IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Harms. v. Harms,*
2025 BCSC 170

Date: 20250203
Docket: E201390
Registry: Vancouver

Between:

Stephan Craige Harms

Claimant

And

Katharina Henriette Harms

Respondent

Before: The Honourable Justice J. Hughes

Reasons for Judgment

Counsel for the Claimant:	L. Newby M.D. Mennie
The Respondent, appearing in-person:	K.H. Harms (August 19-22, 2024 only)
Place and Dates of Trial:	Vancouver, B.C. June 17-19, August 19-23, 2024
Place and Date of Judgment:	Vancouver, B.C. February 3, 2025

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[1] This is a summary trial application in a family action brought by the claimant, Stephen Harms. The only issue of substance is the division of family property. Mr. Harms also seeks a divorce.

[2] The claimant and the respondent, Katharina Harms, were married for 27 years before their relationship ended in January 2018. They had three children together, all of whom are now independent.

[3] The parties are financially well-positioned. As a result of provident business dealings over the course of their relationship, each of the parties leaves the relationship with assets well in excess of $5 million.

[4] On February 6, 2024, Ms. Harms' response to family claim and counterclaim were struck by consequence of her failure to produce documents and attend an examination for discovery, in contravention of multiple order of this Court. Accordingly, this action is proceeding undefended, as if no response had been filed.

[5] Despite this, Mr. Harms provided notice of the summary trial application to Ms. Harms. She did not appear when the summary trial application initially came on for hearing in June 2024. However, the application had to be adjourned to permit certain evidentiary issues to be addressed. The matter then came back on for hearing in August 2024. Ms. Harms appeared on the first day of hearing and requested that the matter be adjourned so that she might retain counsel and adduce evidence to respond to the summary trial application.

[6] In an oral ruling made on August 20, 2024, I refused the adjournment, concluding, *inter alia*, that given Ms. Harms' pattern of delay and failure to comply with her obligations under the *Supreme Court Family Rules*, B.C. Reg. 169/2009 [*Rules*] and this Court's orders, despite having multiple opportunities to do so (see e.g. *Harms v. Harms* (19 April 2023), Vancouver E201390 (B.C.S.C.) [*Fitzpatrick Reasons*]; *Harms v. Harms* (1 December 2023), Vancouver E201390 (B.C.S.C); and *Nelson v. Harms*, 2024 BCSC 1419) and the inevitable delay and prejudice to Mr.

Harms of a further adjournment, all militated in favour of proceeding with the summary trial.

[7] Nonetheless, I granted Ms. Harms permission to appear and participate in the hearing by sitting at the counsel table, having access to the application record and making a closing submission. She attended four of the five days of hearing and provided closing submissions. She did not attend on the fifth day of hearing when the issue of costs was addressed, and thus did not make submissions on costs.

Background

[8] The parties began living in a marriage-like relationship in December 1990, married on July 27, 1991, and separated on January 19, 2018. The parties are in their mid-sixties and have three adult children, all of whom live independently.

[9] The parties had a traditional marriage in which Ms. Harms cared for their children while Mr. Harms worked outside the home. For the duration of the marriage, Mr. Harms worked at Pacific Pallet Ltd. (“Pacific Pallet”), a company originally owned by his father.

[10] Over the course of the marriage, the parties purchased and sold a number of real properties. As of trial, the parties’ real property consisted of the following, all of which are debt-free:

a) a vacation property on Hornby Island comprised of two legal lots both registered in Katharina Harms’ name (collectively, “the Hornby Property”);

b) a residential property located in Surrey, BC (the “Country Woods House”), registered in Stephan and Katharina Harms’ names as joint tenants;

c) a leasehold condominium at the University of British Columbia in Vancouver, BC (the “UBC Condo”), registered in Katharina Harms’ name; and

d) an 8.7-acre parcel located in Abbotsford, BC (the "Fraser Highway Property"), registered in Stephan Harms' name.

[11] The Fraser Highway Property consists of a parcel of land in the agricultural land reserve that is adjacent to the industrial lands on which Pacific Pallet's operations were located. Mr. Harms purchased the Fraser Highway Property via Landel Enterprises Ltd. ("Landel") from his father's company in July 2014. In August 2018, Mr. Harms transferred to himself a 1% interest in the Fraser Highway Property from Landel so that he could start the process of constructing a house for himself on that property. He transferred to himself from Landel the remaining 99% interest in April 2019, and construction completed in May 2020.

[12] Mr. Harms currently resides at the Fraser Highway Property. Ms. Harms appears to split her time between the UBC Condo, the Country Woods House and the Hornby Property.

[13] The parties' family property also includes a number of bank and investment accounts, pensions, vehicles and other chattels. There is no family debt in issue in this proceeding.

[14] The parties each enjoy costly hobbies. Mr. Harms was an avid aviator. He purchased his first aircraft in the early 2000s, a Beaver float plane, which he subsequently sold and then purchased an RV-7 aircraft.

[15] Ms. Harms and the parties' daughter adopted horses in 2012, which they continue to board and care for to date. Mr. Harms has cared for the horses from time to time over the course of the relationship. Ms. Harms now cares for her horse while Mr. Harms continues to care for their daughter's horse.

[16] Both during the relationship and post-separation, the claimant has managed the parties' finances and corporate interests in a manner such that they are in a position of considerable financial means. Each party will, as a starting point, retain financial assets in excess of $5,000,000, along with various real and personal property as set out in these reasons.

[17] The parties initially proceeded by way of mediation/arbitration. However, Ms. Harms was less than diligent in participating in the process, caused multiple delays, did not attend hearings, and failed to produce documents as required: *Fitzpatrick Reasons* at paras. 12-15. Consequently, the mediator/arbitrator terminated that process in January 2023, and Mr. Harms has proceeded with this action.

Division of Family Property

[18] Part 5 of the *Family Law* Act, S.B.C. 2011, c. 25 [*FLA*] sets out the rules for the division of family property and debt. Section 81 of the *FLA* creates a presumption that family property will be divided equally:

> **81** Subject to an agreement or order that provides otherwise and except as set out in this Part and Part 6 *[Pension Division]*,
>
> (a) spouses are both entitled to family property and responsible for family debt, regardless of their respective use or contribution, and
>
> (b) on separation, each spouse has a right to an undivided half interest in all family property as a tenant in common, and is equally responsible for family debt.

[19] The presumption of equal division can only be displaced if the party seeking unequal division can show that equal division would be significantly unfair: *FLA*, s.95; *Banh v. Chrysler*, 2022 BCCA 74 at para. 25. This is a heavy onus that requires “something objectively unjust, unreasonable or unfair in some important or substantial sense”: *Bennett v. Bennett,* 2021 BCSC 1631 at para. 49, citing *Jaszczewska v. Kostanski*, 2016 BCCA 286 at para. 42.

[20] Consistent with s. 81, Mr. Harms seeks equal division of all family property. Ms. Harms did not submit that equal division would be substantially unfair to her. Nor, having considered the factors set out in s. 95(2) of the *FLA*, do I find any basis upon which to depart from the presumptive equal division contemplated in s. 81.

[21] Mr. Harms has been diligent, fair and conscientious in his management of the family property, including disposing of corporate property and distributing the proceeds in a manner that allowed the parties to continue to enjoy a high standard of living. His disclosure regarding the use of family property has also been extensive. In

July 2022, in response to Ms. Harms' request for additional information regarding post-separation disposition of family property, a forensic accountant was engaged to review and account for all transactions over $2,500. The result was a detailed and lengthy report that traced all funds to a bank account, investment, or the parties' living and business expenses. The respondent was represented by counsel at the time and does not appear to have taken issue with that report.

