SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION
Citation: *Butt v. Patterson*, 2023 NSSC 422

Date: 20231229
Docket: SFHPSA-123873
Registry: Halifax

Between:

April Butt

Applicant

v.

David Patterson

Respondent

Judge:	The Honourable Justice Cindy G Cormier
Heard:	May 15 & 16, 2023, in Halifax, Nova Scotia
Written Submissions:	June 7, 2023 for the Applicant June 28, 2023 for the Respondent
Counsel:	Patrick Eagan for the Applicant Meaghan Johnson for the Respondent

By the Court:

Were the parties engaged in a joint family venture or independent personal ventures?

[1] For 17 years the parties lived together in a common-law like relationship, until they separated in October 2020. I have been asked to consider whether Ms. Butt has an entitlement to compensatory and / or non-compensatory spousal support and / or an equal division of all the parties' assets or an unequal division of the parties' joint real property, by way of unjust enrichment or a finding there was a joint family venture.

[2] At trial in May 2023, April Dawn Butt (aka April Dawn MacDonald) was 51 years of age, born in 1972. She remained in the jointly owned home the parties had purchased after living together for approximately 5 years. She remained married to Gary Gerard MacDonald with whom she shares three adult children. She stated she was not employed. David Arthur Maxwell Patterson was 58 years of age, born in 1965. Mr. Patterson left Nova Scotia in or around January 2023 and he reported he was living in Surrey British Columbia in an RV park, and he was not employed.

Trial

Ms. Butt's position

[3] In her post trial submissions dated June 6, 2023, Ms. Butt indicated she was:

> …applying to the Court for prospective and retroactive spousal and associated support under the *Parenting and Support Act* and seeks a determination of the parties' interests in property pursuant to **principles of trust and unjust enrichment** as set out by the Supreme Court of Canada in *Kerr* v. *Barranow*. (my emphasis).
>
> …
>
> Ms. Butt seeks to buy out Mr. Patterson's interest in the home. Mr. Patterson agrees to be bought out. Failing Ms. Butt's ability to buy out the house, it would be sold.

[4] Further, at paragraph 24 of her post trial submissions dated June 6, 2023, Ms. Butt argued:

> If the Court accepts that, pursuant to *Kerr* v. *Baranow*, Ms. Butt should receive **half of the assets which the parties accumulated**, Ms. Butt will acknowledge that there should be an equal division of the equity in the Lake Echo home held in joint tenancy.

[5] In June 2023, Ms. Butt argued that the parties had an "economic partnership," that she "was disadvantaged compared to Mr. Patterson and that all assets, including the VAC benefits, should be found to be joint assets from a joint family enterprise" … Ms. Butt also stated:

> As to tabulation of assets, there can be no dispute that the documentary record is lacking and confusing. In reviewing Mr. Patterson's Schedule "C": to his Trial Brief, we accept that the **RRSP's TFSA's and LIRA are essentially offsetting**.
>
> …
>
> Ms. Butt **accepts that there was no equity in the RV Camper** at separation, and agrees with a figure of $26,000 for the **Charger at separation, resulting in**

equity of $6,000.00 at separation, given the $20K loan at separation according to Mr. Patterson's original Statement of Property.

…

…given that Ms. Butt is seeking, per paragraphs 9 and 10 of her Trial Affidavit, that Mr. Patterson **reimburse her for half the mortgage, property tax, home insurance and upkeep costs** (half of $37,480.78 or **$18,740.30),** we need to use the current mortgage balance ($160,797 as of May 1, 2023) to determine the equity in the home as a starting point.

Further, Ms. Butt is **not** (as we claimed in our trial brief) claiming a contribution from Mr. Patterson for the monthly payments made by her on the solar system lease and heat pump since separation. Rather, **she is more simply seeking to deduct the balance owing on these two (2) debts at separation**…

…

We acknowledge further that the repairs on the scooter were done after separation, thus **Ms. Butt makes no claim for an interest in the scooter** (Piaggio).

[6] Mr. Butt's specific requests included:

1. That the amount of Ms. Butt's equalization payment to Mr. Patterson to equalize all assets, including his interest in the jointly owned home, be set at $48,641.11;
2. That the equalization payment be offset by Ms. Butt's claim for retroactive spousal support in the amount of $26,899.98, such that Ms. Butt pay Mr. Paterson the sum of $21,741.13 [I presume Ms. Butt was referencing spousal support commencing October 19, 2020];
3. That each party have sole ownership of(sic) possession of any accounts, investments, vehicles, or assets of any kind in their own name;
4. Mr. Patterson's military pension be divided equally from the date of inception or, in the alternative, from the end date of the pension entitlement of any former spouse, or, in the further alternative, for the period of cohabitation with Mr. Patterson from October 2003, to August 2005 (Murray v. MacDougall, 2015 NSSC 215);
5. That the parties' incomes be set at $34,000.00 for Ms. Butt and $99,592.00, for Mr. Patterson imputing an additional $10,000.00 above each party's present incomes.
6. That Mr. Patterson pay prospective, indefinite spousal support to Ms. Butt in the amount of $1,626. Per month with a review in two (2) years, [Ms. Butt argued entitlement based on a non-compensatory claim related to the period of cohabitation; the disparity in incomes; her need; her lack of assets apart from the

house; and his ability to pay and / or compensatory entitlement – based on her contribution through domestic chores and helping to care for his son for a year; and her financial contributions – bought him a truck; computer; paid credit cards; CRA debt, assisted him when he purchased the Subaru and then lost his job; supported him while he attended community college; used up her lump sum severance and retroactive LTD payments supporting he and the family].

7. Mr. Patterson maintain Ms. Butt on his military / Sun Life medical / dental / life insurance and that he designate Ms. Butt as survivor beneficiary on his regular military pension.

Mr. Patterson's position

[7] In his Affidavit sworn May 8, 2023, Mr. Patterson stated that he was seeking:

1. Ms. Butt buy me out of the home for an equal division provided the home is valued at $354,000, and provided Ms. Patterson is able to refinance the home in her name alone. In the event she is unable to, I am seeking for the home to immediately be listed for sale and the net proceeds to be equally divided.
2. The return of his belongings [paragraph 89 affidavit sworn May 8, 2023];
3. The return of the $50,000.00 he claims he loaned to Ms. Butt;
3. An equal division of Ms. Butt's pension (locked in RRSP from RSA);
4. For Ms. Butt and Mr. Patterson to each retain the property they have in their individual names and possession; and
5. That no spousal support be payable. [that Ms. Butt does not have a compensatory entitlement to spousal support; she is voluntarily underemployed; and she could work as a trained carpenter and she has an insurance certificate and is a licensed risk management technician].

[8] Issues raised by Mr. Patterson in his post trial submissions filed June 28, 2023, included:

1. What is the appropriate division of the parties joint property?
2. What if any, is the appropriate division of the parties' remaining property?

3. Should income be imputed to Mr. Patterson? * Mr. Patterson noted the issue was only raised in Ms. Butt's post trial submission for the first time.
4. Should income be imputed to Ms. Butt?
5. Is Ms. Butt entitled to spousal support?
6. If entitlement is made out, what quantum of support is appropriate?
7. Should there be a retroactive variation of interim spousal support?

[9] The following is my summary of Mr. Patterson's requests as outlined in his brief filed on June 28, 2023:

1. An equal division of the home purchased in 2008 and resided in together until October 2020. Mr. Patterson was agreeable to Ms. Butt purchasing the home from him and paying him **$87,465.21,** on the condition that if Ms. Butt was unable to secure financing, the home would need to be immediately listed for sale and the proceeds shared equally. He disagreed that the upkeep since separation should be a consideration in dividing the equity in the home. He argued that Ms. Butt provided no objective evidence or supporting documents regarding the cost of upkeep for the home and that if she purchased the home she would retain the benefit of the heat pump and the solar panels;
2. That Mr. Patterson should not be required to pay back half the expenses paid by Ms. Butt since the parties' separation, while she had exclusive occupation of the residence and the value of the home should be assessed as of the date of division pursuant to *Simmons* v. *Simmons,* 2001 CanLII 4717. Mr. Patterson sought credit for the two months of mortgage payments he made following separation, and occupation rent in the amount of $1400 per month for 31 months/ 2 for a total of **$21,700.00**;
3. That the court find Ms. Butt has no claim or responsibility with respect to the remainder of Mr. Patterson's assets / debts which are in his name alone including the Charger, the RV, his motorcycles, the trailer, his debts, and the bank accounts.
4. That Ms. Butt bears the burden to demonstrate a successful claim for unjust enrichment. That the unjust enrichment claim is not made out. *Roach* v. *MacNeil* [2014] NSJ No. 159.
5. That the list of items per paragraph 89 of Mr. Patterson's Affidavit sworn May 8, 2023, be returned to him;
6. That Mr. Patterson's pension not be divided;

7. That Ms. Butt return the $50,000 Mr. Patterson claims he loaned to her for her TFSA;

8. That following trial Ms. Butt recognized there was no equity in the RV at date of separation, and the RV remain in Mr. Patterson's possession without any claim by Ms. Butt;

9. That Mr. Patterson accepts the value of $3000 for the 2003 Kawasaki Nomad, but he argues Ms. Butt has no claim and he will retain title and have possession free and clear;

10. That Mr. Patterson accept the value of $4,000.00 for the Subaru which was in Ms. Butt's possession at separation, but does not claim an interest, nor does he claim an interest in the Nissan Mirano 2010, and Ms. Butt may retain title and have possession free and clear;

11. That the parties agreed to adopt the mid range value of $26,000 for the Charger and agreed there was $20,000.00 owed at separation for a value of $6000, but argued Ms. But has no claim and he will retain title and have possession from and clear;

12. Mr. Patterson sought to impute an income of $60,000 to Ms. Butt, alleging she is underemployed (*Standing* v. *MacInnis*, [2020] N.S.J. No. 377 and *Parsons* v. *Parsons,* 2012 NSSC 239). That Ms. Butt has not discharged her burden to prove she cannot work and did not provide evidence with respect to any efforts she has taken to obtain employment. In addition, Mr. Patterson alleged that Ms. Butt received rent from her daughter, $3600 tax free per year to reside in Ms. Butt's 4-bedroom home.

13. That with respect to establishing Ms. Butt's means and needs, Mr. Patterson argued there was a lack of financial disclosure provided by Ms. Butt. That she failed to file an updated Statement of Expenses and updated Statement of Property prior to trial. That she had purchased a new vehicle after separation Nissan Mirano and failed to disclose the purchase. That she had failed to disclose that her daughter was living with her and paying rent to her until just before trial.

14. Mr. Patterson argued that Ms. Butt should not receive a portion of Mr. Patterson's Veterans Affairs Canada awards or pensions through compensatory spousal support, and that ongoing or prospective spousal support should be denied. That Ms. Butt did not give up her career or educational opportunities for Mr. Patterson's career. Ms. Butt was not a stay-at-home mom and there was no agreement to share the Veterans Affairs Canada awards or pensions with Ms. Butt.

15. That no prospective spousal support be granted and there be no retroactive adjustment to spousal support already paid by Mr. Patteson.

Evidence

[10] Ms. Butt's witnesses included: herself; Natalie MacDonald; Shauna Boyle; and Greg Shand.

[11] Mr. Patterson's was his one and only witness.

Facts

[12] Ms. Butt claims she "owned" the home at Serocco Crescent (the Serocco property) that the parties first resided in when they began their "common law relationship" in the fall of 2003.

The Serocco property

[13] On February 18, 2002, before the parties to this proceeding began to cohabit, the spouses Gary Gerard MacDonald (Ms. Butt's husband) and April Dawn MacDonald (Ms. Butt) and the Halifax-Dartmouth Habitat for Humanity Association took out two mortgages on the Serocco property. Several of the applicable mortgage conditions are summarized by me as follows:

1. One mortgage was a fully open mortgage for the Serocco property in the amount of $80,000 to be paid at **$266.67** month from September 1, 1999 to August 1st, 2024; and
2. The second mortgage was a non-transferable mortgage, a closed mortgage for the Serocco property in the amount of $21,000, payable as of the 1st day of August 2024 or immediately due and payable

upon the sale, lease, or transfer of the property prior to the maturity date set out herein.

[14] Other conditions applicable to the second mortgage on the Serocco property are also summarized by me and included but were not limited to the following:

1. Ms. Butt and her husband Mr. MacDonald were required to provide proof of their income 60 days prior to each anniversary date;
2. The mortgage would become immediately due and payable on the occurrence of any of the following:
    1. the failure of the Mortgagor to occupy the mortgaged property as his, her or their principal place of residence;
    2. the failure of the Mortgagor and his or her spouse, if any, to fully disclose his, her or their gross income as required hereunder;
    3. the provision by the Mortgagor and his or her spouse of false or misleading information as to his her or their gross income; and
    4. the failure of the Mortgagor and his or her spouse, if any, to complete five hundred (500) sweat equity hours within one (1) year of completion of the home on the lands.

[15] There were conditions with respect to the retention of the Serocco property and the sale of the Serocco property. There were incentives for Ms. Butt to remain in the residence for at least twelve years and further incentives for her to remain for twenty years.

