SUPREME COURT OF NOVA SCOTIA
Citation: *Robbins v. Marshall*, 2019 NSSC 168

Date: 20190604
Docket: ST 440596
Registry: Truro

Between:

Julie Robbins

Plaintiff

v.

Gregory Marshall

Defendant

DECISION

Judge:	The Honourable Justice Jamie Campbell
Heard:	March 25, 26, 29, May 14 and 17, 2019, in Truro, Nova Scotia
Counsel:	Karen Killawee and Kristy MacKinnon, for the Plaintiff Gregory Marshall, self-represented

By the Court:

[1] Julie Robbins and Gregory Marshall started living together in the fall of 1995. That relationship ended after about 19 years, in the spring of 2014. This case relates only to the division of their property. Neither of them believes that there is much value left in it.

[2] It would be entirely reasonable to ask how so many pages should be devoted to this. It's a long and complicated story. But not every long and complicated story has to be told, much less in such miserable detail. It might be a cautionary tale. But it's hard to see what lesson could ever be drawn from it. The sorry fact is that a reasonable summary would fail to convey the toxic wasteful unreasonableness of what has gone on. So far, this separation has generated this 5-day trial, another 6-day trial, criminal charges, multiple court appearances or motions at every level of court, including Family Court, Supreme Court, the Nova Scotia Court of Appeal, and the Supreme Court of Canada.

[3] Access to justice is important. In the name of common sense this should stop. I have little confidence that it will.

Issues

[4] The real legal issue is whether Ms. Robbins and Mr. Marshall were involved in a joint family venture. If they were, the question is whether an equal division of assets acquired during the course of that joint family venture would provide one of them with a disproportionate benefit at the expense of the other.

[5] Ms. Robbins says that their almost 20-year relationship in a family with their two children, two shared homes and numerous shared debts, was a joint family venture. Despite the houses being held in her name alone, she says that an equal sharing in the proceeds of sale, adjusted for money paid after separation, would be equitable.

[6] Mr. Marshall says that they were not in a joint family venture. They lived together and had children together and shared expenses, but he contributed far more in money and effort than she did. He maintains that Ms. Robbins is, to use his phrase, a "crooked actor" who has schemed to take his property from him. There could not have been a joint family venture because her intent, he says, was not to build assets but to waste them. Mr. Marshall wants to be repaid for his financial investment and his work performed over almost 20 years. He wants to be

compensated for Ms. Robbins' fraud, physical and emotional abuse and torts of various kinds. He claimed waiver of tort, detinue, conversion, trespass to person, trespass to chattels, and breach of fiduciary duty. He asserts *quantum merit* and unjust enrichment and claimed that Ms. Robbins was guilty of fraud, perjury and assault. He claimed aggravated and punitive damages.

Summary

[7] Ms. Robbins provided a narrative in which she acknowledged her own shortcomings, expressed her frustrations in a measured way, and though perhaps reluctantly, gave credit where credit was due. She acknowledged her inability to recall details of what happened more than 25 years ago. She was trying her level best, in the face of Mr. Marshall's wide ranging accusations, to tell what had happened, as she remembered it. I accept, for the most part, what she said.

[8] Mr. Marshall spoke in his direct evidence for almost two full days, and cross-examined Ms. Robbins for 8 hours. He used equitable or trust law concepts as a way to impose his will and justify his actions. His accusations against Ms. Robbins were so extreme that they showed a lack of perspective bordering a lack of self-awareness. A number of times he related the story how, when pregnant and angry, Ms. Robbins had said to him that she wished the child she was carrying was dead. He told that story, knowing that she had had a miscarriage. Whether the story was true or not, it served no purpose other than to inflict pain. His vitriol descended into mindless cruelty. In his narrative he alternated between being the hero and the victim, but he is always the one who knows best.

[9] Mr. Marshall wanted to be compensated for the work that he had done and the money that he had expended during the course of the relationship. On some things he attributed a notional $50 per hour rate. When asked how much Ms. Robbins' being pregnant with and delivering two children was worth on that basis he could only say that he did not want to get into a debate about "gender issues". It is as if fixing the plumbing has a value while giving birth to a child is somehow just a "gender issue". He showed no respect whatsoever for Ms. Robbins' judgement, or for her contributions to the family.