[22] Ms. Harms has had every opportunity to raise concerns over expenditures or the use of family property since separation and prior to her pleadings being struck, but does not appear to have done so. There is nothing in the record before me suggesting that it would be significantly unfair to divide family property equally in these circumstances. Accordingly, I find that the presumption of equal division of family property applies and so order.

[23] Subject to the exclusions set out in s. 85, family property is defined by s. 84 of the *FLA* as all real and personal property owned by one or both spouses at the date of separation, and property acquired after the date of separation if it is derived from property captured by s. 84(1)(a). This includes: shares or interest in a corporation; an interest in a partnership, an association, an organization, a business or a venture; money in an account in a financial institution; a spouse's entitlement under a pension or retirement savings plan; and the amount by which the value of property excluded by s. 85 has increased since the latter of when the property was acquired or the relationship began.

[24] Property derived from property owned by the parties at separation remains family property: s. 84(1)(b) of the *FLA*. Six years have elapsed since the parties separated and accordingly, the family property that exists today is not the same as the property that existed at separation. Corporate entities consisting of family property have been sold or wound up, chattels have been bought and sold, and real properties have been purchased and improvements made.

[25] As at the date of separation, the parties had the following family property to be divided as between them:

a) Real property consisting of the Country Woods House, the Hornby Property, and the UBC Condo;

b) Various bank and investment accounts;

c) Vehicles in possession of the claimant and respondent as outlined above;

d) The respondent's jewelry;

e) The parties' respective pensions; and

f) Other miscellaneous chattels including personal effects and contents of the parties' residential properties.

[26] The parties also owned a number of companies and associated corporate assets which I will address separately below.

[27] Family debt is defined by s. 86 of the *FLA* to include all financial obligations incurred by a spouse during the relationship and those incurred after separation for the purpose of maintaining family property. The parties own all of their real properties outright, and there is no family debt remaining as of the trial date. Family debt that existed at separation was repaid using family property.

Excluded Property

[28] Section 85 of the *FLA* prescribes the types of property that is excluded from the definition of family property. The categories of excluded family property relevant in this case are: property acquired by a spouse before the relationship between the spouses began, inheritances to a spouse, and gifts to a spouse from a third party: *FLA*, s. 85(1)(a), (b) and (b.1). Under s. 85(1)(g) of the *FLA*, excluded property also includes property derived from excluded property or the disposition of excluded property.

[29] The party seeking to exclude property under s. 85 is responsible for proving its exclusion on the balance of probabilities: *FLA*, s. 85(2); *Shih v. Shih*, 2017 BCCA 37 at para. 42. Entitlement to an exclusion must be established by clear and cogent

evidence; however, in balancing the evidence as a whole, the Court is permitted to draw reasonable inferences from the evidence with a view to doing justice between the parties. As the Court of Appeal noted in *Shih*:

> [42] In my opinion, the proper test for establishing a claim to excluded property under s. 85 of the *FLA* is the same as in any civil case – proof on a balance of probabilities. The requirement of certainty and precision in my view improperly tips the standard closer to the criminal standard of proof beyond a reasonable doubt.
>
> [43] I do not quarrel with the proposition that, in order for a party to establish excluded property, he or she must do so with clear and cogent evidence. If documentary evidence is not available, the party bearing the onus of proof will need to testify as to their recollection of the transactions in dispute. That evidence will be scrutinized for credibility.
>
> [44] However, in balancing the evidence as a whole, the trial judge must be permitted to draw reasonable inferences from evidence that is less than certain or precise in order to do justice between the parties.

[30] Mr. Harms accepts that an RBC account ending in 7866, held jointly by Ms. Harms and the parties' adult daughter Jenna Harms (the "Jenna Account"), is not family property as the funds in that account belong to the Jenna Harms.

[31] Mr. Harms also accepts that an inheritance of $100,000 (the "Inheritance") deposited and retained in an RBC GIC investment account in Ms. Harms' name is not family property, and that Ms. Harms is entitled to retain the Inheritance as excluded property. Mr. Harms does, however, seek division of the growth in value of the Inheritance in the amount of $4,096.36. Any increase in value on the Inheritance is family property pursuant to s. 84(2)(g)(ii) of the *FLA*: see e.g. *Ussher v. Ropchan*, 2024 BCSC 1976 at para. 73, Accordingly, I find growth on Ms. Harms' excluded property is to be divided equally as between the parties.

[32] For his part, Mr. Harms seeks to exclude two categories of property under s. 85: 740 Class F shares in 444214 B.C. Ltd. (the "Class F Shares"); and equity derived from a property located at 3680 Nootka Street, Abbotsford (the "Nootka Property") that he acquired prior to the start of his relationship with Ms. Harms.

Class F Shares

[33] In 1993, Mr. Harms purchased Pacific Pallet through a corporate reorganization in which 444214 B.C. Ltd. (“444214”), a holding company incorporated by his parents Ray and Hilda Harms, acquired ownership of Pacific Pallet from his father’s company 66182 B.C. Ltd. (“66182”). Mr. Harms then acquired a majority ownership interest in 444214. As part of this reorganization, Class F preferred shares were assigned a fixed redemption value of $360.00 per share.

[34] As part of this transaction, Mr. Harms’ parents gifted him 740 Class F shares. Hilda and Ray Harms retained 828 Class F shares and 10 class A voting shares in 444214. The 740 gifted Class F shares were valued at $266,400.

[35] Pursuant to s. 85(1)(b.1) of the *FLA*, gifts to a spouse from a third party are excluded property. As a result, I find that the Class F Shares are excluded property of Mr. Harms, valued at $266,400.

Equity in the Nootka Property

[36] Mr. Harms purchased the Nootka Property for $84,000 in May 1985, prior to the start of his relationship with Ms. Harms. The Nootka Property was therefore excluded property under s. 85(1)(a) of the *FLA*. To purchase the Nootka Property, Mr. Harms took out a mortgage of $63,000.

[37] The parties’ marriage-like relationship began on December 1, 1990. At that time, the Nootka Property was valued at $140,000. The value of Mr. Harms’ exclusion was thus the amount of equity in the Nootka Property at the time. The subsequent growth in value of the Nootka Property over the course of the parties’ relationship is family property under s. 84(1)(g).

[38] Mr. Harms renewed his mortgage on the Nootka Property in July 1992. At that time, the outstanding principal was $12,148.17, meaning that Mr. Harms had paid approximately $39,955.14 of the principal in the 5.5 years from when he acquired the Nootka Property to the commencement of the parties’ relationship. Mr. Harms therefore had accrued equity of approximately $116,955.14 in the Nootka Property

(the "Nootka Equity").[i] The claimant seeks to retain the Nootka Equity as excluded property.

[39] In 1992, after the parties were married, Mr. Harms transferred the Nootka Property into Ms. Harms' name alone. The Nootka Property was then sold in September 2017 for $760,000. The proceeds of sale of approximately $728,000 were deposited into the parties' joint bank account. Approximately $718,000 of those funds were then used to pay down the mortgage on the UBC Condo, which had been acquired the year prior and which they owned (and continue to own) as joint tenants.

[40] Proceeds from excluded property remain excluded under s. 85(1)(g) of the *FLA*. Excluded property can be traced through the sale of excluded property to a new property held in joint tenancy: see e.g. *H.C.F. v. D.T.F.*, 2017 BCSC 1226 at paras. 73-81; *Thornett v. Thornett*, 2018 BCSC 2312 at para. 44.