[16] An email sent to Mr. Patterson from Ms. Boyle, most likely sent after the parties' separation, indicated Ms. Butt did not advise Ms. Boyle that the Serocco

property was a "Habitat for Humanity House." Ms. Boyle suggested she purchased the property from Ms. Butt without knowing about the pre-conditions.

[17] Mr. Patterson suggested he was married to "Stephanie" in the 80s and they had a child, D, who was 29 at the time of trial. He stated that he paid $360 per month in child support until 2010 when D moved in with the parties for a year. He did not resume paying child support after D returned to Stephanie's care.

[18] In *Mason* v. *Patterson*, 2004 NSSF 74, J. Williams found Mr. Patterson and Ms. Mason had lived in a common-law relationship from March of 2000 to January of 2002, "a period of some 22 months." When addressing the issue of Ms. Mason's claim for an interest in Mr. Patterson's pension pursuant to the *Pension Benefits Division Act,* relying on unjust enrichment, J. Williams declined to grant the order "based on a common law relationship that lasted less than two years."

[19] In February 2002, Mr. Patterson was still making mortgage payments on the property he had shared with Ms. Mason, his son J's mother, for about twenty-two months. Mr. Patterson filed for bankruptcy on May 29, 2002.

[20] Ms. Butt provided very little information about the early part of her marriage with Mr. MacDonald or about any agreements they may have reached upon physical separation. Mr. Patterson understood that Ms. Butt and her children's

father, Mr. MacDonald, would take financial responsibility for their three children while he took financial responsibility for his two children.

[21] Mr. Patterson joined the military when he was 17 years old (January 10, 1982). Mr. Patterson completed 5 tours overseas and he worked at the Department of National Defence as a Corporate Postmaster between July 1998 and July 2005. He retired from the military in or around July or August 2005, after 23 years of military service, two years of which he had been living with Ms. Butt and her children.

[22] There was some discrepancy with respect to when the parties began residing together. However, Ms. Butt admits to paragraph 4 of Mr. Patterson's affidavit filed May 8, 2023, wherein he states the parties began residing together in 2003 and separated on October 19, 2020.

[23] Mr. Patterson began a relationship with Ms. Butt, but they did not move in together before he was deployed on military service between March 2003 and August 2003. However, Mr. Patterson stated that in 2003, before he and Ms. Butt moved in together, he was financially supporting Ms. Butt, her three children, and his two children while Ms. Butt was in school and / or she had started a new job.

[24] Mr. Patterson stated that while he was deployed, Ms. Butt told him she had lost much of her furniture in her separation from Mr. MacDonald. He continued that although he understood Ms. Butt had access to funding through a student loan and, to the best of his knowledge, he believed she was receiving child support from Mr. MacDonald for their three children, Mr. Patterson gave Ms. Butt money to purchase bedroom furniture.

[25] He stated that without his knowledge or consent, while he was still deployed overseas between March 2003 and August 2003, Ms. Butt moved his computer, his stereo, his 42-inch TV, his bed frame, and several of his toolboxes and tools into her Serocco property. When he returned, Mr. Patterson purchased a living room set and a dining room table with 8 chairs for use at the Serocco property.

[26] Mr. Patterson indicated that before his son D moved in with Mr. Patterson and Ms. Butt between 2010 and 2011, he had cared for his son D (born in 1994) every weekend and every Wednesday, including providing for his physical needs. There is little to no evidence regarding any agreement Mr. Patterson may have had with D's mother.

[27] Mr. Patterson acknowledges that at times Ms. Butt did contribute financially for the benefit of his children, including paying for them to be included in several

family vacations. Mr. Patterson also stated that at times he contributed to trips and purchased other items for the benefit of Ms. Butt and / or by extension her children.

[28] When the parties started living together, Ms. Butt had just received her driver's license, and she owned a Suzuki Swift. Mr. Patterson stated that Ms. Butt had several car and motorcycle collisions, and "required corrective driver's lessons." He stated that when Ms. Butt "drank often" Mr. Patterson became her designated driver.

[29] On or about January 23, 2004, Ms. Butt's husband, Gary Gerard MacDonald, transferred the Serocco property to April Dawn MacDonald (Ms. Butt). Some time later, on March 9, 2004, April D. MacDonald (Ms. Butt) obtained a separate mortgage from CitiFinancial Canada East Corperation. in the amount of $23,919.79.

[30] Ms. Butt and Mr. MacDonald were not divorced as of the trial date in May 2023. Their three adult children, N, R, and M lived primarily with Ms. Butt and Mr. Patterson for various periods at the Serocco property until 2008 and then the property they purchased together in Lake Echo. M remained until she began living primarily with her biological father, Mr. MacDonald. N left the parties' home

when she was 17 years old or in or around 2018. R remained residing with the parties until 2019.

[31] Mr. Patterson perceived that Ms. Butt and her children were sometimes verbally or emotionally abusive toward him. I accept Mr. Patterson's evidence. However, further to the testimony of Ms. Butt's daughter, N, I find that at times Mr. Patterson also became verbally and / or emotionally abusive toward Ms. Butt and / or the children.

[32] Mr. Patterson stated that initially he helped to clean the parties' home, and that he was responsible for the cleaning and lawn care. However, he indicated that after a period he decided not to clean the children's bedrooms for instance, as he became frustrated with the children and frustrated that cleaning did not appear to him to be a concern for Ms. Butt.

[33] In the early years of the parties' relationship, Mr. Patterson stated that he financially supported his two children. However, Mr. Patterson had a strained relationship with J's mother, Ms. Mason. He had difficulty negotiating parenting time with J. In 2004, Mr. Patterson and Ms. Mason were involved in family litigation.

[34] In 2004, Mr. Patterson was ordered to pay child support for J (born in 2001) beginning June 16, 2004, ($424 + $387 = $811 per month), and specified parenting time was ordered. The order was varied and then Mr. Patterson gave up his parental rights to J. He no longer had a legal obligation to pay child support for J after January 10, 2008.

[35] Mr. Patterson reported concerns that in or around 2020, Ms. Butt advised him she had provided information resulting in Ms. Mason, J's mother, being denied an insurance claim for an accident which occurred in British Columbia. Ms. Butt had suggested to him that the information she provided might possibly result in fraud charges against Ms. Mason.

[36] Ms. Butt understood that during that period Mr. Patterson paid child support for two children from two previous relationships, D and J:

> leaving him with a net take home pay of about $800.00 per month, requiring him to need my financial assistance to have any minimal standard of living or a roof over his head.

Ms. Butt acknowledges that for the first two years of her relationship with Mr. Patterson until Mr. Patterson retired from the military in August 2005, Mr. Patterson "was in the regular military earning a gross income of approximately $50,000.00 per year."

[37] Mr. Patterson denied he had any difficulty meeting his obligation to support his two children from two previous relationships. I would note that at around that time it appears Ms. Butt's mortgage payment for the Serocco property would have been $266.67 per month (roughly equivalent to approximately $412.09 in 2023) based on the open mortgage agreement effective February 18, 2002.

[38] Mr. Patterson retired from the Canadian Armed Forces in August 2005, and he received a lump sum of $21,000 for 23 years of military service. He also began receiving pension income. Ms. Butt understood he was receiving a "defined benefit pension, which appears not to have been a full pension, in the amount of approximately $1,750.00 per month," and she encouraged Mr. Patterson to get another job.

[39] Ms. Butt has stated that though Mr. Patterson had prior relationships with D's and J's mothers, there is no evidence that Mr. Patterson's regular military pension was ever divided with a common law partner or a spouse before Ms. Butt began a relationship with Mr. Patterson in 2003. Ms. Butt provided the court with a copy of the decision of Justice Williams in *Mason, supra*.

[40] Ms. Butt argued that she is entitled to an equal division of the entirety of Mr. Patterson's pension and that his remaining pension income would be available for

him to pay spousal support to her, after accounting for the division of the entirety of his pension or in the alternative, a portion thereof. It is unclear to me what the value is of pension benefits Ms. Butt may have accumulated while she was working in the insurance industry vs the value of Mr. Patterson's military pension.

[41] Although Ms. Butt separated from Mr. MacDonald in 2002, at trial she was still legally married to Mr. MacDonald. She did not provide any evidence regarding any separation agreements reached with her husband and it is unclear whether she has a claim or has any entitlement to support from Mr. MacDonald or a claim to any or has received or will receive any pension benefits accumulated by Mr. MacDonald.

[42] Ms. Butt's adult daughter, N, testified. She stated she was four years old when the parties began cohabitating and she left the parties' home in 2018, when she was seventeen. N indicated that Mr. Patterson: would care for her for "very short periods of an hour or so when mom had to do errands," and he drove her to school between the ages of nine and twelve. N stated that at times Mr. Patterson had presented as angry (throwing things around in the children's bedrooms), and that it did not appear to her at that time that Mr. Patterson enjoyed caring for the children. N returned to live with Ms. Butt after the parties' separated, and N was living with Ms. Butt at the time this matter was heard.

[43] I accept that N's testimony is representative of her impressions of her mother, Ms. Butt, and of Mr. Patterson as a child and as a teenager. I accept that as a child and / or as a teenager, N perceived that her mother took care of most of her physical needs and her mother cared for her and her siblings most of the time.

[44] I also accept N's evidence that Mr. Patterson at times presented as angry or disappointed if the children did not meet his expectations. However, I find that portions of N's affidavit evidence sworn April 30, 2023 regarding her observations as a child or a teenager are: irrelevant; unreliable (due to age / circumstances); or can be described as hearsay.

[45] Although I accept that at times Mr. Patterson became angry with Ms. Butt and / or the children, as noted above, I found Ms. Butt and the children were verbally and emotionally abusive toward Mr. Patterson and their behaviour also contributed to the discord.

[46] N recalled that both Mr. Patterson and her mother used marijuana and drank perhaps to excess sometimes. However, N perceived her mother "as the only real breadwinner in the family until Dave got his settlement."

[47] I understand the children attended an outside childcare facility between 2002 and 2008. During that period, both Ms. Butt and Mr. Patterson were at times

working outside the home. However, in 2008 or by 2009, Mr. Patterson began working primarily from the parties' home garage and he assisted Ms. Butt by driving N to and from school and being available for the children and the family's pets.

[48] N's views about the parties' respective financial contributions are consistent with her mother's position on the issue. However, N's are not likely based on a real understanding or exposure to the parties' respective finances but based on representations made by her mother and / or her perception that because her mother worked outside the home and Mr. Patterson worked from home between 2008 – 2019, that her mother was the "primary breadwinner." Both parties have agreed Ms. Butt was the primary breadwinner. Mr. Patterson is not making a claim that Ms. Butt was enriched because he was more available at home or that he was deprived.

[49] Ms. Butt acknowledged that following Mr. Patterson's retirement from the military in or around August 2005, Mr. Patterson secured other employment, including working with a property restoration company for approximately one year. She further acknowledged that in 2006, Mr. Patterson worked as a cleaning technician at KB Clarke Disaster Kleenup. He also worked outside the home.

[50] Ms. Butt acknowledged Mr. Patterson also took a "course for $4,000 to work on the oil rigs" but she stated he later claimed there was no work. Mr. Patterson specified that in 2006 he took a "swamper's course" to qualify to be a truck driver's assistant. However, upon completion of the course, Mr. Patterson did claim there were no employment opportunities for him in that field.

[51] Ms. Butt acknowledged Mr. Patterson worked with Northern Canada. However, Ms. Butt expressed concern that after working for a short period Mr. Patterson purchased a $65,000 Subaru, and he was subsequently fired from his job. She claimed she put money down on the car, took over the payments, and they traded the car in at a "large loss."

[52] Mr. Patterson acknowledged working in Alberta for eight weeks. He stated he was not fired, nor did he refuse to work because he could not smoke "marijuana. He claimed that he was laid off as the business shut down and that he paid his own down payment for his truck with money he earned from his job in Alberta.

[53] Ms. Butt understood that in 2007 Mr. Patterson took out a student loan for a small engine repair course at the community college at NSCC. Mr. Patterson stated that he took out a loan which he paid off over a ten-year period and that he

had attended a Motorcycle and Power Products Repair course at NSCC Akerley College from September 2007 to June 2008 and he graduated with honours.

[54] Mr. Patterson stated he stopped paying child support for J in or around 2006 or when Ms. Mason left with J. However, Mr. Patterson officially gave up his legal rights to J in or around 2008. At around the same time, the parties agreed to make use of relocation benefits available to Mr. Patterson through Veterans Affairs to sell the home they had been residing in together and to jointly purchase a new home with a garage which would allow Mr. Patterson to run a small engine repair business from the parties' home.

[55] Mr. Patterson indicated that from February 2008 to May 2009 he worked as a mechanic and manager at Cook's Classic Rebuilds and that in the summers he also worked as a motorcycle instructor.

[56] In 2008, Mr. Patterson cashed out an RRSP of $18,000.00 from his military severance. Ms. Butt has suggested she does not know where that money went. Ms. Butt has claimed she paid off Mr. Patterson's credit card bills with a CitiFinancial loan which was rolled into their home mortgage.

[57] In 2008, Mr. Patterson declared employment income of $4,356.28 (income $12,849.49 – expenses of $7,496.33 = $5,353.16 – business use of home $996.88 =

$4,356.28); pension income of $20,961.36; and RRSP income of $18,723.64 for a total of $48,391.28. At that time, Mr. Patterson owned a 1998 Chevy 1/2 ton and claimed total motor vehicle expenses of $3,741.43 for 2008.