[10] Mr. Marshall has assured himself of the truth of some things that are just not true. Much of his evidence was not reliable. His story involved a series of curiously improbable events.

[11] It is important that this matter be resolved in a manner that involves the least interaction between the parties. The more that is left unresolved, the more scope remains for further accusations, disagreements, motions, and court appearances. There may be some remedies that would work in "an ideal world" or even in a just sort of OK world. This is very far from an "ideal world".

[12] There are two houses involved. One, Muir Street is now unoccupied. Ms. Robbins has been paying the expenses. The other, Victoria Street is occupied by Mr. Marshall. Both houses are mortgaged. The deeds to both properties are in the name of Ms. Robbins.

[13] The parties lived together, as a family for almost 20 years. A detailed accounting for the contributions that each made to the acquisition of assets and to the family generally, is a process that is artificial and largely meaningless. When trying to follow Mr. Marshall's accounting of everything from his Toronto condominium sold more than 20 years ago to the Peggy's Cove oven mitts, gone missing when Ms. Robbins left, it is downright bizarre.

[14] This was a joint family venture. Each party contributed in different ways at different times. Neither contributed to an extent that was disproportionate. There was never a shared intent that if they were to separate they would do anything other than divide assets equally. An equal sharing of the assets is appropriate.

[15] Mr. Marshall wants to keep the Victoria Street house in which he is living. Ms. Robbins is responsible for the mortgage and taxes on that property however. They are each entitled to 50% of the equity in that home. If Ms. Robbins wishes to transfer ownership of that home to Mr. Marshall in return for a payment representing her share of the equity in the home the parties may reach that agreement. If they cannot agree on terms the property should be listed for sale within 60 days of this decision.

[16] As for the other property, Muir Street, it should be listed for sale within 30 days. The terms of sale for both houses will be as set by Ms. Robbins. She will select a real estate agent to list the property, a lawyer to act on the sale, a list price and the sale price. Shared responsibility for those matters would be an invitation to further litigation. Mr. Marshall is required to cooperate in the sale of the homes. Legal fees and real estate fees should be paid from the sales. The parties should share equally in the net proceeds of sale of the homes, subject to adjustments.

[17] Equal sharing applies up to the point of separation. After that point, there should be adjustments for the "equities". Money paid by one party from which the other derived a benefit should be accounted for. From Mr. Marshall's equal share should be deducted the amounts that he owes to Ms. Robbins for debts and expenses paid after the separation. That amount is $31,035.69 being the total of $13,075.75 the unpaid legal costs, $14,300 the amount withdrawn from the parties' joint line of credit in January/February 2015, and $3,659 the tax arrears on the Victoria Street property paid by Ms. Robbins.

[18] I am not prepared to order that Ms. Robbins be permitted to enter the home now occupied by Mr. Marshall to search for and recover items of personal property. Mr. Marshall will be required to return to her all of Ms. Robbins' personal belongings and effects and personal papers in his possession or located in the home at Victoria Street within 30 days of this decision.

[19] Mr. Marshall will be ordered to pay the costs of this trial. No more legal fees should be spent arguing about legal fees. This matter has already chewed up enough resources. I asked the parties for their positions and representations on costs at the conclusion of the trial.

[20] This is an appropriate case for a lump sum award of costs. Ms. Robbins has had to expend money dealing with a case that should have been settled some time ago. Mr. Marshall's conviction that his cause was just, should not be indulged at her cost. Ms. Robbins' counsel indicated that her legal fees in this matter were approaching $100,000. A costs award should reflect a partial indemnity with respect to those fees and it should reflect the manner in which the parties have conducted the litigation. Mr. Marshall's failure to respond reasonably to demands for production of documents, his laundry list of claims and his allegations of misconduct have substantially increased the costs of this litigation. A lump sum costs award of $20,000 will provide Ms. Robbins with some modest contribution toward her actual fees. That amount should be deducted from Mr. Marshall's share of the proceeds of sale of the homes.