[41] However, excluded property can lose its status as such and become family property if the party gifts the excluded property to their spouse. The intention of the spouse transferring ownership is key in determining whether a gift was intended, as noted in *Venables v. Venables*, 2019 BCCA 281:

> [95] What emerges from these authorities, of relevance to the current appeal, is that the intention of the spouse transferring ownership is key in determining whether the property transferred from one spouse to the other remains excluded property or becomes family property. If it is found that the spouse who transferred the property intended that the property be a gift to the other spouse, and there is no agreement that it is to remain excluded property, then it will become family property: *V.J.F.* at paras. 74-79; *Namdarpour* at para. 46.

[42] The presumption of advancement also provides that a transfer of property between spouses is presumed to be a gift. Accordingly, unless the presumption is rebutted, excluded property and the proceeds thereof that are gratuitously transferred between spouses during a relationship may lose excluded status: *Baryla v. Baryla*, 2019 BCCA 22 at para. 33.

[43] I am cognizant that recent amendments to the *FLA* provide that the presumption is not applied in questions respecting ownership of property between spouses, and that s. 85(3) of the *FLA* now provides that an exclusion continues to apply despite any transfer of ownership between one spouse or another. However, this action was commenced prior to May 11, 2023, and accordingly, it is a pre-existing proceeding to which the recent amendments do not apply: *FLA*, s. 24; *Cohoon v. Stobo*, 2023 BCCA 479 at para. 17.

[44] The onus is on Mr. Harms, as the party seeking to exclude the Nootka Equity, to establish on a balance of probabilities that it remains excluded property. His intention when he transferred the Nootka Property, which included the Nootka Equity, into Ms. Harms' name, is key in this respect.

[45] If Mr. Harms intended to transfer the Nootka Property and Nootka Equity as a gift, then it became family property, absent an agreement to the contrary: *Venables* at para. 95; *Cohoon* at paras. 18-19. There is no evidence of any agreement to the contrary. Accordingly, Mr. Harms must demonstrate that his intention in transferring the Nootka Property to Ms. Harms was *not* to gift either the property or his excluded equity in it.

[46] Mr. Harms invited me to draw inferences from the evidence to support the exclusion of the Nootka Equity on the balance of probabilities. He relies on *Thornett v. Thornett*, 2018 BCSC 2312, and *H.C.F. v. D.T.F.,* 2017 BCSC 1226, as instances in which excluded property was traceable in circumstances where a spouse took excluded property and applied it to pay down a mortgage on another property held in joint tenancy. There are cases where trial judges have concluded that gifts used to buy a joint property retain their character as excluded property; however, there are also cases where the court concluded, in similar circumstances, that potentially excluded property became family property: *Cohoon* at para. 21. What these cases illustrate is that each turns on its own facts. Without more, the broad factual circumstances of the transaction do not determine whether the gift retains or loses its character as excluded property: *Cohoon* at para. 22.

[47] In the present circumstances, there is little evidence in the record before me from which I can draw any inferences as to Mr. Harms' intent when he transferred the Nootka Property, including his equity therein, to Ms. Harms in 1992. The extent of Mr. Harms' evidence on this point is that: he transferred the Nootka Property into Ms. Harms' name after the parties were married; after the Nootka Property was sold in 2017, Ms. Harms deposited the proceeds of sale into the parties' joint bank account; and the proceeds of sale were then used to pay down the mortgage on the UBC Condo.

[48] Mr. Harms provided no evidence as to what his intentions were when he transferred the Nootka Property to Ms. Harms in 1992. Without evidence on this point, there is no evidentiary basis upon which I draw the inferences he seeks in support of a conclusion that he did not intend to transfer the Nootka Property to Ms. Harms as a gift. The presumption of advancement therefore applies, and the transfer of the Nootka Property to Ms. Harms, inclusive of the Nootka Equity, is presumed to be a gift. The same conclusion follows from Mr. Harms' evidence that Ms. Harms deposited the proceeds of sale from the Nootka Property into the parties' joint account in 2017.

[49] In the result, I find that Mr. Harms has not met his onus of establishing that the Nootka Equity retains its character as excluded property.

Valuation

[50] Section 87 of the *FLA* provides that unless otherwise agreed to or ordered, the value of family property or debt is determined as of the date of an agreement dividing it, or as of the date of trial. Where the valuation date does not align with the date of trial, the court should use the valuation date that is closest to the date of trial: *C.M. v. M.N*, 2022 BCSC 684 at para. 14, citing *Namdarpour v. Vahman*, 2019 BCCA 153 at para. 83. That said, the court may choose a different valuation date if doing so avoids a significant unfairness: *Bennett v. Bennett*, 2021 BCSC 1631 at para. 45.

[51] Mr. Harms provided professional valuations for the parties' real property and a third-party valuation for the 1941 Tiger Moth aircraft. In other instances, Mr. Harms provided estimated values based on his own investigations and comparisons.

[52] I have considered Mr. Harms' evidence in this respect and find that the valuations he proposes are fair and reasonable in the circumstances. Indeed, in some instances, he has valued property that he proposes to retain at or close to its initial cost of acquisition, without depreciation. In others, he assigned a reasonable depreciation from the purchase price. Consequently, the claimant is attributing what is likely a higher than market value to the assets he will be retaining. I find that in the circumstances, this is an eminently fair approach which results in additional benefit to the respondent, and I accept Mr. Harms' evidence in this respect and the resulting valuations.

[53] In her closing remarks, the respondent took issue with the claimant's valuation of some of the family property, namely her jewelry, the Land Rover and Pacific Pallet. I do not find the respondent's submissions compelling. She has had ample opportunity to challenge the claimant's valuations of family property or obtain her own over the course of the litigation, but failed to meaningfully engage, which as noted above, resulted in her pleadings being struck out.

[54] As I concluded in my ruling refusing her request for an adjournment of this application, permitting Ms. Harms to file responsive evidence in circumstances where her pleadings were struck because, among other reasons, she failed to engage in discovery process and in particular, submit to examination for discovery, would have amounted to the Court condoning litigation by ambush and result in a subversion of the trial process if she were to be permitted to adduce evidence for the first time in response to a summary trial application in circumstances where she has refused to provide disclosure or submit to discovery.

[55] Indeed, Ms. Harms' failure to comply with her disclosure obligations made the exercise of valuing family property—most notably her jewellery—much more challenging and subject to a greater degree of uncertainty that it ought to have been.

Her submissions regarding Pacific Pallet also ignore the fact that the sale was approved by this Court, through a process that was again required because of her failure to engage in this litigation. Accordingly, to the extent that Mr. Harms' evidence may undervalue any of the property he retains, or overvalue any of the property she retains, that is a problem of Ms. Harms' own making.

[56] Mr. Harms has gone to extensive lengths to have the family property assessed as best as possible in the circumstances, and I am satisfied that the evidentiary record supports the valuations of family property I have accepted and the findings I have made as set out above. Ms. Harms' challenges to the valuation of family property are raised far too late, are in large part the product of her own failure to engage in the litigation process, and are, in any event, unmeritorious.

Real Property

[57] A significant component of the parties' family property consists of real property, namely the Country Woods House, the UBC Condo, the Hornby Property and the Fraser Highway Property.

[58] The claimant provided professional appraisals for the real properties as of the summer of 2024. This is the closest approximate time frame to trial, and I accept and rely on the claimant's appraisals for the purpose of valuing these properties in accordance with s. 87 of the *FLA*: see e.g. *C.M.* at para. 14.