[58] Ms. Butt claims she paid $3,000 to buy Mr. Patterson a computer for his business and that she purchased tools and all parts and supplies for Mr. Patterson to operate his small engine repair business. She stated that she also took out loans in her name to make purchases for the family or to purchase things for Mr. Patterson including a "motorbike" for $9,500.00 and $5,000.00 for a truck for Mr. Patterson, and she paid for all the repairs and the gas for their vehicles for two years.

[59] The parties kept their own bank accounts. Money flowed back and forth between the parties from their respective bank accounts which they managed individually. I was not provided with evidence of any written agreements outlining that the parties had any expectations with respect to either parties' expenditures, assets purchased, or debts accumulated either together or individually.

[60] Shauna Boyle stated she met the parties in or around 2002 or 2003. She continued that in 2008 the parties talked about renovating the Serocco property or selling it. Ms. Boyle advised that in 2008 she assisted the parties when they decided to sell the home they had been residing in together. She purchased their

home for $178,500.00 to allow the parties to take advantage of the military transfer house sale / purchase reimbursement program, which she understood they would no longer be eligible for after 2008.

[61] When asked questions on cross-examination, Ms. Boyle indicated she saw the parties four to six times a year, and to the best of her knowledge, improvements to their new home were arranged by Ms. Butt or someone she hired but she had conversations with both parties about the home renovations. She understood the parties had wanted a house with a garage which would allow Mr. Patterson to start a small engine repair business.

[62] Mr. Patterson suggested that between 2009 and 2018 he had his own small engine mechanics business, where he worked on motorcycles, lawn mowers, and other small engines.

[63] Ms. Butt's daughter, N, alleged Mr. Patterson had difficulty getting along with his customers and with others. N's version of the facts as they relate to Mr. Patterson's interactions with his customers is consistent with other evidence including Mr. Patterson's presentation in Provincial Court. However, I find I cannot place much weight on N's testimony as I do not have sufficient details about the circumstances N has referred to in a very general manner.

[64] In 2008, Ms. Butt was employed outside the home and had her own vehicle for work. Mr. Patterson was working from his garage at home. I accept he was available to help Ms. Butt with her foster puppies, and he helped Ms. Butt's children, N and R, out as needed which included driving N to school daily and from school occasionally for three years. In addition to the dogs and the children, Mr. Patterson was also responsible for lawn care and snow removal.

[65] Ms. Butt claimed that not only was she the "primary income earner in the relationship," but she also paid "for virtually all of our joint expenses with the exception of the car payment and the insurance on the car that we shared." Mr. Patterson agreed Ms. Butt was the primary income earner during their relationship, and she paid the mortgage payments on their jointly owned home.

[66] However, I understood Mr. Patterson stated that in addition to helping at home that at times between 2003 and 2018, he contributed to or paid for: insurance – house and vehicle; his telephone; internet; house phone; power; all car loans, and / or repairs and vehicle expenses for daily use (with exception of the two years Ms. Butt claims she covered expenses for the cars).

[67] Mr. Patterson also claimed he paid for home upgrades such as the down payment for solar panels, new doors, windows, eavestroughs, floors, and kitchen

appliances. I accept that between approximately 2003 or 2004 and until 2018, Ms. Butt paid all mortgage payments and additional expenses. I also accept that Ms. Butt paid for a much larger share of the groceries and for other household necessities. She was the primary income earner.

[68] Mr. Patterson indicated that when they moved to their new home, their agreements regarding sharing of expenses were still in place. In addition, he stated that the parties often shared expenses for food and entertainment. He indicated that pursuant to Ms. Butt's request they did not mix their finances and they did not have any shared bank accounts.

[69] Ms. Butt claimed that in 2008 their home sold for a net profit of about $42,000.00. Upon review of the Statement of Adjustments dated August 1, 2008, the subtotal after all disbursements of $146,332.47 was **$27,242.68** (Ms. Butt) + **$14,930.75 (relocation allowance Mr. Patterson**) = $42,173.43.

[70] The parties' new home was purchased on or about the 30th day of July 2008 for $202,728.91 – deposit of $2000 and taxes of $483.27 = $200,245.64 including mortgage funds of $176,656; bridge loan funds of $22,030.00; and funds received from IRP of **$4,636.02 (relocation funds Mr. Patterson)**.

[71] It appears Ms. Butt would have had access to approximately **$27,242.68** in equity from the sale of the Serocco property. Ms. Butt claimed that $19,000.00 was paid on their "joint bills and credit cards" and the balance paid by Ms. Butt as a down payment on their new home, the matrimonial home.

[72] Ms. Butt claimed that Mr. Patterson's name was included on the deed to "my home only as a requirement for us to access the military moving benefits program." Mr. Patterson in fact accessed $19,566.77 from Veterans Affairs Canada for the relocation, including credits assigned to the sale of Ms. Butt's home and credits assigned to the purchase of the parties' joint property in Lake Echo. In or around June 2009, both parties signed on to a mortgage for $250,000.00 registered against the new home which they had purchased in July 2008.

[73] In or around 2010, Mr. Patterson's oldest son, D, moved in with the parties for approximately a year. Mr. Patterson claimed he took care of his son and was responsible for most but not of all his son's expenses until his son returned to live with his mother in or around 2011. He acknowledged that for several months Ms. Butt did pay for D to have a cellular telephone on their family plan, and she covered some other expenses.

[74] Mr. Patterson described home life with Ms. Butt as chaotic. He stated he did not approve of Ms. Butt's decisions to allow her daughter's boyfriends to move into their home with them. He also took issue with Ms. Butt's decisions on two separate occasions to allow her ex-boyfriends and children (she claimed it was not an ex-boyfriend) to move into their home with he and Ms. Butt's children. I find that Ms. Butt made the major decisions related to the home, and Mr. Patterson complied with her decisions.

[75] Mr. Patterson provided some documentary evidence of his ongoing contributions to the home after he'd received his first lump sum in 2005 for his 23 years of military service and before and after he received any lump sum payments from Veterans Affairs Canada in or around 2018 and 2019, including the following receipts: $872.85 for the purchase of a dishwasher on May 27, 2016; $748.52 for the purchase of a king size bed on November 15, 2018; and a receipt of $1,576.08 for the purchase of a smart TV and accessories on April 16, 2020.

[76] Shawna Boyle, real estate agent and friend of the parties, noted that Mr. Patterson stopped going out with her and with Ms. Butt socially around 2016. Although in her affidavit Ms. Boyle commented about her perception that it was Ms. Butt who "ran virtually all of the errands, got the groceries, cleaned, prepared

meals, parented teenagers, maintained the property, and served Dave," she stated she only saw the parties four to six times per year.

[77] The comments made by Ms. Boyle about Mr. Patterson boasting to Ms. Boyle that "she handles it" (Ms. Butt) and "she does everything," referenced the few times per year when Ms. Boyle saw the parties. Mr. Patterson acknowledged that when the parties were at Ms. Boyle's home, Ms. Butt did get his drinks and or food. However, Mr. Patterson stated he was more than able to, and he did take care of himself while at the parties' joint home. I accept that Mr. Patterson was able to care for himself and that he did take care of his own needs and most often the needs of his children while they were in the parties' joint home.

[78] Ms. Butt worked for an insurance underwriting company for about 15 years until 2016, and she earned between $50,000 and $60,000 per year, including bonuses. In 2016, her job was moved to Ontario, and she indicates that "in consultation with Mr. Patterson" Ms. Butt chose to take a payout of $42,000.00. Mr. Patterson stated that Ms. Butt did not consult with him on the issue. I accept Mr. Patterson's evidence on this point over Ms. Butt's evidence. Ms. Butt has claimed that between 2016 and until Mr. Patterson received lump sum payments or additional pension income, she paid most of her severance payout down on credit cards that "Mr. Patterson and I had racked up, which were in my name."

[79] Ms. Butt stated she took $6,000.00 of the payout to register for a carpentry course. She also took an online property inspection course at $150 per month to be qualified as a home inspector. and she began work as an inspector in August 2017. Ms. Butt stated she was diagnosed with cervical cancer in October 2017, she stopped working, and then left work on disability leave on or about January 2018. She indicated that her income went from approximately $50,000.00 to $24,000.00 while on disability benefits.

[80] Mr. Patterson suggested **Ms. Butt earned approximately $60,000 until 2018**. Ms. Butt stated that she stopped working as a home inspector in or around November 2017 due to "stress and a cancer diagnosis" after which she began receiving CPP disability in or around January 2018. Ms. Butt provided no medical evidence with respect to past, present, or future ability to work.

[81] Ms. Butt suggested Mr. Patterson had "long suffered from mental illness." She stated that in or around 2017 or 2018, after discussing the issue with her stepbrother, Greg Shand, and others, Ms. Butt determined Mr. Patterson may be eligible for a Veterans Affairs Canada (VAC) pension and other associated benefits.

[82] Ms. Butt's stepbrother, Greg Shand, provided evidence claiming he alerted Ms. Butt to the possibility that Mr. Patterson may be eligible for benefits. I don't doubt Mr. Shand's evidence, however I find it is irrelevant to any of the determinations I must make. My determination regarding whether Ms. Butt is entitled to a share of Mr. Patterson's pension or disability benefits will not be based on whether she found out about the program and / or whether she told him about the program and / or whether she helped him apply for his own benefits.

[83] Mr. Patterson observed that Ms. Butt stopped working at about the same time Mr. Patterson began preparing to file or he did file claims with Veterans Affairs Canada in or around 2017 for injuries sustained while he was on active duty with the military. However, Mr. Patterson did not receive his first lump sum award from the Department of Veterans Affairs Canada in relation to hearing loss and / or pain and suffering until the end of July 2018, approximately seven months after Ms. Butt stopped working.

[84] I would note that Ms. Butt's daughter, N, moved out of the home in 2018 and her daughter, R moved out in 2019. Presumably, Ms. Butt was no longer receiving child support and / or her child related government benefits also ended.

[85] It was not until July 2019 that Mr. Patterson received a lump sum award of $203,263.00 for symptoms related to post traumatic stress disorder, and in or around that time he began receiving a monthly disability pension from Veterans Affairs Canada. In addition to the usual household expenses Mr. Patterson had been contributing to, Mr. Patterson took over all the expenses and he also took over the mortgage payments in or around 2019. Ms. Butt acknowledges Mr. Patterson paid six (6) months of property tax in 2020.

[86] Mr. Patterson maintains that Ms. Butt did not discuss with him her decision to file for bankruptcy before she had already done so. I accept Mr. Patterson's testimony. Ms. Butt filed as a single person.

[87] Mr. Patterson stated that in 2019 he transferred $50,000 to Ms. Butt as a loan to put in a TFSA so she could rebuild her credit rating following her bankruptcy. Mr. Patterson states they had a verbal agreement that the $50,000 was a loan but Ms. Butt now claims the money was a gift to her. Given how much money has flowed back and forth between the parties, I am not prepared to rely on Mr. Patterson's verbal assertion that there was an agreement that the money was a loan. Given Ms. Butt's claims of gifts and loans and payouts for Mr. Patterson's benefit and Ms. Butt's personal circumstances at that time, I find it is highly unlikely that there was "a meeting of the minds" on the issue of repayment.

[88] On October 9, 2019, just one year prior to separation, Mr. Patterson purchased an RV, a 2010 Sunseeker model 3170. The RV was purchased in his name and the financing was and remains in his name. Mr. Patterson has made all the payments since he purchased the RV for $59,389, including paying for delivery costs and a service contract. Owing as of September 15, 2020 was $55,088.80, and his payments are $137.16 weekly. A more current balance of $42,864.45 was given as of the date of trial. The RV mileage is 97,000 kilometres. Ms. Butt accepts there is no "equity" in the RV, and she is not making a claim.

[89] The parties both agree they separated on or about October 19, 2020, following allegations by Mr. Butt that Mr. Patterson assaulted her. Mr. Patterson plead guilty to an assault against Ms. Butt. However, he has maintained that she "attacked him" and he plead guilty "to get out of the relationship."

[90] Mr. Patterson was sentenced to 18 months of probation, and he was required to abide by certain conditions including having no contact with Ms. Butt and not attending the home. Mr. Patterson has explained "he plead to a lesser charge to avoid the stress and cost of a trial. That there was an agreed statement of facts indicating he would not let Ms. Butt in the house and that he pushed her out of the front doorway." He received a conditional discharge.

[91] Mr. Patterson raised a concern that in 2020, Ms. Butt won approximately $16,800 in the lottery, and she did not share her winnings with him.

[92] Ms. Butt raised concerns that prior to separation in October 2020, Mr. Patterson used undisclosed funds (or perhaps a portion of his settlement with VAC) to purchase cryptocurrency and / or that matrimonial funds were used by Mr. Patterson to gamble. Per correspondence from Ms. Butt's legal counsel dated June 9, 2022, Ms. Butt alleges that on May 11, 2020, Mr. Patterson transferred $25,000.00 out of his account to an unknown account; on October 8, 2020, he transferred $12,200 to his CIBC account; and on October 2, 2020, $2,043.60, with further transfers detailed in Appendix A and Ms. Butt's contributions to Mr. Patterson's expenses detailed at Exhibit B of the correspondence.

