil
Jimmy	Nil	Nil	
Truck	Nil		Nil
Insurance Policies (present dollar value)	2,543	2,543	
Navarro	71,943		71,943
Whirlwind	118,506		118,506
Total	1,487,427	466,293	1,021,134
1,487,427/2=743,713.50			
Mr. Covey owes Mrs. Rusnak $277,420.50			

Retirement/Registered Holdings

Property	Value	Tracey Lynn Rusnak	John Allan Covey
RRSP	998,648		
	exemption		114,894
	60/40 increase in value	353,501	530,252
		353,501	645,146
RRSP	110,932	55,466	55,466
LIRA	147,570	73,785	73,785
	1,257,150	482,752	774,397
Rollover by T2200 to give Mrs. Rusnak $482,752 total in RRSP assets			

Exempt Property, Not Divisible

	Tracey Lynn Rusnak	John Allan Covey
RBC TFSA		16,240
Cash Account		34,560
Collier Painting		Unknown
Proceeds from MVA		Unknown

Other Property to be Divided

Tools and Furnishings	Equal Split
Net Severance Payment	30% to Ms. Rusnak 70% to Mr. Covey
RESP	Jointly held until children qualify for use ($92,132)

Proceeds of Sale of House

After Costs of Sale (realtor/legal)	87,148 to Mr. Covey 30,000 to Ms. Rusnak	(exemptions)
	Then equal division of the balance of proceeds	
From Proceeds:		
Mrs. Rusnak owes Mr. Covey	Equalization of Asset Use	29,289
	Half Mediation Costs	8,682
		37,971
Mr. Covey owes Ms. Rusnak	Lump Sum Support	75,000
	in specie asset equalization	277,420
		352,420
Net payment From Mr. Covey to Ms. Rusnak	352,240 – 37,971=314,269*	

*subject to adjustment in paragraph 94 for property taxes and insurance