[59] Accordingly, I find that the parties' real properties have the following values:

a) Country Woods House: $2,500,000.00.

b) Hornby Property: $1,676,000, consisting of $526,000 for one lot and $1,150,000 for the other lot;

c) UBC Condo: $1,180,000.00; and

d) Fraser Highway Property: $2,750,000.

Vehicles and Aircraft

[60] I accept Mr. Harms' evidence as to valuation of the various vehicles and trailers constituting family property and find their values for the purpose of division of family property are as set out below.

[61] Mr. Harms has and will retain vehicles in his possession consisting of:

a) 2015 Tundra, valued at $19,123.00;

b) 2015 John Deere tractor, valued at $21,200.00;

c) 2012 Crusader Travel Trailer, valued at $13,500.00;

d) a utility trailer, valued at $450.00;

e) one 53' storage trailer, valued at $1,700.00; and

f) a horse trailer, valued at $6,000.00.

[62] Ms. Harms has retained possession of two vehicles: a 2011 Land Rover LR4 valued at $9,500 and a 2001 BMW 321i valued at $3,414. The values for these two vehicles are derived from Mr. Harms' estimate for the BMW and Ms. Harms' incomplete F8 financial statement made July 2022 for the Land Rover.

[63] At trial, Ms. Harms submitted that the Land Rover requires maintenance, and therefore ought to be valued at something less than $9,500. Given the circumstances of Ms. Harms' participation in this proceeding, there is no evidence as to the current value of the Land Rover or what maintenance, if any, may be required. In the absence of other evidence, and despite its deficiencies, I find Ms. Harms' financial statement provides the best evidence as to the value of the Land Rover: see e.g. *Prasad v. Prasad*, 2015 BCSC 207 at para. 69. Accordingly, I decline to apply any reduction to the value of the Land Rover. I also accept Mr. Harms' estimate of the value of the BMW. I therefore find that the Land Rover has a value of $9,500 and the BMW has a value of $3,414.

[64] Over the course of the parties' relationship, Mr. Harms purchased hobby aircraft, which were owned by corporate entities incorporated for that purpose, namely 366963 B.C. Ltd. ("366963") and 100 Acre Woods Ltd.—holding companies that owned the claimant's various hobby aircraft.

[65] In July 2018, Mr. Harms sold the Beaver aircraft held by 366963 for $375,000 in an arms length transaction. 366963 was subsequently amalgamated with Landel.

[66] Portions of the proceeds of sale for the Beaver aircraft were subsequently used to purchase the John Deere tractor described above and to pay expenses and costs related to construction of the Fraser Highway Property. The remainder of the proceeds were deposited into an RRSP and ultimately transferred into an Envision account. Mr. Harms accepts that the proceeds of sale from the Beaver aircraft are family property, and I have treated them as such.

[67] In 2019, Mr. Harms purchased a second aircraft, an RV-7 for $95,000. Mr. Harms sold this aircraft in 2024 for $105,000 and deposited the proceeds of sale into the Envision account. Again, Mr. Harms accepts that the proceeds of sale for the RV-7 aircraft constitute family property.

[68] Mr. Harms retains possession of a 1941 Tiger Moth airplane, which was appraised at $25,000. I accept this valuation.

Jewelry

[69] Mr. Harms asserts that over the course of the marriage, he purchased jewelry for Ms. Harms consisting of diamond earrings, a pear necklace and numerous other pieces. Despite multiple requests, Ms. Harms failed to produce these items for appraisal.

[70] Mr. Harms asserts that the jewelry in Ms. Harms possession at separation ought to be valued at approximately $90,000. In April 2003, the diamond earrings were appraised for insurance purposes at $81,950. The pearl necklace was purchased for $8,000. Due to Ms. Harms' failure to comply with her disclosure

obligations, Mr. Harms has been unable to value the balance of the jewelry in her possession.

[71] At trial, Ms. Harms professed surprise that her jewelry would be valued at $90,000, and asserted it was “overvalued”. If this were the case, then Ms. Harms had the opportunity to produce the items for appraisal. She failed to do so. Accordingly, I accept Mr. Harms’ evidence on this point and find that the jewellery in Ms. Harms’ possession is valued at $90,000.

Bank Accounts

[72] For practical purposes, bank accounts used by the parties in their day-to-day lives are valued at the date of separation, while long-term investments are valued as of the date of trial, subject to accounting for contributions and withdrawals: see e.g. *Bennett* at para. 47. In the present case, Mr. Harms seeks to value the parties’ bank accounts and credit cards for the purposes of property division as of July 1, 2023. This is the date in which the parties’ finances were separated pursuant to the April 19, 2023 order of Justice Fitzpatrick the (the “Fitzpatrick Order”).

[73] In the circumstances, I agree that the parties’ bank accounts as family property ought to be valued as at July 1, 2023, consistent with the Fitzpatrick Order. Accordingly, I find that the parties’ bank accounts and corresponding values, consist of the following:

a) Held jointly: RBC Dominion Securities account ending in 03-1-9 with a value of $2,452,129.46 (the “Joint RBC DS Account”).

b) Held by Mr. Harms:

   i. RBC Dominion Securities account ending in 90-1-4 with a value of $5,000,000.00;

   ii. RBC Savings account ending in 7246 with a value of $0.04;

   iii. RBC Chequing account ending in 7212 with a value of $773.78; and

iv. Envision Savings and Chequing account ending in 0728 with a value of $1,717.29.

c) Held by Ms. Harms:

i. RBC No Limit Chequing account ending in 4487 with a value of $143,766.48; and

ii. RBC Dominion Securities account ending in 02-1-0 with a value of $5,000,000.00.

[74] Each party shall retain those bank accounts held solely in their respective names. The Joint RBC DS Account shall be used to make the equalization payment described below, with any remaining funds being divided equally between the parties.

[75] Mr. Harms also holds $1,700 in cash from the sale of a 53’ storage trailer which he acknowledges constitutes family property and which fund shall be divided equally between the parties.

RRSPs and Investments

[76] The parties have registered retirement savings plans and investment accounts consisting of the following:

a) Held by Mr. Harms: Envision/Aviso RRSP account ending in 29-22 with a value of $242,041.78.

b) Held by Ms. Harms:

i. RBC Dominion Securities RRSP account ending in 49-1-7 (CDN) with a value of $227,576.32;

ii. RBC Dominion Securities RRSP account ending in 49-1-7 (USD) with a converted value of CAD $65,340.28;

iii. BMO RRSP account ending in 2042 with a value of $36,147.39;

iv. RBC RSSP account ending in 4773 with a value of $10,379.98;

v. RBC Dominion Securities TFSA account ending in 84-1-8 TUI with a value of $55,054.16;

vi. BMO RESP account ending in 8396 with a value of $27,165.83;

vii. RBC GIC Investment account ending in 9713 with a value of $104,096.36;

viii. the Jenna Account with a value of $360.39.

[77] Each party shall retain the RRSP and investment accounts held in their respective names.

Corporate Assets

[78] At the time of separation, Mr. Harms owned or had an interest in the following corporate assets:

a) 444214: the holding company for Pacific Pallet;

b) Pacific Pallet: the operating company that made and sold wood pallets and for which the claimant worked for the majority of his adult life;

c) Pacific Wood Specialties (2013) Ltd.: the corporate entity used to pay employees of Pacific Pallet;

d) Windcross Enterprises Inc. and Landel: the holding companies for the industrial property located at 28989 Fraser Highway (the “Landel Property”) on which Pacific Pallet’s premises and operations were located; and

e) 366963 and 100 Acre Woods Ltd: holding companies that owned the claimant’s various hobby aircraft.