[93] Mr. Patterson stated that since receiving his Veteran's Affairs Canada awards, he has transferred approximately $30,000 to Ms. Butt via e-transfers. He claimed that he also paid out a $12,500 line of credit which was in Ms. Butt's name. As noted above, Mr. Patterson also highlighted that he paid all the household bills between 2018 and the parties' separation in October 2020.

[94] On March 1, 2022, in response to communication from Ms. Butt, Mr. Patterson responded:

> Whatever I'm not going to pay for you and your addictions anymore you stolen from me and lied to the judge. You owe me for the appraisal and the $8400 for the cost to fix your accident. When those items are paid that when you get your blood money not a minute sooner. I'd rather go to jail that support a piece of garbage like you.

[95] On March 2, 2022, Mr. Patterson responded:

> You are one to talk. Someone who destroyed more lives than you can count. You're a narrow minded person who is so full of hate you're blinded to the toxic bullshit that flows out of your mouth. I am who I am not because of you. You egotistical ass. I am more powerful than you a piece of garbage who things the world owes you. You attacked me I defended myself and you are truly lucky I was restraining myself from acting like a soldier and putting you in the dirt. Go fuck yourself live in your house of lies you keep telling yourself. Talk that's all you really have going for you. Broke ass bitch with limited life skills. I have surpassed you in everything I do. You wollow in shit and live in denial. That's where you will die. Get a job get a life. But you can't (wont) You're depressed. Your excuses don't fool anyone. You need to take your own advise instead of pretending but unfortunately for you, your skills are limited as a person.

[96] On May 30, 2022, Mr. Patterson applied to the Provincial Court to request a change in his court ordered conditions not to have contact with Ms. Butt or attend the matrimonial home. He argued he needed to get into the house so that:

> … I can remove all my stuff out of there, pack it up so that I can prepare to sell it. But I can't do that right now with these restrictions.

Mr. Patterson advised the Provincial Court judge that he was residing in Lunenburg and planning to move to British Columbia.

[97] The Provincial Court judge suggested there appeared to be family related issues left to resolve, and Mr. Patterson stated:

> No. We're not a family. We never were.

> …
>
> It cost me over $7000.00 already and nothing has come out of it.
>
> …
>
> All my savings is gone.
>
> …
>
> I can't afford $20,000.00 for two days.
>
> …
>
> Court: … if your family situation gets sorted out before the 18 months…
>
> It's not my family…
>
> …
>
> You're restricting me from doing anything outside of Family Court. I can't go to my house… my house!
>
> …
>
> I'm not yelling at you.
>
> Court: You are.
>
> I'm speaking over this mask… this illegal covering.
>
> …
>
> You're restricting me. It could take another fucking year!
>
> …

Mr. Patterson indicated his probationary period was set to expire in October 2022. Ms. Butt understood Mr. Patterson's probation would end in December 2022.

[98] In June 2022, efforts were made to have Mr. Patterson identify the "stuff" he wanted to remove from the matrimonial home. At trial, Ms. Butt claimed that Mr. Patterson's belongings remained stored in the parties' jointly owned home where she was residing.

[99] And on September 3 Mr. Patterson wrote:

> You attacked me, I get arrested. You win. You interfere in my kids life they don't want to see me. You win. I help you financially $110,000.00 you want to keep what you know is mine $50,000.00. You want 2/3 of my pension. Do you see what you already have. I have bills, no home, no family. You win. Death is the next local(sic) step. You win.

[100] On September 12, 2022, the parties consented to the terms included in a Consent Order for Exclusive Occupation, which granted Ms. Butt exclusive possession of the parties' joint real property. The order also gave Mr. Patterson the authority to retrieve certain personal items on one occasion as may be agreed with Ms. Butt.

[101] On or about September 23, 2022, Mr. Patterson filed a consumer proposal.

Contents of the house

[102] In his affidavit filed on or about May 8, 2023, Mr. Patterson provided a list of household items that belonged to him and remained in the home. Mr. Patterson had been prohibited from returning to the home since October 2020. **The items listed by Mr. Patterson should be made available for Mr. Patterson to pick up. I will remain seized with this matter if the parties cannot negotiate the return of the items listed in paragraph 89 of Mr. Patterson's affidavit sworn May 8, 2023.**

The House

[103] In the Appraisal Report prepared by Greg Lockyer B.Sc., CRA, Papp February 7, 2022, the home was appraised at an estimated **$354,000.00.**

[104] As of April 11, 2023, the parties jointly owned property was appraised by Katheryn Downey, B. Comm, AACI, P App at an estimated value of **$350,000.00**.

[105] Mr. Patterson suggests the parties split the difference and use a value of **$352,000.00**, which I feel is fair in the circumstances.

Other property

Charger

[106] Mr. Patterson does not agree Ms. Butt has a claim, but he agreed with the value range for the Dodge Charger of $24,000 - $28,000 and sought to set the value at a mid range of $26,000 – with a loan owing of $20,000 for a value of $6,000.00. The parties agreed to **assign $6000 as the value of the Dodge Charger**.

Piaggio

[107] Mr. Patterson acknowledged he purchased a Piaggio for $11,000 in September 2019. He stated that Ms. Butt was in an accident with the Piaggio before the parties separated and he paid for all repairs after separation. He

provided evidence regarding the cost of repairs which were approximately $2,486.86 + $1,734.44 = $4,272.18. Pursuant to her post trial submissions, Ms. Butt was **no longer seeking an interest in the Piaggio**.

Solar energy system

[108] On or about July 21, 2020, the parties signed a lease with Polaron for a Solar energy system at a cost of $21,990.00 upfront, with a monthly lease payment of $117.26 thereafter. On or about January 10, 2022, Nova Scotia Power advised that as of January 10, 2022, the balance of the heat pump for the parties' joint home was $9,773.49. At trial, Ms. Butt sought to be compensated for her ongoing contributions to the improvement for the home, including the above noted payments. Pursuant to her post-trial submissions, Ms. Butt was seeking to have the parties share the payment of the remaining balances for the solar panels and the heat pump.

Ms. Butt's income

[109] Ms. Butt filed an "Updated Statement of Income of April Butt" prepared on May 1, 2023, indicating she was earning $744.35 per month from the Life Insurance Co. of North America and $1,361.68 from CPP disability, stating that her total annual income for table amount was $25,272.36.

[110] However, attached to her Updated Statement of Income, sworn on May 1, 2023 and filed May 2, 2023, is a Canada Pension Plan T4A document indicating April MacDonald (Ms. Butt) earned **$53,541.47 in 12 months in taxable CPP benefits in 2022** (disability benefits) in the name of April MacDonald (same address).

[111] Ms. Butt did not provide a T1 Tax and Benefit Return for 2020, 2021, or 2022. She provided one undated tax assessment with no name, and she filed Notice of Assessments for 2020 and 2019 only.

[112] In Ms. Butt's trial affidavit sworn on **May 1, 2023** and filed on May 2, 2023, Ms. Butt claims:

> I remain unable to work and in receipt of long-term disability payments from the Life Insurance Co. of North America, **as described in the letter from Cigna Insurance of Phoenix, AZ, dated August 6, 2021**, attached to my Statement of Income filed with the Court on October 29, 2021. My current monthly insurance benefit is $744.35. **At the time of separation, my gross annual income from my disability insurance payment was $23,448.00**.

The Statement of Income Ms. Butt filed on October 29, 2021, with attachments (Assessments and Notices of Assessment for 2020 – 2018) is incomplete and the letter dated August 6, 2021 is insufficient evidence to prove what Ms. Butt's total income was in 2020 and in 2021.

[113] In her trial affidavit filed May 2, 2023 at paragraph 5, Ms. Butt references Exhibit A as a letter from Service Canada dated January 22, 2023, which is in fact dated **January 22, 2022 (<u>not 2023</u>)**, and states in part:

> CPP is paying $39,477.20 directly to your insurance company, Life Insurance Company of North America, because you have signed a consent form allowing us to pay them back for the period you were eligible to receive both benefits. This amount is for the period of **<u>June 2019 to January 2022</u>**. (my emphasis).

As noted above, the partial Canada Pension Plan T4A (P) is attached to Ms. Butt's Updated Statement of Income filed May 2, 2023, and indicates **that in 2022** [12-month period, most likely Jan 2022 – December 2022], Ms. Butt (Ms. MacDonald) **received <u>disability benefits alone in the amount of $53,541.47</u> as taxable CPP benefits**. Ms. Butt suggested her income should be imputed to $34,000.00.

[114] I am unclear how the letter dated January 2022 (not 2023) referencing the period 2019 – January 2022 helps to clarify what total benefits were received by Ms. Butt in 2020, 2021, 2022, or 2023. Without her T1 General Tax and Benefit returns and her T4A(P) returns for 2020, 2021, and 2022, her financial disclosure remains incomplete. Given the lack of disclosure and the multiple incorrect references to documents, I am drawing an adverse inference and finding Ms. Butt's testimony about her income is not credible.

[115] In her affidavit evidence, Ms. Butt's daughter, N, made no comment about residing with her mother or paying rent to her mother. At trial she confirmed she was twenty-three years old. She had been living with her mother since November 2022 and paying her mother $300 per month in rent. She had been working full-time at Seamaster Marine Services earning $17.50 per hour, 40 hours per week. She indicated that there are three bedrooms on the main level with one bathroom and a basement with a partial bathroom in the home where Ms. Butt resides with her daughter.

[116] Mr. Patterson has raised a concern that Ms. Butt did not file an updated Statement of Expenses to indicate what her needs were at trial in May 2023. In addition, I find Ms. Butt has neglected to address what efforts or measures she has taken to adjust her expenses based on her current means and needs i.e.: does she need a three-bedroom home. Based on Divorce Mate software calculations, it appears Mr. Patterson is seeking to impute an income of **$65,777.00** to Ms. Butt (rent $3,600 grossed up; and employment income imputed at $60,0000). I find that effective January 1, 2024, Ms. Butt has an **imputed income of <u>$65,777.00</u>**.

Mr. Patterson's income

[117] Mr. Patterson also attached Tax Assessments and a Re-Assessment to his Statements of Income dated January 4, 2022, and / or May 8, 2023. As with Ms. Butt's disclosure, his disclosure is also not adequate. I surmise based on the Divorce Mate calculations provided by Mr. Patterson's lawyer that his income for 2022 and arguably for 2023 is in the vicinity of **$74,586** ($20,961 pensions; $7,154 non-taxable; and $43,660 VAC taxable). It appears from the income information Mr. Patterson did file that his total income for **2020 was $63,129** (including $41,968 in employment income and $20,961 in pension income or superannuation; and $200 in interest or other investment income) with a refund of $13,859.29; his total income for **2019 was $60,661** (including pension income of $20,961 and interest or other investment income of $39,700); that his income for **2018 was $21,361** with a refund of $2,143.93.

[118] Based on J. Williams decision in *Mason* v. *Patterson*, 2004 NSSF 74, I find Mr. Patterson had an income of approximately $51,145 in 2002. I find that effective January 2024, Mr. Patterson's income is approximately **$74,586.** I am not prepared to consider a retroactive calculation of spousal support back to October 2020 or between March 2022 and May 2023. Mr. Patterson is not asking for me to reconsider the interim spousal support payments he made up until the trial in May 2023.

Analysis

[119] Courts have traditionally taken some of the following factors into consideration when determining whether a party has been unjustly enriched and/or when determining whether there was a joint family venture.

> Division of functions in their relationship;
>
> Express or tacit agreement of the spouses that one will maintain the other;
>
> The terms of a marriage contract or separation agreement between the spouses;
>
> Custodial and parenting arrangements made with respect to the children of the relationship;
>
> Obligations of each spouse towards any children;
>
> The physical and mental disability of either spouse;
>
> The inability of a spouse to obtain gainful employment;
>
> The contribution of a spouse to the education or career potential of the other;
>
> The reasonable needs of the spouse with a right to support;
>
> The reasonable needs of the spouse obliged to pay support;
>
> The separate property of each spouse;
>
> The ability to pay of the spouse who is obliged to pay support having regard to that spouse's obligation to pay child support in accordance with the Guidelines; and
>
> The ability of the spouse with the right to support to contribute to the spouses' own support.

The Home

[120] Both parties' names are on the deed and the mortgage(s) to their joint property acquired in 2008.

[121] Mr. Patterson has argued that the division of any equity in the home falls under the *Partition Act* and there is no jurisdiction for the court to order that Ms. Butt "buy out" Mr. Patterson's interest without Mr. Patterson's consent. *Roach* v. *MacNeil* [2014] NSJ No. 159. However, Mr. Patterson has consented to Mr. Butt buying his half interest in their joint home with some conditions precedent to be met.

[122] Ms. Butt asked the court for an unequal division of the equity in the parties' joint real property. However, she stated she would agree to an equal division of the real property if all other property held by both parties was divided equally.