[21] That order may leave Mr. Marshall with nothing or less than nothing. It need not have been this way. It should not have been this way. Some civility, a bit of humility and a willingness to compromise might have saved something.

Background: Court Proceedings

[22] Usually, the previous court proceedings can be addressed in passing to provide the context for the matter under consideration. Here, the manner in which Mr. Marshall has dealt with those proceedings over the course of more than 4 ½ years has increased the expense and frustration that often accompanies litigation of this kind.

[23] The court battles began in 2014, after the separation in the spring of that year. Ms. Robbins made an application in Family Court seeking an order for custody, access and child support. An interim order was granted by Judge DeWolfe and issued on September 3, 2014. There was an unsuccessful settlement conference held in late November 2014.

[24] In June 2015, this matter was started in Supreme Court.

[25] Ms. Robbins filed a Notice of Motion seeking to have a date set to determine the outstanding property matters. In that motion she alleged that while Mr. Marshall had possession of a property on Victoria Street she was still burdened by the mortgage and other expenses. She said that she could not afford to keep paying mortgages and expenses on two homes, one on Victoria Street and the other on Muir Street. She wanted a court order requiring Mr. Marshall to refinance the property and assume the expenses for the home on Victoria Street.

[26] On July 10, 2015 Mr. Marshall filed a motion of his own. He sought a declaration that Ms. Robbins' legal counsel was ineligible to continue to act for her because of a conflict of interest.

[27] The parties came before the late Justice John Murphy in July 2015. Mr. Marshall's motion to have Patterson Law declared ineligible to act on behalf of Ms. Robbins was dismissed. Justice Murphy ordered Ms. Robbins to provide Mr. Marshall with all documents in her possession relating to the refinancing of the home on Victoria Street, by July 31, 2015. She was also ordered to make best efforts to obtain from RBC any further documents that related to that mortgage.

[28] Mr. Marshall was required to pay to Ms. Robbins an amount equal to the mortgage and taxes, for Victoria Street.

[29] Mr. Marshall would not consent to the form of order. On August 17, 2015 he wrote to the court outlining his concerns. Justice Murphy replied that the order

drafted by Ms. Robbins' counsel accurately reflected his decision. The order was issued.

[30] The attention then shifted back to Family Court. On December 1, 2015, Mr. Marshall filed a response to the application made by Ms. Robbins in Family Court in 2014. In that response, he claimed spousal support and claimed for a finding of undue hardship on the basis of his health. The parties appeared before Judge David Hubley of the Family Court on January 7, 2016. The matter was adjourned. On February 25, 2016 Judge Hubley granted Production Orders and urged Mr. Marshall to voluntarily provide the information that was being sought. That information was not forthcoming. There were several further court appearances.

[31] Mr. Marshall sought to appeal the Production Orders to the Court of Appeal. He had to make a motion to the Court of Appeal seeking an extension of time to file an appeal. That motion was heard on June 2, 2016.

[32] The Court of Appeal refused Mr. Marshall's motion to extend the time for filing an appeal.[1] In that decision, dated June 7, 2016, Justice Farrar noted that Mr. Marshall had been "less than forthright" in a number of respects in his affidavit filed with respect to the motion. Justice Farrar said that Mr. Marshall's attempt to seek to extend the time for an appeal and to appeal, were "nothing more than a stalling tactic and not a *bona fide* intention to appeal". Costs of $500 were awarded against Mr. Marshall. Mr. Marshall then took the extraordinary step of seeking to take the matter to the Supreme Court of Canada. The motion for leave was filed on September 27, 2016. Leave to appeal was denied on December 1, 2016, again with an award of costs against Mr. Marshall.[2]

[33] The matter was heard in Family Court over 6 days in September and October 2017. Judge Wilson ordered joint custody of the two children and set out arrangements for parenting time and child support. For the purpose of child support Judge Wilson imputed an $87,000 yearly income to Ms. Robbins and $35,000 to Mr. Marshall.