[79] Mr. Harms accepts that his interest in these corporations constitute family property under s.84(2) of the *FLA*, subject to his claim for exclusion of the Class F Shares as set out above. The claimant also accepts that the proceeds from the disposal of these companies remain family property: *FLA*, s. 84(1)(b).

[80] Mr. Harms also acquired an interest in 66182 from his father's estate following separation. This company has since been dissolved and in any event, the claimant's interest therein does not constitute family property as Mr. Harms' interest was acquired after separation and, as an inheritance, was not derived from family property: *FLA,* s. 84; see e.g. *Muraca v. Dunsmore*, 2022 BCSC 279 at para. 52.

Sale of Pacific Pallet

[81] In or about spring 2018, a third-party supplier approached Mr. Harms and expressed interest in purchasing Pacific Pallet. Mr. Harms commissioned a valuation and also had his accountant provide a rough calculation of the company's value. Both valuations were consistent.

[82] In January 2019, Mr. Harms sold Pacific Pallet to an arms-length purchaser for $3,485,316 (the "Pacific Pallet Funds"), a price slightly in excess of the valuations he had previously obtained. The proceeds of sale were deposited into Landel's bank account, and subsequently used by Mr. Harms for various purposes, including to pay taxes accruing as a result of the sale, mortgage payments for and maintenance of the Landel Property (as defined above), and construction costs for the Fraser Highway Property. The proceeds of sale were also used to maintain the parties' residential properties, fund their hobbies and day-to-day living expenses, and make semi-monthly payments of $1,750 to Mr. Harms and $1,850 to Ms. Harms.

[83] On January 4, 2021, the parties consented to an order in respect of the balance of the Pacific Pallet Funds (the "Consent Order"). Ms. Harms was represented by counsel at this time. The Consent Order permitted them to encroach on those funds to maintain the standard of living that they had enjoyed prior to separation by way of semi-monthly payments to each of them in the amount of $1,850. It also permitted payment of various expenses including: income and

property taxes; property, home, car and aircraft insurance; utilities, repairs, and maintenance for family property; tuition, living allowance and expenses for the children; medical benefit premiums and expenses for the parties and their children; and costs associated with farm animals and household pets.

Sale of the Landel Property

[84] In 2010, Mr. Harms, through his company Landel and jointly with a neighbouring business, purchased 10 acres of industrial land from 66182. Those lands were subsequently subdivided such that Landel became the exclusive owner of the land located at the Landel Property. This proved to be a provident decision as the Landel Property was subsequently sold for in excess of $20,000,000.

[85] In May 2022, Pacific Pallet (now owned by a third party, Mr. Munish Sharma), approached Mr. Harms and expressed interest in purchasing the Landel Property.

[86] In September 2022, Mr. Harms obtained an appraisal for the Landel Property from Frontline Real Estate, which valued the property at $22,000,000.

[87] On October 14, 2022, Mr. Harms, as an officer of Windcross Enterprises Inc., entered into an agreement of purchase and sale with Mr. Sharma pursuant to which Windcross Enterprises Inc. agreed to sell the Landel Property for $22,000,000. The transaction was subsequently converted to a share sale with a purchase price of $20,100,000, which price was commensurate with the net amount that Landel would have received under an asset purchase transaction.

[88] The Landel share sale was subject to court approval in accordance with the Consent Order. On April 19, 2023, Fitzpatrick J. approved the sale, finding the evidence “overwhelmingly” established that the share sale was both necessary and expedient:

> [33] Having considered the evidence put before me over these two days of hearings and having considered the submissions of both counsel, I am overwhelmingly convinced that the share sale under the Amended PSA is both expedient and necessary.

> [34] I accept Mr. Harms' counsel's submissions that the sale is advantageous in the sense that the sale will maximize this very valuable asset, which stands as the couple's most valuable asset. I am also of the view that this sale is likely to provide some assistance to the parties in removing some of the issues that exist between them and that the sale may help promote an early settlement of the remaining issues, being asset division and spousal support. Accordingly, I conclude that the sale can be described as being advantageous or expedient to both parties.
>
> …
>
> [36] In my view, the share sale also meets the necessary requirement of the test. Mr. Harms' evidence about the current financial situation is uncontroverted. He says that the amount of cash that remains for the parties' use is limited. The Landel rental amount has been the source of the parties' income and it is simply not sufficient to cover the ongoing expenses of both parties. Those expenses are substantial, given their real estate holdings and the requirements to fund this very conflicted litigation where every issue seems to be in dispute.

[89] In the course of approving the sale, Justice Fitzpatrick considered and dismissed concerns raised by Ms. Harms in opposition to the sale—which concerns Ms. Harms again raised in her submissions at trial—concluding as follows:

> [44] On the other side, Ms. Harms, perhaps consistent with her overall approach to this litigation, has entirely failed to respond in any meaningful way, or any way at all perhaps, to oppose the sale. She has not presented any evidence that would even suggest that a return to the market might yield a higher sale amount. She simply opposes the sale.
>
> [45] Also, Ms. Harms does not address in any meaningful way whether there should be a share sale or an asset sale, other than to propose that there should be a further analysis as to best scenario that would maximize the sale proceeds for the benefit of both parties. Mr. Harms does not dispute that this is a valid consideration and I agree that this is a reasonable approach towards maximizing the recovery from the family assets.
>
> [46] Having said that, the only evidence that Ms. Harms relies on with respect to whether this should be a share sale is contained in the Affidavit #4 of Jocelyn Marais sworn April 12, 2023. Ms. Marais is a legal assistant employed at Ms. Harms' lawyers' offices. Ms. Marais states that Ms. Harms has advised her that:
>
> > 13. …she does not agree with the sale of the business, given that the business has generated a steady income for the family for many years. She further informed me that she is concerned that the sale of the business will affect her stress level and exacerbate her heart problems.
>
> [47] In my view, Ms. Harms' evidence, such as it is, is wholly unsatisfactory in meeting the substantial evidence that has been presented by Mr. Harms. I acknowledge that Ms. Harms refers to her emotional state of affairs and,

> while that is unfortunate if true, it is perhaps of her own making in the sense that she has left attempting to address the issue until this very late and urgent court application. In addition, I cannot see any reasonable basis upon which Ms. Harms would be emotionally harmed by a sale of the Landel property since it is an industrial property and Mr. Harms has been managing it for some, if not all, of the times that the parties have held it.

[90] The proceeds of sale from the Landel Property were distributed according to the Fitzpatrick Order as follows:

a) $5,000,000 was deposited in RBC Dominion Securities account ending in 90-1-4, in the name of Stephan Harms (the “Claimant’s RBC DS Account”);

b) $5,000,000 was deposited in RBC Dominion Securities account ending in 02-1-0, in the name of Katharina Harms (the “Respondent’s RBC DS Account”);

c) $7,769,493.52 was deposited in the Joint RBC DS Account;

d) $658,300 was deposited in the account of 444214 in exchange for 444214’s interest in the Landel Property; and

e) Each party received an advance on capital in the amount of $400,000.

[91] The value of the Joint RBC DS Account as at the time of summary trial was $2,452,129.46. This is the result of the payment of taxes resulting from the sale of the Landel Property, which I am satisfied constitutes payment of family debt from family property.