[123] In *Thew* v *Nichol*, 2015 ABQB 556, the Honourable Madam Justice S.J. Greckol reviewed the legal framework for claims of unjust enrichment:

> [44] Ms. Thew and Mr. Nichol were common law partners for almost 11 years. The definition of "spouse" in the *Matrimonial Property Act*, RSA 2000, c M-8 ("*MPA*"), does not cover common law partners. The Supreme Court of Canada in ***Nova Scotia (Attorney General) v Walsh***, 2002 SCC 83, held that the distinction between marriage and common law relationships for purposes of legislation dealing with the division of property was not discriminatory. **As the *MPA* does not apply in the present situation, there is no presumption of equal division of assets.** (my emphasis)
>
> [45] Nevertheless, Ms. Thew seeks an equal share of assets acquired during the relationship on the basis of unjust enrichment. Mr. Nichol does not take issue with application of the principles of unjust enrichment with respect to the home that the couple built at 10724 (subject to a credit to him for his pre-existing equity) or with respect to the travel trailer that they purchased together.
>
> [46] In ***Kerr v Baranow***, 2011 SCC 10 [***Kerr***], a unanimous decision of the Supreme Court of Canada, the court set out an analytic framework for unjust enrichment claims in the context of common law unions. The decision notes at the

> outset (at para 30) that the law of unjust enrichment has been the primary vehicle to address claims of inequitable distribution of assets on the breakdown of a domestic relationship.
>
> [47] At the heart of the doctrine lies the notion of restoring a benefit which justice does not permit one to retain (***Kerr*** at para 31)…
>
> [48] Canadian law permits recovery where the plaintiff can establish three elements: (1) an enrichment of, or benefit to, the defendant; (2) a corresponding deprivation of the plaintiff; and (3) the absence of any juristic reason for the enrichment: ***Pettkus v Becker***, [1980] 2 SCR 834 [***Pettkus***] as cited in ***Kerr*** at para 32.
>
> [49] In ***Kerr***, at para 34, the Supreme Court affirmed a previous decision of that court (***Peter v Beblow***, [1993] 1 SCR 980 [***Peter***]), which held that courts "should exercise flexibility and common sense when applying equitable principles to family issues with due sensitivity to the special circumstances that can arise in such cases".
>
> 1. Enrichment and corresponding deprivation
>
> [50] The court employs an economic approach to the first two elements that the claimant party must show – enrichment and corresponding deprivation – as set out at paras 38 and 39 of ***Kerr***:
>
> > 38 For the first requirement – enrichment – the plaintiff must show that he or she gave something to the defendant which the defendant received and retained. The benefit need not be retained permanently, but there must be a benefit which has enriched the defendant and which can be restored to the plaintiff in specie or by money. Moreover, the benefit must be tangible. It may be positive or negative, the latter in the sense that **the benefit conferred on the defendant spares him or her an expense he or she would have had to undertake** (***Peel***, at pp 788 and 790; ***Garland***, at paras 31 and 37). (my emphasis)

Enrichment

[124] Ms. Butt has not proven Mr. Patterson was unjustly enriched because in 2003 she "opened her home" to him, a home "she owned herself" following her separation from her husband, Mr. MacDonald.

[125] Ms. Butt separated from her husband, Mr. MacDonald, in or around 2002. The parties started their relationship before Mr. Patterson was deployed in March 2003. While Mr. Patterson was away, Ms. Butt was either training to start a new job or had just started a new job, and Mr. Patterson was helping with Ms. Butt's living expenses.

[126] While he was deployed and without his knowledge or consent, Ms. Butt moved various of Mr. Patterson's belongings into her home. Before Mr. Patterson returned from his deployment in 2003, Ms. Butt suggested to Mr. Patterson that her husband had taken a considerable amount of furniture from the Serocco property she was residing in. Mr. Patterson gave Ms. Butt money to purchase furnishings for the bedroom in the Serocco property. Upon his return home, Mr. Patterson also purchased living room and dining room furniture for use in the Serocco property.

[127] Although Mr. Patterson did not contribute to the acquisition of the Serocco property, there are sufficient facts to find that Mr. Patterson contributed to the preservation, maintenance and / or improvement of the disputed property. Both parties were enriched by the other's contributions through contributions to expenses, maintenance, or assistance in other areas of each party's lives.

[128] Ms. Butt has also not proven Mr. Patterson was unjustly enriched when in 2008 she sold the 1st home "she owned herself" to jointly purchase a new home with Mr. Patterson in Lake Echo. Ms. Butt did arguably have some equity in the first home which allowed her to make a down payment on the second home; however, Ms. Butt overstated her contribution.

[129] Ms. Butt also understated Mr. Patterson's contribution to the purchase of the second home and to the preservation, maintenance, or improvement of the second property. Ms. Patterson was not unjustly enriched.

[130] In her submissions Ms. Butt has claimed:

> The evidence is that Ms. Butt opened up her home, which she owned herself following her separation from her husband, to Mr. Patterson in the fall of 2003, and sold that home to purchase a new one in 2008 with Mr. Patterson. She put all of the equity from the former home into the new one, and also paid off significantly joint debts of hers and Mr. Patterson's with her remaining equity.

[131] The mortgage payments due for the Serocco property for the period between 2003 and 2008 were very reasonable, as the home was built and financed through Habitat for Humanity. Mr. Patterson contributed to the Serocco property in different ways: purchasing furniture for the home; paying some household expenses for the home; and assisting with the maintenance of the home to name a few. Both parties were enriched between 2003 and 2008 and Mr. Patterson was not unjustly enriched.

[132] I have considered that the balance due to Ms. Butt on the sale of the Serocco home in July 2008 was $173,575.15. Disbursements owing by Ms. Butt were $146,332.47 (including a payout of an existing mortgages with the Royal Bank of Canada of $28,051.94 Royal Credit Line *6931 and $108,630.86 mortgage * 7457) with equity remaining of **$27,242.68 available to Ms. Butt.**

[133] Mr. Patterson's Veterans Affairs Canada program allowed him to claim a **$14,930.75** (Royal Lepage Relocation) credit toward fees on the sale of Ms. Butt's first home and allowed him to receive **$4,636.02** (Royal Lepage Relocation) credit on the parties' joint purchase of the second home, for a total credit of **$19,566.77 attributable to Mr. Patterson alone**.

[134] Both made a relatively comparable financial contribution to the purchase of the second home. Ms. Butt also claimed they used military benefits to cover the costs of a hotel and various hook up fees including for power and cable. I do not believe those were accounted for in the $19,566.77 credits attributable for costs related to the sale of the 1st home and purchase of the 2nd home. Apparently, Mr. Patterson made it possible to receive additional credits as well.

[135] Other than the mortgage payments which were paid by Ms. Butt, Mr. Patterson contributed to a share of household expenses, and he assisted with the

maintenance of the property. In addition, after 2008 Mr. Patterson was working from his garage at home which meant he was available for the children and the family pet(s) on an as needed basis. Mr. Patterson was not unjustly enriched.

[136] Ms. Butt has argued that due to her efforts mostly, Mr. Patterson made a successful claim to Veterans Affairs Canada and that he would not have made the claim if she did not advise him of the possibility. She claimed that he would not have completed the necessary forms or attended the appointments had she not facilitated those for him.

[137] Mr. Patterson's approval by Veterans Affairs Canada for lump sum awards, pensions, and ongoing benefits is directly related to Mr. Patterson's 23 years of service in the military and the pain and suffering related to his years of service. The benefit (pension) is not being conferred by her. Allowing persons who assist veterans to apply for their benefits to then claim a portion of those benefits by virtue of the assistance they provided to the veteran is not a good social policy. The veteran is being compensated for a reason.

[138] Ms. Butt did not serve in the military, and she was only in a relationship with Mr. Patterson for the last two years of his military service. There was no agreement for the parties to share in the other's pensions.

Deprivation

[139] *Thew, supra* continues:

> 39 Turning to the second element – a corresponding deprivation – the plaintiff's loss is material only if the defendant has gained a benefit or been enriched (***Peel***, at pp 789-90). That is why the second requirement obligates the plaintiff to establish not simply that the defendant has been enriched, but also that the enrichment corresponds to a deprivation which the plaintiff has suffered (***Pettkus***, at p 852; ***Rathwell***, at p 455).

[140] Ms. Butt did not suffer any deprivation by having Mr. Patterson contribute to the purchase of the second home, contribute to household expenses, assist with the maintenance of the home, and at times assist her with the children and the parties' pets.

[141] Ms. Butt was not deprived when Mr. Patterson received monetary awards for pain and suffering in July 2018 and then for symptoms of post traumatic stress disorder in July 2019. Ms. Butt benefited greatly as Mr. Patterson took over many of the household expenses between 2018 or 2019 up until separation in October 2020.

[142] Overall, Ms. Butt benefited from the increased financial support up to separation and she benefited from Mr. Patterson's increased means and his ability to pay interim spousal support during a period of transition for the parties up until trial.

Absence of juristic reason

[143] *Thew, supra* continues:

> 2. Absence of juristic reason
>
> [51] Juristic reasons may provide a basis to deny recovery to the claimant. This element of the analysis is summarized at para 40 of ***Kerr***:
>
> > 40 The third element of an unjust enrichment claim is that the benefit and corresponding detriment must have occurred without a juristic reason. To put it simply, this means that there is no reason in law or justice for the defendant's retention of the benefit conferred by the plaintiff, making its retention "unjust" in the circumstances of the case: see ***Pettkus***, at p 848; ***Rathwell***, at p 456; ***Sorochan***, at p 44; ***Peter***, at p 987; ***Peel***, at pp 784 and 788; ***Garland***, at para 30.
>
> [52] The Court also confirmed at para 42 of ***Kerr*** that an economic analysis reveals there is **no reason to distinguish domestic services from other contributions, as they are of great economic value to the family or spouse. Any other conclusion denies the economic value of the domestic work** provided to the family – still primarily by women. (my emphasis)
>
> [53] In ***Kerr***, at paras 43 – 45, the Court affirmed the two-step juristic reason analysis from ***Garland vs Consumer's Gas Co***, 2004 SCC 25 [***Garland***]. The first step requires courts to consider established categories of juristic reasons, such as contract, a disposition of law, and other valid common law, equitable, or statutory obligations. In their absence, **the second step permits consideration of reasonable expectations of the parties and public policy considerations to assess whether recovery should be denied.** (my emphasis)
>
> [54] The Court in ***Kerr*** clarified the considerations at the second step in this fashion, at para 44:
>
> > 44 Thus, at the juristic reason stage of the analysis, if the case falls outside the existing categories, the court may take into account the legitimate expectations of the parties (***Pettkus***, at p 849) and moral and policy-based arguments about whether particular enrichments are unjust (***Peter***, at p 990). For example, in ***Peter***, it was at this stage that the Court considered and rejected the argument that the provision of domestic and childcare services should not give rise to equitable claims against the other spouse in a marital or quasi-marital relationship (pp 993-95). Overall, the test for juristic reason is flexible, and the relevant factors to consider will depend on the situation before the court (***Peter***, at p 990).

> [55] An example of a policy argument considered and rejected by the Court in the ***Peter*** case is the notion that a legislative decision to exclude unmarried couples from division of property legislation indicates the court should not use unjust enrichment to resolve such disputes. In ***Peter***, McLachlin J wrote that "It is precisely where an injustice arises without a legal remedy that equity finds a role."

[144] Both parties were enriched by each parties' contributions to their joint expenses, neither was unjustly enriched.

[145] Given the parties' respective circumstances and given that the parties jointly own the Echo Lake property, both parties should have reasonably expected they would share equally in the equity of the home. Ms. Butt has not made out a claim that the equity in the home should be divided unequally in her favour.

[146] Based on Ms. Butt's involvement in helping Mr. Patterson complete forms and attend appointments, Ms. Butt should not have reasonably expected she would share in Mr. Patterson's pension benefits.

[147] Based on the parties' histories and their understandings, including not to share other assets and bank accounts, Ms. Butt should not have reasonably expected the parties would equally divide other assets in each other's names.

Remedy

[148] *Thew, supra:*

> 3. Remedy
>
> [56] The purpose of a remedy in unjust enrichment cases is to "…require the defendant to **repay or reverse the unjustified enrichment**": ***Kerr***, at para 46.
>
> [57] Difficulties emerge in retroactively unravelling the finances of two people who have for years lived in a marriage-type relationship without keeping a ledger to record and value all the services rendered (***Kerr*** at paras 48-49). To deal with these difficulties, some appellate courts have adopted the approach of viewing the overall increase in the couples' wealth over the course of the relationship (for examples, ***Kerr*** at para 49).
>
> [58] **A claimant may be entitled to a monetary or proprietary remedy. Where a monetary remedy is inappropriate or insufficient, a proprietary remedy such as the constructive trust may be used**: ***Kerr*** at para 50. The extent of the constructive trust will be in proportion to the extent of the contribution, so that the Court responds with a remedy that is a fair and equitable distribution: ***Kerr*** at para 53. (my emphasis)

[149] I found Ms. Butt did not prove Mr. Patterson was unjustly enriched.

[150] There is no argument before me that there is a contract, disposition of law, or other valid common law, equitable, or statutory obligations which would permit Ms. Butt an unequal division of the parties' joint real property at the expense of Mr. Patterson or an equal division of property held solely by either party.

[151] There is no evidence of Mr. Patterson's intentions to deal with the parties joint or respective assets differently. There is some evidence Ms. Butt believed her contributions to the parties' joint assets might entitle her to an unequal division. However, there was no agreement, and her assumptions are not enough.