[34] Mr. Marshall was ordered by Judge Wilson to pay $10,000 in costs, forthwith, to Ms. Robbins. Until that award was paid in full, he was required to get court approval before making any other applications. That is usually a judicial signal that things are getting, or have already got, quite out of hand.

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[1] *Marshall v. Robbins* 2016 NSCA 51
[2] *Marshall v. Robbins*, [2016] S.C.C.A. No. 405

[35] In June 2018 Ms. Robbins filed a motion to set a date to determine the outstanding property issues between the parties and to require Mr. Marshall to pay all expenses related to the family home on Muir Street. Mr. Marshall opposed the motion. He said that the matter had been initiated almost three years ago and no steps had been taken to have it set down for trial. He said that he was preparing a motion to dismiss the action for delay just prior to receiving the motion. He noted that he had registered a *lis pendens* with respect to each of the properties. He asserted his right of ownership.

[36] On November 2, 2018 Mr. Marshall attempted to file an *ex parte* motion seeking an injunction to prevent Ms. Robbins from "intruding onto the residence, premises, and/or lands located at --- Victoria Street in Truro until all of the issues and disputes relating to property - real and otherwise - have been determined by the Honourable Court." Justice Hunt did not accept the motion for filing on an *ex parte* basis.

[37] On November 19, 2018 the parties were before Justice Hunt for a date assignment conference. Court dates were set for March 25, 26 and 29, 2019 to hear the trial. Witness lists were to be exchanged before January 25, 2019. On January 25, 2019, Mr. Marshall wrote to the court seeking an adjournment. He said that he could not "meet the timelines that we are currently operating under". After a brief telephone conference, the matter of the adjournment was set down to be heard, by me, in court in Truro. At that hearing Mr. Marshall asserted at that time that he was suffering from so much stress that he could not properly concentrate in order to prepare for the trial. The adjournment was denied and the timelines for filing were confirmed, again with an order of costs against Mr. Marshall.

[38] The case was not one for which a settlement conference would be an appropriate form of dispute resolution. Ms. Robbins was prepared to agree to a binding settlement conference which would have avoided the need for formally calling witnesses. Mr. Marshall wanted the matter dealt with formally, in court.

[39] On March 19, less than a week before the beginning of the trial, Mr. Marshall sought to have six subpoenas issued, two of which were for witnesses outside of Nova Scotia. One was for two people in Gananoque, Quebec who he believed would have information pertaining to the search for, purchase and financing of a 2013 Chevrolet Suburban. Another was for a representative of Canadian Border Services Agency, requiring that person to bring Ms. Robbins entire employment file. One was for a local Branch Manager of RBC, requiring

that the person bring all information pertaining to Ms. Robbins held by RBC and property appraisals and mortgage statements from 2003 and earlier under the name of Gregory Marshall. Three subpoenas were with respect to individuals who would have information about property appraisals.

[40] I convened a conference call with Mr. Marshall and Ms. Robbins' counsel on March 20th, raising concerns about the timing of the subpoenas and the time available for the trial. Counsel for Ms. Marshall, Ms. Killawee, said that she would object to any other witnesses being called. Mr. Marshall expressed his concern that he has disabling conditions and was doing all he could do as a self-represented person. No decision was made during the conference call and argument on the issue was set over to the first day of the trial.

[41] When the trial began, on March 25, 2019 none of the proposed witnesses were present. I denied Mr. Marshall's request to have witnesses heard who were not on a witness list. There was no witness list. A list was not filed on January 25, 2019. It was never filed. The issue of an adjournment had already been addressed. Mr. Marshall had already argued then that he could not comply with the time requirements. His motion was denied. He had not even tried to provide Ms. Robbins' counsel with a list a of witnesses within a reasonable time.

[42] Trial briefs were to be provided by March 11, 2019. Ms. Killawee's brief was dated March 11 and filed March 12, 2019. Mr. Marshall did not file a brief. That is usually not a major problem when a person is self-represented. The lawyer can often make a prediction about what the issues will be. That was not at all the case here.

[43] Ms. Robbins' counsel was required then to speculate about the kinds of arguments that would be made; a daunting task given the array of arguments to which Mr. Marshall had alluded in his affidavits and pleadings. Ms. Killawee had to present evidence to respond to each claim, making a guess about what evidence would be brought to substantiate those claims.