[92] Consequent on the sale and following the Fitzpatrick Order, each party’s RBC DS Account is valued at $5,000,000 as the interest from these accounts is paid to each party monthly. As noted above, these accounts constitute family property, and each party will retain their respective RBC DS Account.

Conclusion on Corporate Family Property

[93] Mr. Harms accepts that the various corporate entities in which he had an interest at the time of separation constitute family property under s. 84(2) of the *FLA*. He also accepts that the proceeds from the disposal of these companies remain family property pursuant to s. 84(1)(b).

[94] I note that Ms. Harms has had many opportunities to raise whatever issues she may have with Mr. Harms' management of the family companies, including prior to entering into the Consent Order and in conjunction with the Court's approval of the sale of the Landel Property which resulted in the Fitzpatrick Order. In the circumstances, having reviewed and considered Mr. Harms' evidence as to the various corporate transactions that were affected, and the use to which the proceeds of sale for the various properties were put, I am satisfied that there are no circumstances that create substantial unfairness to Ms. Harms justifying unequal division, nor any expenditures or withdrawals that would require further accounting.

[95] Following the various transactions effected by Mr. Harms over the years, the only remaining corporate entity is 444214. That company is no longer an operating entity; it is not engaged in active operations, it does not have an income stream, and its only remaining assets consist of funds of $1,470,873.21 as of July 31, 2024, which are held in two CIBC bank accounts.

[96] Accordingly, I find that 444214's value consists of the value of its financial assets, namely the funds in its bank accounts, and value it at $1,470,873.21.

[97] Mr. Harms will retain ownership of 444214 and is not seeking any accounting for any potential distributive taxes. Ms. Harms is thus entitled to one-half of the value of 444214.

Shareholder Loan from 66182 and Hilda Harm's Class F Shares

[98] As noted above, Mr. Harms purchased Pacific Pallet from his father in 1993. Three features of this transaction are relevant for present purposes:

a) Mr. Harms' purchase of 1482 Class F preferred shares of 444214, valued at $533,520, was secured by way of promissory notes (the "1993 Promissory Notes");

b) Mr. Harms' parents retained 828 Class F shares valued at $298,080.00 (the "Hilda Shares") and 10 Class A shares of 444214; and

c) the transaction included an estate freeze which froze the value of the Hilda Shares at $298,080.

[99] Following the 2002 transfer of Mr. Harms' parents' 10 Class A shares in 444214 to Mr. Harms, he believed he was the sole owner of 444214. He also understood that by way of various transactions and offsets between 444214 and 66182 (his parents' company), the 1993 Promissory Notes no longer remained outstanding.

[100] Mr. Harms' father died in 2021. His mother suffers from advanced-stage dementia. In 2022, 66182 was wound up. 66182's accountant informed Mr. Harms that 66182 had no assets or liabilities. 66182's final financial statement also zeroed out a shareholder loan to Mr. Harms of $282,891.77, and thus showed no outstanding shareholder loans owing.

[101] However, in the process of obtaining and producing documents for the purpose of this litigation, Mr. Harms learned that other corporate documentation suggested that: his mother still owned the Hilda Shares; the 1993 Promissory Notes remained outstanding; and 66812's final financial statements showed a shareholder loan due to him in the amount of $282,891.77 (the "Unpaid Loan").

[102] Mr. Harms was not able to obtain further clarity or confirm the accuracy of this information, given his father's passing and his mother's advanced dementia.

[103] Mr. Harms does not dispute that the Unpaid Loan is family property. He also accepts that the Hilda Shares are not family property and would, therefore, ordinarily be deducted from the value of 444214 to determine the value of that company which

constitutes family property. However, Mr. Harms does not seek to exclude the value of the Hilda Shares. Instead, he seeks to set off the value of the Unpaid Loan against the value of the Hilda Shares, as the value of the Unpaid Loan ($282,891.77) is roughly commensurate to the value of the Hilda Shares ($298,080.00). In practical effect, this would result in the Court essentially ignoring both items in calculating the family property.

[104] In the unique circumstances of this case, I find it is appropriate to do so. Proceeding in this manner is to the respondent's benefit in terms of division of family property, as she would be entitled to a 50% interest in the proceeds of the Unpaid Loan as family property (approx. $141,446), but the value of 444214 as family property would be reduced by the value of the Hilda Shares ($298,808) which would result in reduction of the respondent's share of family property of $149,040. Moreover, given that 66182 has been wound up, there is a low likelihood that the Unpaid Loan is recoverable in any event. Proceeding in this manner simplifies the division of family property with no prejudice to the respondent.

[105] In the result, I make no reduction to the value of 444214 on account of the Hilda Shares.

Pension Division

[106] Both parties have pensions. The claimant has IWA-Forest Industry Pension Plan, B.C. Reg. No. 85995-1 (the "IWA Plan"), and the respondent has Teacher's Pension Plan, B.C. Reg. No. 85495-1 (the Teacher's Plan"). It is uncontested that the pension benefits accrued to the claimant under the IWA Plan (the "IWA Pension") and the benefits accrued to the respondent under the Teacher's Plan (the "Teacher's Pension") during the parties' relationship are family property.

[107] However, there is little or no evidence before the Court with respect to the details of these pensions plans and the extent to which contributions were made, in whole or in part, during the marriage.

[108] Accordingly, I order that the portions of each of the parties' respective pensions acquired during the parties' relationship are family property and are to be divided equally pursuant to Part 6 of the *FLA.* I therefore make the following orders as sought by Mr. Harms to effect equal division of those portions of the parties' respective pensions that constitute family property:

a) The benefits accrued to the claimant under the IWA Plan are family property and the respondent is entitled to a 50% share of the IWA Pension that accrued during the parties' relationship, determined and divided in accordance with Part 6 of the *FLA* and this order;

b) For the purposes of determining the respondent's share of the IWA Pension, the portion of the IWA Pension subject to division is from December 1, 1990 to January 18, 2018;

c) The benefits accrued to the respondent under the Teacher's Plan are family property and the claimant is entitled to a 50% share of the Teacher's Pension that accrued during the parties' relationship, determined and divided in accordance with Part 6 of the *FLA* and this order;

d) For the purpose of determining the claimant's share of the Teacher's Pension, the portion of the Teacher's Pension subject to division is from December 1, 1990 to January 19, 2018; and

e) Either party is at liberty to apply to a court of competent jurisdiction for such directions and orders as may be necessary to facilitate and enforce the division of the IWA Pension or the Teacher's Pension in accordance with this order.

Other Property

[109] Except as otherwise set out in these reasons, each party shall retain all chattels, financial assets, and household contents currently in their possession and

shall be responsible for all debts in their respective names, free and clear of any claim or interest by the other party.

Equalization Payment

[110] Attached to these reasons as Schedule A is a Scott Schedule reflecting my findings, as set out above, reading the division of family property.

[111] Equal division of family property in accordance with these reasons results in a property equalization payment to Mr. Harms in the amount of $870,380.85 (the "Equalization Payment"). This payment derives in large part from Ms. Harms retaining the majority of the parties' real properties.

[112] The Equalization payment shall be made from funds currently held in the RBC DS Joint Account. After the funds in the RBC DS Joint Account are divided equally, the Equalization Payment will be paid to Mr. Harms from Ms. Harms' share of that account.

Vesting Order – UBC Condo

[113] The claimant seeks a vesting order transferring title to the UBC Condo solely into the respondent's name. In his submission, such an order is necessary because, given the respondent's ongoing pattern of failing to engage with this litigation, it is likely she will not take the necessary steps to effect the transfer of the UBC Condo solely into her name in accordance with these reasons and the resulting orders for property division.