Joint Family Venture

[152] Ms. Butt has suggested the parties' circumstances gives rise to an unjust enrichment based on a "joint family venture." *Thew, supra:*

> [59] Writing for the Court in ***Kerr***, Cromwell J articulated an obvious circumstance where there is basis for a successful unjust enrichment claim – the joint family venture where both parties contribute to the overall accumulation of wealth. At para 60 he stated:
>
> > 60 At least one other basis for an unjust enrichment claim is easy to identify. It consists of cases in which the contributions of both parties over time have resulted in an accumulation of wealth. The unjust enrichment occurs following the breakdown of their relationship when one party retains a disproportionate share of the assets which are the product of their joint efforts. The required link between the contributions and a specific property may not exist, making it inappropriate to confer a proprietary remedy. However, there may clearly be a link between the joint efforts of the parties and the accumulation of wealth; in other words, a link between the "value received" and the "value surviving", as McLachlin J put it in ***Peter***, at pp 1000-1001. **Thus, where there is a relationship that can be described as a "joint family venture", and the joint efforts of the parties are linked to the accumulation of wealth, the unjust enrichment should be thought of as leaving one party with a disproportionate share of the jointly earned assets.** (Emphasis added)
>
> [60] Unjust enrichment principles will be responsive to the "…social reality identified by the legislature that many domestic relationships are more realistically viewed as a joint family venture to which the parties jointly contribute" (***Kerr*** at para 62).
>
> [61] In ***Kerr***, the Court commends an approach to identifying unjust enrichment arising from a joint family venture using hallmarks of such relationships, at para 87:
>
> > 87 My view is that when the parties have been engaged in a joint family venture, and the claimant's contributions to it are linked to the generation of wealth, **a monetary award for unjust enrichment should be calculated according to the share of the accumulated wealth proportionate to the claimant's contributions.** In order to apply this approach, it is first necessary to identify whether the parties have, in fact, been engaged in a joint family venture....
>
> [62] The Claimant must establish that the couple were engaged in a joint family venture, and that there is a link between the claimant's contributions to the joint family venture and the accumulation of wealth. In ***Kerr***, the Court delineates factors to consider in determining whether the parties were involved in a joint

> family venture: **mutual effort, economic integration, actual intent, and priority of the family,** at paras 90 to 99. These are considered below.

[153] Can Ms. Butt's and Mr. Patterson's efforts related to the accumulation of certain assets and / or debts be described in terms of a "joint family venture?" Were the parties' "joint efforts linked to the accumulation of wealth?" Is there an unjust enrichment because one party is left with a disproportionate share of **jointly earned assets**?

[154] When determining whether there was a "joint family venture," I must consider what each parties' **contributions were to the "acquisition, preservation, maintenance, or improvement of the disputed property"** and I must consider if there was a **mutual effort, economic integration, actual intent, and priority of the family.** *Thew, supra:*

> 4. Jurisprudence after *Kerr*
>
> [63] It is useful to consider some of the leading authorities that have been decided by our Courts, and others, since the ***Kerr*** decision. Provincial legislation to address the conundrums presented by acquisition and division of property between unmarried couples has been passed in several Canadian jurisdictions (see *Family Law Act,* SBC 2011, c 25; *The Family Property Act*, CCSM c F25; *The Family Property Act*, SS 1997, c F-6.3; *Family Law Act*, SNWT 1997, c 18; *Vital Statistics Act*, RSNS c 494, s 54(2) (f)). Though such legislation does not yet exist in Alberta, it is obviously responsive to common law partnerships having become a significant feature of contemporary family life, offering some legal certainty in place of protracted, expensive litigation with uncertain results.
>
> …
>
> [68] At issue in ***Ibbotson v Fung***, 2013 BCCA 171, aff'ing 2011 BCSC 1021, was whether a joint family venture could apply to one property owned by Dr.

Fung but not to other property held by each party alone. Ms. Ibbotson claimed an interest in a residential home that the parties had treated as "theirs together". Dr. Fung's mother had provided the bulk of the initial purchase price, with Ms. Ibbotson and Dr. Fung contributing less than 10% each. At the time of the purchase, only Dr. Fung and his mother were on title as joint tenants. The property then passed to Dr. Fung on his mother's death. Throughout the parties' relationship, they resided in that home. After separation, Ms. Ibbotson maintained and improved the property. Between the date of purchase and the trial, the value of the property had increased almost tenfold. The primary reasons for that increase were inflation and the substantial market increase to home values in the greater Vancouver area. The trial judge found that there was a joint family venture and awarded Ms. Ibbotson a 25% interest in the home.

[69**] The majority of the Court of Appeal held that because the dispute centred on one property, not general family assets, the trial judge had erred in importing the concept of joint family venture into the analysis. As there was no general commingling of the parties' assets, the dispute should be resolved through the constructive trust principles set out in *Pettkus* and *Peter***. In separate reasons concurring in the result, Garson JA opined that the case could have been decided either on the basis of ***Pettkus*** or on the basis of ***Kerr***. In either case, a **"value survived",** not "value received" remedy was the appropriate measure of damages. Under this latter analysis, **a joint family venture may be found, though the claim extends only to specific assets held by one of the parties**. (my emphasis)

[70] In ***Thomas v Florkow***, 2011 BCWC 802, aff'd by 2012 BCCA 486, the court found that the constructive trust principles enunciated in ***Kerr*** could apply to a non-conjugal domestic arrangement. This resulted in a one-quarter interest in a residential property for Ms. Thomas.

[71] In ***McKenzie v Perestrelo***, 2014 BCCA 161, varying 2013 BCSC 1452, the Court of Appeal determined that the facts warranted a monetary remedy on a value survived basis, as the evidence and the trial judge's findings supported Ms. Perestrelo's **contributions to the "acquisition, preservation, maintenance or improvement of the disputed property**" (at para 53) – a home and an RRSP. The trial judge had not embarked on the proper unjust enrichment analysis, but did find that Mr. McKenzie had been unjustly enriched. Because there were no findings of fact as to the contributions made by each of the parties, the Court of Appeal held that the fairest way of resolving the dispute was to equally divide the equity in the home. This corresponded with the parties' intention when they purchased the home, and avoided the "uncertainties attendant on the evidence of [the parties'] respective contributions" (at para 60). The Court of Appeal did not upset the trial judge's finding that Ms. Perestrelo had not proven her claim for unjust enrichment with respect to the RRSP portfolio.

…

[74] In ***Wills v Kennedy***, 2015 NBCA 31, the parties lived in a common law relationship from 1991 to 2011. They had one child together and Mr. Wills treated Ms. Kennedy's son from another relationship as his own. Ms. Kennedy sought an unequal division of property in her favour, while Mr. Wills argued that an equal division was appropriate. The Court of Appeal held that the judge at first instance erred in deciding that various properties were family assets subject to equal division. **In sending the matter back, the Court of Appeal reaffirmed that *Kerr* requires courts to conduct a proper unjust enrichment analysis and, if necessary, determine why a monetary remedy is not satisfactory**. (my emphasis)

[75] In ***Djekic v Zai***, 2015 ONCA 25, the claimant appealed the trial judge's order that she was entitled to an equitable trust interest in the parties' residence valued at $100,000 on the basis that there was unjust enrichment, having applied ***Peter***. She argued that the trial judge erred by failing to find a joint family venture and by failing to determine her interest using the **value survived approach**. In dismissing the appeal, the Court of Appeal commended the trial judge for doing his best with an incomplete evidentiary record, including the absence of a valid appraisal for the residence. Because ***Kerr*** had not been argued at trial, the claimant could not impugn the trial judge's lack of finding that the parties were engaged in a joint family venture. The record did not permit an analysis using the ***Kerr*** factors. The Court of Appeal elected not to interfere with the trial judge's decision because the result was fair and reasonable.

B. Application of *Kerr* principles

[76] The claimant in this case, Ms. Thew, contends that the relationship she had with Mr. Nichol **was a joint family venture and their joint efforts led to an accumulation of wealth, but Mr. Nichol retains a disproportionate share of the jointly acquired assets.** Ms. Thew argues that Mr. Nichol has been unjustly enriched at her expense and there is no juristic reason for him to retain that enrichment.

1. Unjust enrichment analysis

[77] To prove the first element – enrichment – Ms. Thew must show that she gave something to Mr. Nichol which he received and retained, a benefit which has enriched him and can be restored to her *in specie* or by money.

…

[80] Thus Ms. Thew contributed to the development, enhancement and maintenance of both homes…

…

(b) Deprivation

[86] Turning to the second element – a corresponding deprivation – Ms. Thew must establish not simply that Mr. Nichol has been enriched, but also that the enrichment corresponds to a deprivation which she has suffered.

[87] Once enrichment is shown, corresponding deprivation is the other side of the same coin, as stated by Cory J in ***Peter*** at paras 70-72:

> 70 It is again important to first consider the finding of the trial judge on this issue. He stated: ... the Plaintiff was deprived of any compensation for her labour since she devoted the majority of her time and energy and some of the monies she earned towards the benefit of the Respondent, his children and his property.
>
> 71 That finding would seem sufficient in itself to warrant the conclusion that the appellant suffered a deprivation which corresponds to the enrichment of the respondent.
>
> 72 Indeed, I would have thought that if there is enrichment, that it would almost invariably follow that there is a corresponding deprivation suffered by the person who provided the enrichment. There is ample support for the proposition that once enrichment has been found, the conclusion that the plaintiff has suffered a corresponding deprivation is virtually automatic. In ***Sorochan***, supra, Dickson CJ suggested that benefit and deprivation are essentially two sides of the same coin. He wrote at pp 45-46:
>
> > Moreover, the case law indicates that the full-time devotion of one's labour and earnings without compensation can readily be viewed as a deprivation. In ***Murray v Roty*** (1983), 41 OR (2d) 705 (Ont CA), for example, a case involving a joint business and farm operation, Cory JA, commented (at p 710): "For eight years of her life she devoted all of her time and energy and almost all of her wages for the benefit of Roty. The deprivation is obvious". In ***Everson v Rich*** (1988), 16 RFL (3d) 337, the Saskatchewan Court of Appeal, applying ***Sorochan***, stated at p 342:
> >
> > The spousal services provided by the appellant were valuable services and did constitute a benefit conferred upon the respondent. The provision of those services was a detriment to the claimant by virtue of the use of her time and energy.

[88] Ms. Thew contributed her personal finances, her efforts, and her time to the two homes, to the family, and to the Chatters business during the relationship with Mr. Nichol. She was deprived of her contributions as he was correspondingly enriched by them.

[89] The overall financial picture of Ms. Thew and Mr. Nichol shows that Mr. Nichol enjoyed a significant financial advantage over Ms. Thew at the conclusion of their relationship, as is demonstrated below. That disproportionate share of the fruits of their labours is tangible and measurable by looking at the respective value of the assets that each owned at the commencement and conclusion of the relationship.

(c) Juristic reasons

[90] This leads to the consideration of whether there is a juristic reason for Mr. Nichol's enrichment. **There is no evidence or argument before me that there is a contract, disposition of law, or other valid common law, equitable, or statutory obligations which would permit Mr. Nichol's enrichment at the expense of Ms. Thew. Neither is there proof of the parties' reasonable expectations that they would benefit unequally from the contributions made by each to the Chatters business, the two houses, and their savings**. (my emphasis)

[91] No public policy reasons have been advanced to support a denial of the remedy that Ms. Thew seeks. Any argument that the provision of domestic services should not give rise to equitable claims against the other spouse in a quasi-marital relationship has been rejected (***Peter,*** at pp 993-95). Any argument that the legislative decision to exclude unmarried couples from division of property legislation indicates the court should not use unjust enrichment to resolve such disputes, has also been rejected in ***Peter***.

[92] I conclude that Mr. Nichol has been unjustly enriched. Ms. Thew is entitled to a remedy.

2. Considerations related to remedy

[93] According to the court in ***Kerr***, an obvious circumstance where there is basis for a successful unjust enrichment claim is the joint family venture where both parties contribute to the overall accumulation of wealth (para 60). The unjust enrichment occurs where the parties separate and one party retains a disproportionate share of the assets which are the product of their joint efforts. **Because domestic relationships often proceed without a parsing or specific accounting of household income and expenses between the parties, the required link between the contributions and a specific property may not exist. It is then inappropriate to confer a proprietary remedy**. As noted above, from ***Kerr*** at para 60: (my emphasis)

> … [T]here may clearly be a link between the joint efforts of the parties and the accumulation of wealth; in other words, **a link between the "value received" and the "value surviving"...** Thus, where there is a relationship that can be described as a "joint family venture", and the joint efforts of the parties are linked to the accumulation of wealth, the unjust enrichment should be thought of as leaving one party with a disproportionate share of the jointly earned assets.

[94] Ms. Thew argues that though the parties were engaged in a joint family venture, Mr. Nichol retained a disproportionate share of the assets.