[44] Self-represented litigants should be treated respectfully. They are not intruders into a closed system. The courts should not be made entirely detached from the public by the use of complicated procedures and impenetrable jargon that have the effect of making a self-represented litigant feel like this is the private professional domain of judges and lawyers. Judges have an obligation to offer some help while at the same time not taking the side of the self-represented litigant. Things become complicated when the self-represented litigant is the one

who adopts the jargon, tries to manipulate the procedures while claiming to be unable to comply with those intended to provide meaningful disclosure to the other side, and takes every opportunity to make the matter more lengthy, complex and expensive than it ought to be. Sometimes, that happens.

[45] Lawyers who represent themselves, through choice or necessity, are self-represented litigants. They may find themselves dealing with areas of law with which they are unfamiliar. Mr. Marshall said that he was very familiar with trust law.

[46] Mr. Marshall was permitted to remain seated while asking questions. He could use documents that were not included in any affidavit of documents. He was permitted to cross-examine Ms. Robbins for 8 hours. Sitting time was extended on the second day until 6:00 pm. A fourth day of court time was added. After Mr. Marshall's full day of evidence on his own behalf, a fifth day was added. The fourth and fifth days were April 9 and 10, 2019. Mr. Marshall was ill on those days. Mr. Marshall was adamant that his evidence was relevant and important to the arguments that he would eventually make. As a self represented litigant he was given every opportunity to put forward his evidence. Dates were set for May 14 and 17, 2019. Mr. Marshall continued with his direct evidence for the better part of the second day, on May 14.

[47] Mr. Marshall used the idea that a person seeking an equitable remedy must come to the court with "clean hands" as an opportunity to engage in a wide-ranging attack on Ms. Robbins character. For example, Mr. Marshall noted that Ms. Robbins, used her former husband's last name. He suggested that she had used Robbins to avoid the complications that might arise from having an "Arabic" last name. He said that she was now using Khoury in her work email, and that this amounted to an alias or an attempt to mislead. Mr. Marshall said that if she was untruthful about that, she would be untruthful in what she said in court. That makes no sense at all. None. At all.

[48] On the final day of the trial Ms. Killawee made her argument on behalf of Ms. Robbins. That took about an hour. Mr. Marshall was told he had the same time. He provided his argument over the course of 90 minutes, leaving little time for Ms. Killawee to respond to arguments based on tort law, most of which she had not heard before. The only notice she received was a one-page list of cases, most of which Mr. Marshall did not refer to at all in his argument. Counsel had to print out and read those cases in order to anticipate how they might relate to this matter.

[49] Mr. Marshall was not a litigant who was intimidated by court processes and who could be bullied by a lawyer. He was highly confident in his own understanding of the law and of financial matters. His tactic of pleading a list of torts and only disclosing how in his opinion they applied in the last hour of the 5 day trial amounted in itself to a kind of passive aggressive bullying.

Relationship

[50] Gregory Marshall is now 63 years old. He has an MBA, an M.Ed. and a law degree, although he no longer practices law. He has been receiving a disability pension since 2007. Julie Robbins is 55 years old. She has a BA and a B.Ed. She is a supervisor with the Canadian Border Services at the Halifax Stanfield Airport. She has been with the CBSA since 1999.

[51] Mr. Marshall went to law school as a mature student in his thirties. He had worked before that in the music industry. He articled at Borden Elliot in Toronto. He bought a condominium in downtown Toronto close to the law office on King and Bay. That condo was purchased in 1992 for $150,000. He said it was worth more like $350,000. He paid a down payment of $30,000 and took title to the condo with his mother.

[52] Mr. Marshall was not hired back at Borden Elliot and had to find work. He was then dating Ms. Robbins. Mr. Marshall found a job first and they agreed that they would move, as a couple, to Truro, Nova Scotia from their home in Ontario. Mr. Marshall arrived in Truro in August 1995. Ms. Robbins arrived in late September of the same year with her two young children of a previous marriage.