[114] The Court's jurisdiction to make a vesting order arises from s. 37 of the *Law and Equity Act*, R.S.B.C. 1996, c. 253 [*LEA*], and s. 97 of the *FLA*. Under s. 37 of the *LEA*, a vesting order is available where a court has the authority to order a conveyance of property: *Lanfer v. Eilers*, 2021 BCCA 241 at para. 95. An order made under s. 37 then has the same effect as if legal title had been actually conveyed to the person in whom it is ordered vested:

> **Vesting orders**
>
> 37(1) Where the court has authority to order the execution of a deed, conveyance, contract, transfer or assignment of any property or other document or to endorse any negotiable instrument, the court may, by order, vest the property in the person and in the manner and for the estates, as would be done by that deed, conveyance, contract, assignment or transfer if it were executed.
>
> (2) An order made under subsection (1) has the same effect as if the legal or other estate or interest in the property had been actually conveyed by deed or otherwise for the same estate or interest to the person in whom it is ordered to be vested or, in the case of a chose in action, as if the chose in action had been actually assigned to that person.

[115] Subsections 97(1) and (2) of the *FLA* in turn confer the necessary authority on the court to determine ownership of property and make orders transferring, vesting, or declaring ownership of property to give effect to a division of property under that act:

> **Giving effect to property division**
>
> 97(1) For the purposes of giving effect to a division of property or family debt under this Part or Part 6, the Supreme Court may
>
> > (a) determine any matter respecting the ownership, right of possession, or division of the property or family debt, and
> >
> > (b) despite sections 94(2) and 215(2), and subject to subsections (3) to (4.3) of this section, as applicable, make any order that is necessary, reasonable or ancillary to give effect to the division.
>
> (2) Without limiting subsection (1), the Supreme Court may make an order to do one or more of the following:
>
> > (a) declare who has ownership of, or right of possession to, property, including a companion animal;
> >
> > (b) require that title to a specified property granted to a spouse be transferred to, held in trust for, or vested in the spouse, absolutely, for life or for a term of years;
> >
> > …
> >
> > (j) transfer property to a spouse.

[116] The claimant submits that a vesting order is warranted in the present circumstances because, given the respondent's pattern of conduct in failing to actively participate in the litigation, it is likely that she will refuse or fail to take the

necessary steps to effect the transfer of title to the UBC Condo to herself in accordance with these reasons and the resulting orders for property division.

[117] In my view, the claimant's concerns are not unfounded. Ms. Harms' refusal to engage in the litigation process has been noted by multiple associate justices and justices of this Court, and in the circumstances, I find that reticence is likely to continue.

[118] In the result, pursuant to s. 37 of the *LEA* and s. 97 of the *FLA*, I order that title to the UBC Condo be vested solely in the respondent's name.

Conclusion – Property Division

[119] In the result, I find that the parties' family property is to be divided equally pursuant to s. 81 of the *FLA*. As noted above and reflected in the attached Scott Schedule, this results in the Equalization Payment being paid to Mr. Harms.

[120] The Class F Shares, the Inheritance and the Jenna Account are excluded property.

[121] Mr. Harms shall retain title to the Fraser Highway Property. Ms. Harms shall retain title to the Country Woods House, the UBC Condo and the Hornby Island Property. Title to the UBC Condo shall be vested solely in Ms. Harms' name.

[122] Mr. Harms shall retain all right, title and interest in 444214, free and clear of any claim or interest by Ms. Harms.

[123] Each party shall:

a) retain sole ownership of all vehicles, chattels, and household contents currently in their possession as set out in paras. 60-70 above;

b) retain sole ownership of the bank and investment accounts as set out in paras. 71-76 above; and

c) be responsible for all debts in their respective names, free and clear of any claim or interest by the other party.

[124] The parties are each entitled to a 50% interest in that portion of the other party's pension that accrued during the relationship, to be determined and divided in accordance with Part 6 of the *FLA*.

Divorce

[125] Mr. Harms also seeks an order for divorce. The conditions that must be satisfied for a divorce to be granted are set out in ss. 8–12 of the *Divorce Act,* R.S.C. 1985, c. 3 (2nd Supp.). In light of the following evidence, I find that those conditions are satisfied:

a) The parties married on July 27, 1991 in Chilliwack, British Columbia;

b) The parties have been living separate and apart since January 19, 2018;

c) There is no collusion in relation to the application for divorce, and the divorce is not sought for any improper purpose or on false evidence;

d) There are no children of the marriage; and

e) There is no chance that the parties will reconcile.

[126] Based on the foregoing, I am satisfied that the requirements of the *Divorce Act* have been met and grant a divorce. Pursuant to s. 12(1) of the *Divorce Act*, the divorce will take effect on the 31st day after the issuance of this order.

Conclusion

[127] In summary, I make the following orders:

a) Subject to s. 12 of the *Divorce Act*, the claimant, Stephan Craige Harms, and the respondent, Katharina Henriette Harms, who were married at Chilliwack, British Columbia, Canada on July 27, 1991, are divorced from

each other, the divorce to take effect on the 31st day after the date of this order.

b) The parties' family property shall be divided equally as set out in Schedule A.

c) The claimant is entitled to retain the Class F Shares as excluded property under s. 85(1)(b.1) of the *FLA*.

d) The respondent is entitled to retain the following property as excluded property under s. 85 of the *FLA*:

   i. The Jenna Account, namely RBC account ending in 7866, held jointly with Jenna Harms; and

   ii. The Inheritance of $100,000 held in RBC GIC investment account ending in 9713.

e) The claimant will retain all rights, title and interest in the Fraser Highway Property, free and clear of any claim or interest of the respondent.

f) The respondent will retain all rights, title and interest in the following real property, free and clear of any claim or interest of the claimant:

   i. The Country Woods House; and

   ii. the Hornby Property.

g) Pursuant to s. 37 of the *LEA* and s. 97 of the *FLA*, the UBC Condo shall be vested in the sole name of the respondent, and she shall retain all rights, title, and interest in the property, free and clear of any claim or interest of the claimant.

h) The claimant will retain all right, title and interest in 444214 B.C. Ltd., free and clear of any claim or interest of the respondent.

i) The parties are each entitled to a 50% interest in that portion of the other party's pension that accrued during the relationship, to be determined and divided in accordance with Part 6 of the *FLA*.

j) The RBC DS Joint Account is to be divided equally. The Equalization Payment in the amount of $870,380.85 shall be made to Mr. Harms from Ms. Harms' share of the account.

k) Except as otherwise set out herein, each party shall retain all chattels, financial assets, and household contents currently in their possession and shall be responsible for all debts in their respective names, free and clear of any claim or interest by the other party.

Costs

[128] Under Rule 16-1(7), costs of a family law case must be awarded to the successful party, unless the Court otherwise orders. Rule 16-1(1)(c) in turn provides that costs must be assessed in accordance with Appendix B, unless the court awards lump sum costs for the family law case and fixes those costs under 16-1(14) in an amount the court considers appropriate.

[129] Mr. Harms seeks costs at Scale B in accordance with Appendix B of the *Rules*, to be assessed on a lump sum basis. Mr. Harms has provided a draft bill of costs in the amount of $40,000, exclusive of disbursements, which he is prepared to waive.