[95] The benefit that Ms. Thew conferred on Mr. Nichol can be restored to her *in specie* or by money – **it is a question of determining the value of the assets before and after her contribution to them during the life of the relationship**. (my emphasis)

> (a) Joint Family Venture Inquiry
>
> [96] The factors that may shed light on whether there is a joint family venture are set out in ***Kerr***: **mutual effort by the parties; economic integration of their lives; their actual intent to engage in a joint family venture; and their approach to family as the priority.**
>
> (i) Mutual effort
>
> [97] There are a number of factors that show Mr. Nichol and Ms. Thew were **working collaboratively towards common goals. They lived together** as a couple in a blended family setting, running a household that, for about 8 of the 11 years together, variably included one or two of their children. They also worked together to establish and maintain two family homes throughout the course of their relationship, with the attendant costs and effort shared between them. Mr. Nichol **paid for the hard costs of running the family homes such as the mortgage for a period of time, taxes and utilities, while Ms. Thew paid for household necessities and groceries as well as generally making a financial contribution of $500 per month** towards meeting the hard costs. **Both worked at housekeeping as well as house and yard maintenance**, as did their children. **They lived together in every respect as a modern family with shared contributions to the home derived from their labours inside and outside of the home**. They, along with the two children, **pooled their efforts for the benefit of the blended family unit**.
>
> [98] …As he had complete control of the finances, he made the decisions as to what portions of those incomes he would retain for his own use, or contribute to the household where the family lived or to the rental property...

Mutual Effort

[155] Ms. Butt has asked me to find there was a "joint family venture." The parties in this proceeding "lived together as a couple in a blended family setting," and they ran a household together for 17 years. However, Ms. Butt has stated she cared primarily for her own children whom she shared with her husband, Mr. MacDonald, and relied on Mr. Patterson very little. Mr. Patterson has stated that he cared for J and D and predominantly it was him who met J and D's needs, and that he did not rely on Ms. Butt to any great extent.

[156] The parties both worked to maintain a family home "throughout the course of their relationship, with the attendant costs and effort shared between them." In addition, they worked together to help Mr. Patterson start a small business.

[157] They may have appeared to have "lived together in every respect as a modern family" but I find they did not always "share contributions to the home derived from their labours inside and outside of the home." They did not always pool their efforts for the benefit of the blended family unit. They kept separate bank accounts, separate savings accounts, separate investments by choice and it was unclear what savings or investments may have been acquired while the parties were involved in previous relationships. The never married and they never intended to marry.

Economic Integration

[158] *Thew, supra:*

> (ii) Economic integration
>
> [99] **The couples' economic life was substantially integrated**. Ms. Thew obtained the Chatters franchise opportunity for them. She paid the franchise fee and the start-up capital. Mr. Nichol **pledged his properties as security for the start-up loans.** Ms. Thew worked long hours, hands on, running all aspects of the salons, and was paid a salary set by Mr. Nichol. Mr. Nichol worked at Redcliffe, supervised construction of the salons, and kept the books. By late 2008, he worked full time in the Chatters business. Both were equal owners and directors in the business and each drew profits from the business in the form of dividends in equal measure, but for the extra dividend sum Mr. Nichol took in 2007.

> [100] Ms. Thew and Mr. Nichol taxes were done jointly by the same accountant, instructed by Mr. Nichol as to their joint tax planning and structure. This financial planning involved income splitting with respect to revenue for the rental properties, though Ms. Thew did not receive that money. As well, for so long as Mr. Nichol worked at Redcliffe, he received a salary that he did not share directly with Ms. Thew, **though he paid the hard costs of running the two properties. Ms. Thew's labours and wages** were devoted to building the Chatters business that was owned equally by Mr. Nichol, as well as to the running the two successive households.
>
> [101] The couple fell into this pattern, and, as is common, did not discuss the minutiae of who would pay for what. They were pulling the plow together in the business and the houses and the homes. **In this case, there was economic interdependence as well as a pooling of human and financial resources**. This was particularly so in the latter years, when the company dividends went into their joint account and used to build family home #2 and purchase all new furnishings.
>
> [102] However, likely due to his role as financial steward, Mr. Nichol ended up with significantly more assets than did Ms. Thew, keeping for himself the house that was family home #1 from 2001 to 2009, as well as family home #2 constructed from joint funds (admittedly shared), the travel trailer (admittedly shared), the boat, various vehicles, and other financial assets including RRSPs and a CIBC TSFA account.

[159] The couples' economic life was not as substantially integrated as the case referenced above. They did not share bank accounts but they both paid expenses related to the home and purchased items for the home.

[160] In 2008 they both contributed toward the purchase of a new home. They co-signed mortgages. At times, they helped one another. They supported the other in their respective efforts to obtain gainful employment and / or secure benefits.

[161] For instance: in 2003 Mr. Patterson helped Ms. Butt while she was in school and / or starting a new job; in 2005 after Mr. Patterson left the military, Ms. Butt

supported his efforts to retrain; in 2007 - 2008 Ms. Butt helped Mr. Patterson while he was in school; in 2008 the parties purchased a house with a garage to allow Mr. Patterson to open a small engine repair shop in their home; Mr. Patterson was at home and provided support to the children and the families' pets as needed; Ms. Butt purchased a computer and a truck for Mr. Patterson's business; Mr. Patterson has suggested he made purchases for Ms. Butt's benefit; at times they transferred money to one another.

[162] Although there was some economic interdependence as well as some pooling of human and financial resources at times, I do not believe that the actual intent of the parties was to share each other's individual wealth.

Actual Intent

[163] *Thew, supra* continues:

> (iii) Actual intent
>
> [103] I conclude that the parties conducted themselves as a family unit and considered their relationship to be a joint family venture. I do so for a number of reasons. I have accepted Mr. Thew's evidence that Mr. Nichol gave her a promissory ring and expressed its meaning as symbolizing the past, present and future of their relationship. The coupled lived with two of their children as a blended family. They built a business together, contributing money and sharing the risks, the profits and the sweat of their efforts in their individual occupations. They then used their joint funds, and built together, a "dream" family home suitable for aging and retirement. They purchased a travel trailer together for extended future travels as a couple. This reality of shared personal life, family business life, building of a custom-made home to meet present and future needs, and acquiring a vacation travel trailer for family use, support the conclusion that

> this was a joint family venture, to which the couple jointly contributed for their mutual benefit and the benefit of their children.

[164] This was not the first intimate common law relationship / or marriage for either party. At the outset, Ms. Butt was clear with Mr. Patterson that she did not want to share bank accounts or resources equally, that the expectation was she would take care of her own children financially and he would be expected to take care of his children and pay certain expenses. More likely than not, the parties sometimes strayed from this general understanding, but I find it was only when they chose to do so and not because of any sense of obligation to the other, or not with the intent to create an obligation, legal or otherwise.

[165] The parties had a general understanding that they would share household expenses and that in addition, each would choose if they wished to help the other financially by pooling resources but neither would be obligated to do so. Ms. Butt has suggested she took loans out for Mr. Patterson. Mr. Patterson has stated that without him co-signing for a mortgage or a line of credit, Ms. Butt would not likely have qualified, and he has also helped Ms. Butt pay off debts at times. I agree that is most likely the case.

[166] The parties did sometimes consult the other, but not always, and they did not feel obligated to do so. They often supported the other when making some

decisions about their careers and about their joint asset. Ms. Butt clearly made decisions about the parties' home life despite Mr. Patterson's objections. These include allowing her young daughter's boyfriends to move into their home and on two occasions allowing her friend /ex-boyfriend and their children to move into their home together.

[167] Ms. Butt assigned herself as the person who paid the mortgage. She described herself as the primary income earner, the person who paid most of the bills, who did most of the chores, and portrayed Mr. Patterson as a person who did not contribute equally. On the one hand, Ms. Butt argued that because she contributed more she should be entitled to more of the parties' jointly held real property or she would be prepared to divide the real property equally if the court gave her an equal division of all the parties' property, including Mr. Patterson's pension.

[168] However, I do not recall Ms. Butt suggesting she was agreeable to dividing her pension or her payout equally with Mr. Patterson.

Priority of Family

[169] *Thew, supra* continues:

> (iv) Priority of family
>
> [104] Ms. Thew relied on the familial relationship with Mr. Nichol: she trusted him entirely to look after both their business and personal finances as she believed their relationship would endure into the future. She was not concerned with the amount of dividends realized from profit, the income splitting for tax purposes, or whether she was realizing an equal benefit from the joint family venture. Nor was she concerned with accounting for her work effort, his work effort in the two occupations he had, or the rental properties. She trusted that the familial relationship would endure and ensure her financial security. She worked for the benefit of the family unit – Mr. Nichol as her life and business partner, their two sons who lived with them in a blended family arrangement, and her two daughters who assumed significant roles in the family business.

[170] Ms. Butt worked outside the home. At times, out of necessity, Ms. Butt relied on Mr. Patterson to transport N to school, to pick N up from school, and to care for the families' pets (including rescue puppies) while she was at work. He did so but was not obligated to do so. She also relied on Mr. Patterson to complete certain tasks such as mowing the lawn and shoveling, and there was an expectation that he pay his share of the agreed upon expenses.

[171] Mr. Patterson has suggested that Ms. Butt interfered in his relationship with J's mother, Ms. Mason, and she was unkind to his son D. Ms. Butt allowed an ex-boyfriend to move into their home with the children. In 2007 one of Ms. Butt's children chose to live with her father. I would anticipate there may have been a corresponding reduction in child support / benefits paid to Ms. Butt.

[172] In early 2008, Mr. Patterson gave up his legal rights to J. Also in 2008, Mr. Patterson took out a portion of his military severance pay, he went back to school,

the parties decided to purchase a new home, and the parties decided to work together to allow Mr. Patterson to open a small home-based business. The parties made plans together, but the priority did not appear to be with respect to maintaining a blended family, but rather with respect to each achieving some financial security. *Thew, supra:*

> (v) Conclusion on identification of the joint family venture
>
> [105] I conclude that Ms. Thew and Mr. Nichol were engaged in a joint family venture as demonstrated by their personal, family, and business endeavours.
>
> (b) Link between contributions to joint family venture and accumulation of wealth
>
> [106] …Ms. Thew contributed to family home #1 both by monthly payments of $500 to Mr. Nichol to defray his costs, by purchasing food and other necessities to run the household, and by housekeeping and cooking. Ms. Thew contributed one half of the costs of building family home #2.
>
> …
>
> [108] These parties were engaged in a joint family venture. **There was a clear and demonstrable link between Ms. Thew's contribution and the overall wealth accumulated through their joint efforts**. Upon separation, Mr. Nichol retained a **disproportionate share of the jointly-acquired assets**.
>
> [109] Mr. Nichol was able to make a contribution to his RRSP in the sum of $171,671.00 during the course of the relationship. Ms. Thew had only $120,258 in her RRSP portfolio as of March 2012, just after the relationship ended.
>
> [110] …Counsel for Mr. Nichol notes that the sums in the column shown as "rent" were not received by Ms. Thew; also these sums are described as "other employment income" in their tax returns...

Conclusion on Identification of the Joint Family Venture

[173] Due to the parties' previous relationships, including Ms. Butt's ongoing marriage to Mr. MacDonald, and her focus on providing for her three children M,

R, and N, initially. and Mr. Patterson's focus on his two children, I hesitate to find that these parties were "fully" engaged in a joint family venture. There was insufficient documentary evidence available from both parties to determine there was a "demonstrable link between" Ms. Butt's or Mr. Patterson's contributions to the family and any wealth accumulated by either party.

[174] Both parties tried to meet their own obligations to pay agreed upon expenses. At times they pooled their efforts to obtain a loan or at one point to help Mr. Patterson start a new home-based business which would allow him to be home for the children and family pets. There was no obligation or expectation either would contribute more than was agreed initially.

[175] Although there is a clear and demonstrable link between Ms. Butt's and Mr. Patterson's contributions to the equity in their jointly held real property in Lake Echo through their contributions to the maintenance of the property, those contributions do not necessarily extend to the overall wealth accumulated by either party, especially in relation to Mr. Patterson's pension entitlement earned prior to the parties' relationship. His pension cannot be characterized as being earned through the parties' joint efforts during their relationship.

[176] Mr. Patterson's pension was granted to him based on his service with the military for twenty-three years. Although Ms. Butt and Mr. Patterson lived together for seventeen-years, Ms. Butt was only in a relationship with Mr. Patterson for two of his twenty-three years of military service. Arguably, Ms. Butt's claim to Mr. Patterson's pension would be limited to a one-year period after the parties began cohabitating in or around October 2003, or between August 2004 and August 2005, when Mr. Patterson retired.

[177] Mr. Patterson is asking that I find there was no "joint family venture" and Ms. Butt should not share in his pension (either pre-cohabitation / or post one-year cohabitation) or the other assets he acquired during the parties' relationship (arguably acquired with funds received due to severance pay and lump sums received due to his military service). I agree. Ms. Butt's claim is denied in its entirety.

[178] If I deny Ms. Butt's claim to Mr. Patterson's pension, then should Mr. Patterson be entitled to a share of Ms. Butt's pension accumulated over fifteen years (or pension payout funds) and acquired during the parties' seventeen-year relationship? No. He has argued that except for the jointly held real property and Ms. Butt's pension, no other assets should be divided, and he should not have to pay spousal support. If there is no joint family venture and no unjust enrichment,

then I am unclear why Mr. Patterson believes he has a claim to Ms. Butt's pension. I am denying Mr. Patterson's claim to Ms. Butt's pension.

[179] The parties did not have the intent necessary for a "joint family venture." Their financial relationship could more accurately be described as consisting of two "independent personal ventures" undertaken while residing in a jointly owned property.