[130] The Court's discretion to fix quantum of costs is to be exercised sparingly, particularly as the Registrar is the court officer best positioned to conduct an assessment. That said, an exception arises where the time and cost of a registrar's hearing cannot be justified. As the Court of Appeal noted in *Gichuru v. Smith*, 2014 BCCA 414:

> [154] … The decision to fix the quantum of costs under R. 14-1(15) is a matter of judicial discretion that should be sparingly exercised. The court officer best placed to conduct an assessment is usually the registrar, whose knowledge and experience in assessing legal bills is extensive and seldom

> matched by that of a trial judge. An exception may arise in cases when the judge is intimately familiar with the litigation or the time and cost of a registrar's hearing cannot be justified or where the parties consent. The fact that a judge has heard the trial does not necessarily lead to the conclusion that the best use of judicial resources is for the judge to assess costs. A concern that a party who might have to pay costs will prolong the costs assessment by requiring a microscopic review of the services provided by counsel must be balanced against the right of that party to challenge the reasonableness of the proposed costs.
>
> [emphasis added]

[131] In my view, it is highly likely that Ms. Harms' pattern of ongoing delay throughout this proceeding will continue in proceedings before the Registrar, and that she is likely to unduly prolong a hearing before the Registrar: see e.g. *Nelson v. Harms*, 2024 BCSC 1419 at para. 88. Previous conduct that raises such concerns weighs in favour of a lump sum assessment: see e.g. *Kemp v. Vancouver Coastal Health Authority Ltd.*, 2016 BCSC 1541 at paras. 66-67. In my view, the likely prospect that Ms. Harms will refuse to engage in or delay proceedings before the Registrar is a significant concern.

[132] I have balanced this concern against Ms. Harms' right to challenge the reasonableness of the opposing party's proposed costs: *Gichiru* at para. 109. In doing so, I have considered Rule 1-3 of the *Rules*, in particular the object of proportionality.

[133] Mr. Harms has also prepared and provided a bill of costs on the tariff at Scale B in amount of $40,000. Having reviewed the bill of costs in light of my knowledge of this proceeding, I find the amount sought eminently reasonable given the lengthy and protracted nature of this litigation and volume of materials marshalled on this summary trial application and the litigation as a whole. Indeed, the amount sought likely falls at the low end of the appropriate range.

[134] This is particularly the case as Mr. Harms has also confirmed that he is not seeking recovery of his disbursements, which would undoubtedly have been significant given the lengthy nature and extent of these proceedings and multiple expert reports that were commissioned and produced at various points in time over

the course of the litigation. In such circumstances, the principle proportionality show that it is in the interests of both parties to deal with the matter without further process: see *Harrison v. Law Society of British Columbia*, 2015 BCSC 521 at para. 6.

[135] The amount Mr. Harms' seeks to recover is relatively small in relation to the amounts at issue in this proceeding, and I am satisfied that awarding it will have no effect on Ms. Harms' ability to live comfortably for the balance of her life: see e.g. *Bradley v. Callahan*, 2024 BCSC 806 at para. 9.

[136] Mr. Harms is not seeking recovery of disbursements. These proceedings have extended far longer than necessary, owing almost entirely to the conduct of Ms. Harms. It is eminently like that proceedings in front of the Registrar will likewise be characterized by unnecessary delay and expense. In these circumstances, I find that the object of the rules and the principle of proportionality, as set out in Rule 1-3, are furthered by a lump sum assessment.

[137] I find these concerns outweigh Ms. Harms' right to challenge the reasonableness of a costs award made against her in the circumstances. The present circumstances are such that the time and cost required to conduct a hearing before the Registrar cannot be justified. Considering history of proceedings, Rule 1-3 of the *Rules,* and Ms. Harms' conduct throughout, I conclude that this is an appropriate case to exercise my discretion under Rule 16-1(14) to award lump sum costs and fix those costs in an appropriate amount.

[138] Mr. Harms asserts the proceedings before me on this summary trial—which occupied eight days—together with the voluminous materials contained in the court file provide a sufficient evidentiary basis for me to assess costs on a lump sum basis. In the unique circumstances of this proceeding, I agree.

[139] Accordingly, I find that as successful party, Mr. Harms is entitled to his costs at Scale B, which I fix on a lump sum basis at $40,000 inclusive of taxes.

[140] The Court has discretion to order costs paid out from a portion of estate or property: *Rules,* Rule 16-1(15); see e.g. *C.H.T. v*. *P.V.L.*, 2015 BCSC 2311 at para. 85. In the interest of minimizing the prospect of future litigation and bringing these proceedings to an end, I further order that Mr. Harms' costs are to be paid from Ms. Harms' share of the Joint RBC DS Account following payment of the Equalization Payment. This results in a transfer of $910,380.85 to Mr. Harms from the Joint RBC DS Account.

"Hughes J."

[i] The claimant sought an exclusion of $100,045. However, this appears to be a mathematical error, as the claimant's equity at that point in time is the Nootka Property value ($140,000), less the outstanding principal ($23,044.86, which is $63,000 less the amount paid off, $39,955.14), for a total of $116,955.14.

Schedule A

	Retained by claimant	Retained by respondent
Real Property		
Country Woods House		$2,500,000.00
Hornby Property		$1,676,000.00
UBC Condo		$1,180,000.00
Fraser Highway Property	$2,750,000.00	
Vehicles and Aircraft		
2015 Tundra	$19,123.00	
2015 John Deere	$21,200.00	
2012 Crusader Travel Trailer	$13,500.00	
one utility trailer	$450.00	
one 53' storage trailer	$1,700.00	
one horse trailer	$6,000.00	
2011 Land Rover LR4		$9,500.00
2001 BMW 321i		$3,414.00
1941 Tiger Moth airplane	$25,000.00	
Jewelry		$90,000.00
Bank Accounts		
RBC Dominion Securities account ending in 02-1-0		$5,000,000.00
RBC Dominion Securities account ending in 90-1-4	$5,000,000.00	
RBC Savings account ending in 7246	$0.04	
RBC Chequing account ending in 7212	$773.78	
Envision Savings and Chequing account ending in 0728	$1,717.29	
RBC No Limit Chequing account ending in 4487		$143,766.48
Cash from sale of 53’ storage trailer	$1,700.00	
Joint RBC DS Account	$1,226,064.73	$1,226,064.73
RRSPs and Investments		
Envision/Aviso RRSP account ending in 29-22	$242,041.78	
RBC Dominion Securities RRSP account ending in 49-1-7 TUI (CDN)		$227,576.32
RBC Dominion Securities RRSP account ending in 49-1-7 TUI (USD)		$65,340.28

BMO RRSP account ending in 2042		$36,147.39
RBC RSSP account no. 550844773		$10,379.98
RBC Dominion Securities TFSA account ending in 84-1-8 TUI		$55,054.16
BMO RESP account ending in 8396		$27,165.83
RBC GIC Investment account ending in 9713		$104,096.36
Jenna Account		$360.39
Corporate Assets held by 444214		
CIBC account ending in 5712	$931.38	
CIBC account ending in 5217	$1,469,941.83	
LESS: Excluded Property		
Class F Shares	-$266,400.00	
Ms. Harms' Inheritance		-$100,000.00
Jenna Account		-$360.39
	$10,513,743.83	$12,254,505.53
Total Value of Family Property	$22,768,249.36	
Each Entitled	$11,384,124.68	
Equalization Payment to claimant	**$870,380.85**	
ADD: Lump sum costs to claimant	$40,000.00	
Total to claimant	**$910,380.85**	

After adding up family assets each party will retain, Ms. Harms owes Mr. Harms an equalization payment of $870,380.85. Adding the $40,000 lump sum costs I have assessed, $910,380.85 is to be transferred to Mr. Harms from the Joint RBC DS Account.