Disposition

[180] Mr. Patterson has suggested the facts do not make out an "unjust enrichment" claim in Ms. Butt's favour [consider enrichment, deprivation, and juristic reason]. I agree. Neither party was unjustly enriched by the other. There was no deprivation to either party.

[181] Mr. Patterson argued that Ms. Butt's claim that there was a "joint family venture" after she initially appeared to be suggesting Mr. Patterson did not in fact contribute much to the family at all should be denied. I find there was no joint family venture.

Joint ownership of Lake Echo home

[182] Ms. Butt sought to divide the equity in the jointly owned home unequally in her favour after the mortgage balance of **$160,797.00** and disposition costs are taken into consideration.

[183] Ms. Butt has suggested that if the court decides the parties will equalize all assets, including Mr. Patterson's interest in the jointly owned home, that Ms. Butt's equalization payment to Mr. Patterson should be set at **$48,641.11**.

[184] Mr. Patterson suggested the following calculations:

Appraised value:	$352,000.00
Less mortgage:	$160,797.58
Less Realtor fees 4% + HST:	$16,192.00
Less legal fees:	$1000.00
Total equity:	$174,010.42
Each party's share:	$87,005.21
Cost of appraisal paid by Mr. Patterson	$920.00 /2 = $460.00
Total owed by Ms. Butt to Mr. Patterson	$87,465.21

[185] Ms. Butt sought to be compensated for the money she claims she contributed as a down payment for the parties' jointly owned home. As reflected above, Ms. Butt and Mr. Patterson made comparable contributions.

[186] Ms. Butt sought to be compensated for half the mortgage, property tax, home insurance, and upkeep costs (half of $37,480.78 or **$18,740.30**) she paid while she continued to reside in the home after the parties separated on October 19, 2020. Mr. Patterson argued that he should not be required to pay back half the expenses paid by Ms. Butt since the parties' separation while she had exclusive occupation of the residence. I agree with Mr. Patterson.

[187] Mr. Patterson was unable to reside in the home and had to arrange for alternate accommodations. If he managed to do so at a reduced cost, good for him. If Ms. Butt did not feel she could afford to continue to live in the parties' jointly owned home, she should have taken steps to either offer her half interest for sale to Mr. Patterson or determine if the parties could agree to sell the home. Mr. Patterson has not asked to be compensated for the delay in the realization of Mr. Patterson's interest in the jointly held property. Arguably, the delay may not be attributable to Ms. Butt.

[188] In her post-trial submissions, Ms. Butt indicated she was no longer claiming a contribution from Mr. Patterson for the monthly payments made by her on the solar system lease and heat pump since separation (as initially claimed in their trial brief). Rather, "she is more simply seeking to deduct the balance owing on these two (2) debts at separation."

[189] Mr. Patterson disagreed that the upkeep / payments on the solar panels or heat pump since separation should be a consideration in dividing the equity in the home. On one hand, he argued that Ms. Butt provided no objective evidence or supporting documents regarding the cost of upkeep for the home. Further, he argued that if Ms. Butt purchased the home, she would retain the benefit of the heat pump and the solar panels. Arguably, if the parties sell the home they will benefit from any added value to the home. I agree with Mr. Patterson, and the balances for the solar panels and heat pump will not be deducted from the final price of the home or from the amount owed by Ms. Butt to Mr. Patterson if she chooses to buy out his half interest in the property.

[190] Mr. Patterson sought an equal division of the equity in the home the parties' own jointly. Mr. Patterson was agreeable to the home being valued at $352,000 and to Ms. Butt purchasing his interest in the home from him for **$87,465.21, on the condition that** if Ms. Butt is unable to secure financing, the home would be

immediately listed for sale with an agreement or order specifying that the proceeds of sale of the home would be shared equally. I am prepared to grant Mr. Patterson's request, and I rely on the calculations he provided in his brief filed June 28, 2023, at paragraph 34 and reproduced above at paragraph 169.

[191] Mr. Patterson sought credit for the two months of mortgage payments he made following the parties' separation. **Ms. Butt shall reimburse Mr. Patterson for two months of mortgage payments,** or he shall receive a two-month credit which will be added to the transfer payment Ms. Butt must make to Mr. Patterson to purchase his interest in the parties' jointly held real property.

[192] Mr. Patterson sought occupation rent in the amount of $1,400 per month for 31 months / 2 for a total of **$21,700.00.** The remedy requested is discretionary. (*Wawzonek, Stetco v. Stetco* 2014 ONCA 370) As in *Stetco*, Mr. Patterson was removed from the residence due to a criminal charge. He then plead guilty to a lesser charge of assault. Upon reviewing the transcript related to Mr. Patterson's appearance in Provincial Court (paragraph 100) and recognizing that in September 2022 parties consented to an order granting Ms. Butt exclusive possession of the home, I am not prepared to award Mr. Patterson any occupation rent.

Contents of Home

[193] Mr. Patterson sought the return of his belongings [per paragraph 89 of his trial affidavit sworn May 8, 2023].

[194] The Consent Order granted in September 2022 provided Mr. Patterson with a one-time opportunity to attend at the home and to retrieve his personal belongings. He has not yet availed himself of the opportunity.

[195] Ms. Butt has stated that she has held Mr. Patterson's personal belongings for him. If the parties are unable to negotiate the return of the items to Mr. Patterson who I last heard had moved to British Columbia, or he is unable to negotiate the release of the items to a person designated by Mr. Patterson, I will retain jurisdiction to address the issue.

Pensions

[196] As noted above, Ms. Butt requested that Mr. Patterson's military pension be divided equally from the date of inception or, in the alternative, from the end date of the pension entitlement of any former spouse, or, in the further alternative, for the period of cohabitation with Mr. Patterson from on or about October 2003, to August 2005. (*Murray* v. *MacDougall*, 2015 NSSC 215) Mr. Patterson asked that Ms. Butt's request be denied and that his pension not be divided. For the reasons noted above, I am denying Ms. Butt's request.

[197] Ms. Butt has asked the court to order Mr. Patterson to maintain Ms. Butt on his military / Sun Life medical / dental / life insurance and to order that Mr. Patterson designate Ms. Butt as a survivor beneficiary on his regular military pension. This is not a first "marriage" like relationship for either party. Ms. Butt is still married to Mr. MacDonald, and they have three children together. I have found there was no unjust enrichment and no "joint family venture." I am not prepared to order Mr. Patterson to assign any benefits to Ms. Butt.

[198] Although Mr. Patterson gave up his parental rights with respect to J, he has another son, D, by another mother. Although the parties were in a seventeen-year relationship, they have no children together. Both parties should feel free to move on with their lives and to assign medical, dental, or life insurance benefits to whomever they wish and to designate whomever they chose as "survivor beneficiary" if they are entitled to do so.

[199] Mr. Patterson sought an equal division of Ms. Butt's pension (locked in RRSP from RSA). For all the reasons noted above, I am denying Mr. Patterson's request.

Other property

[200] Ms. Butt has suggested that the RRSP's TFSA's and LIRA were essentially "off-setting."

[201] I am granting an order that each party have sole ownership of any accounts, investments, vehicles, or assets of any kind currently in their own name;

[202] I am NOT prepared to grant an order requiring Ms. Butt to return $50,000.00 Mr. Patterson transferred to Ms. Butt. Money flowed both ways. Without written proof the money was forwarded to Ms. Butt as a loan, I am not having her return the money to Mr. Patterson.

[203] Ms. Butt **accepts that there was no equity in the RV Camper** at separation. I find Ms. Butt has no claim to the RV purchased by Mr. Patterson with his own funds.

[204] The parties agree the value of the Dodge Charger at separation was approximately $26,000, that $20,000 was owing**, and the resulting equity at separation was $6,000** according to Mr. Patterson's original Statement of Property. I find Ms. Butt has no claim to Mr. Patterson's Dodge Charger.

[205] Ms. Butt acknowledge that the repairs on the scooter (Piaggio) were completed after separation. **Ms. Butt makes no claim for an interest in the scooter** (Piaggio).

[206] Mr. Patterson accepts the value of $3,000 for the 2003 Kawasaki Nomad, but argues Ms. Butt has no claim and he will keep it. Ms. Butt has no claim to the 2003 Kawasaki.

[207] Mr. Patterson accepts the value of $4,000.00 for the Subaru which was in Ms. Butt's possession at separation, but he did not claim an interest. Mr. Patterson has no claim to Ms. Butt's Subaru vehicle, which I understand has been replaced with another vehicle to which Mr. Patterson also has no claim.

Disclosure

[208] The lack of full disclosure or clear and / or cogent disclosure in relation to various claims of loans of money, payment of expenses, and the acquisition of certain assets and debts at various times during the parties' relationship makes it difficult to complete an analysis regarding the extent of any joint family venture. In addition, due to the lack of clear evidence of intent to share in the parties' respective pensions (or payout from pensions), I decline to award either party any interest in the other parties' pension benefits or other assets held in either parties' sole name.

Spousal Support

[209] Ms. Butt asked me to grant an order that Mr. Patterson pay prospective, indefinite spousal support to her in the amount of $1,626.00 per month with a review in two (2) years.

[210] Ms. Butt argued she is entitled to spousal support on a non-compensatory basis based on the period of cohabitation, the disparity in the parties' incomes, her need, her lack of assets apart from the house, and Mr. Patterson's ability to pay. However, between 2003 and November 2017, Ms. Butt worked outside the home earning between $50,000 and $60,000 per year. Ms. Butt did not give up her career or educational opportunities for Mr. Patterson's career. Ms. Butt was not a stay-at-home mother. Mr. Patterson has assisted Ms. Butt financially since 2018.

[211] Further, Ms. Butt argued she is entitled to spousal support on a compensatory basis based on her contribution through domestic chores and helping to care for his son for one year; and her past financial contributions: buying him a truck and a computer, paying off his credit cards and his Canada Revenue Agency debt, assisting him when he purchased an expensive Subaru and then lost his job, supporting him while he attended community college, and using up her lump sum severance and retroactive LTD payments supporting him and the family.

[212] Both parties contributed to the upkeep of the home. If anything, it was Mr. Patterson who worked from home between 2008 and 2019, and he was more available to assist by driving N to school or available to perform house related tasks. In addition, money flowed both ways. I am not convinced the parties have both provided me with a thorough accounting of their assets or their respective contributions to the other, however I am satisfied that any contributions they may have made to the other prior to separation were made of their own free will and without any legal obligation to the other party. In addition, I find that any undisclosed assets should remain with the owner of that asset.

[213] Mr. Patterson has argued that Ms. Butt does not have a compensatory entitlement to spousal support; that she is voluntarily underemployed; and she could work in various capacities including but not limited to working as a trained carpenter and / or a licensed risk management technician. I agree with Mr. Patterson. Mr. Patterson sought to impute an income of $60,000 to Ms. Butt, alleging she is underemployed. (*Standing* v. *MacInnis*, [2020] N.S.J. No. 377 and *Parsons* v. *Parsons*, 2012 NSSC 239)

[214] Ms. Butt has not discharged her burden to prove what her means and needs are, or that she cannot work or what efforts she has taken to secure employment.

In addition, Mr. Patterson alleges that Ms. Butt received rent from her daughter in the amount of $3,600 tax free per year to reside in Ms. Butt's three-bedroom home.

[215] There is no presumptive entitlement to spousal support. Unless entitlement is proven, Mr. Patterson is not under any legal obligation to look out for Ms. Butt's legal interests. Mr. Patterson is not asking that I revisit the interim spousal support he paid to Ms. Butt. I have determined Mr. Patterson's obligation to pay spousal support terminates at the end of December 2023.

[216] As noted above, it appears Ms. Butt received $53,541.47 in disability benefits in 2022, and she was in receipt of rental income from her daughter or should have been if her daughter was residing with her. Mere disparity in the parties' incomes does not necessarily result in an award of spousal support.

[217] If I am wrong, then I find Ms. Butt has failed to file sufficient evidence establishing her needs and / or her means, and / or she has failed to prove she cannot work and / or she has failed to prove she has looked for employment commensurate with her past income earning potential and her current circumstances.

[218] With respect to establishing Ms. Butt's means and needs, Mr. Patterson argues there was a lack of financial disclosure provided by Ms. Butt, that she failed

to file an updated Statement of Expenses and updated Statement of Property prior to trial, and that there is evidence she had disposable income as she had purchased a new vehicle after separation.

[219] No adjustments will be made to spousal support paid by Mr. Patterson effective March 2022. Mr. Patterson's obligation to pay spousal support is terminated effective at the end of December 2023.

[220] Based on DivorceMate calculations provided to me by Mr. Patterson, I am imputing an income of **$65,777.00** to Ms. Butt ($60,000 as I find her to be underemployed and $3,600 to account for non-taxable rental income).

[221] I find Mr. Patterson has an income of **$74,586.00** composed of $20,961 in pension income; $7,154 in on taxable income; and $43,660 in taxable income.

[222] Neither party is entitled to spousal support.

[223] Mr. Patterson's counsel shall draft the final order.

[224] If Ms. Butt seeks to be heard on costs, she must file written submissions within 30 days of receipt of an advanced copy of this decision. Mr. Patterson may file costs submissions within two weeks of the expiration of the 30-day period for Ms. Butt to file submissions.