[53] Mr. Marshall says that Ms. Robbins' divorce litigation left her with only her household furniture and clothes. He presented her with legal bills from her legal counsel in 1995 but it is not clear how much of those were actually paid by her.

[54] Mr. Marshall said that he arrived with a net worth that he now estimates at between $140,000 and $200,000. He had a condominium in Toronto, investments, musical equipment, a 15-year-old Chev, office furniture, computer equipment, and law books that he says were worth several thousand dollars. His only debts were a mortgage and two student loans that totalled about $15,000.

[55] Mr. Marshall had come to Truro to accept a new position as an inaugural faculty member teaching Business Communications and Business Law at the Truro Campus of NSCC. His employment contract was for three years with a starting

salary of $50,000. When he arrived in August, he began living at the Stonehouse Motel in Truro. When Ms. Robbins and her two children arrived, the motel agreed to give them adjoining rooms. Ms. Robbins says that they became common law spouses at this time. Clearly Ms. Robbins meant that they began living together as spouses at that time. Mr. Marshall says "no". Based on the *Parenting and Support Act*, ss. 2(m)(v) they didn't become common law spouses until October 1997, at which point they had lived together for two years. But they were living together when Ms. Robbins arrived in Truro. Mr. Marshall argued that this was a lie intended to mislead the court. It wasn't and it didn't.

[56] A few months later the family moved into a flat in Truro. They were living together as a family. It was not intended as a short-term living arrangement. They were not merely flatmates. Ms. Robbins, without a job, had followed Mr. Marshall to another province where she had no family, no friends and no connections, to start a life with him.

[57] Mr. Marshall says that Ms. Robbins was not making genuine efforts to find gainful employment at the time. They argued about it. He would like to have kept the condo as an investment but because he was supporting Ms. Robbins and her two children, he had to sell it. It was what he described as a distress sale, so he got only $156,000 in February 1996. He says that had Ms. Robbins and her children not been such a financial drain on him he would now be the owner of a $1 million property in downtown Toronto.

[58] Because of financial strains he says that he was unable to make student loan payments which ruined his credit rating. He had to take an administrative suspension from the Law Society of Upper Canada so that he could no longer practice law. Had she not been such a financial drain he could be practicing law now.

[59] Mr. Marshall traces back his financial woes to this period, just over 20 years ago. Had he not supported Ms. Robbins and her two children at that time, he believes he would still have a very valuable condominium in Toronto and would not have fallen into debt. What that suggests however is that at that time, they were very much a family. He supported her and her children.

[60] In 1996 Mr. Marshall bought the property on Muir Street for about $63,000. They discussed the purchase as a couple and were living together at the time. It was put in Mr. Marshall's name and he provided the down-payment. He says that he spent significant amounts of money upgrading and making capital

improvements to the property. He described those in great detail. Those included renovations to the kitchen, bathrooms, exterior siding, and electrical system. The basement was extensively renovated. Mr. Marshall says that some of the money to do that came from his grandfather's estate.

[61] Ms. Robbins says that the money for renovations came from a line of credit. There is no suggestion that Ms. Robbins and her two children were living in the home as guests or tenants. The home was intended not as an investment property but as a family home.

[62] All the while, from 1995 to 2000, Mr. Marshall says that Ms. Robbins was not gainfully employed on a full-time basis. He says that he covered the expenses for her and for her two children from his income, his existing assets and borrowed funds. His student loan fell into default and Ms. Robbins' loan was paid off.

[63] Mr. Marshall says that the parties continued to have discussions about Ms. Robbins' failure to make an adequate financial contribution. He says that she made a firm commitment, "a legally binding agreement" (para. 18, July 17, 2015 affidavit) to repay him, in an amount equal to a minimum of ½ of whatever her ex-husband did or would owe in child support. That agreement was that she would reimburse Mr. Marshall when her ex-husband paid up or whenever she was working and could afford it.

[64] Ms. Robbins says that there was never such an agreement. There was no written agreement and no evidence beyond what Mr. Marshall says to support there ever having been such an agreement. Agreements don't have to be written to be binding but it is odd that Mr. Marshall, who said that he was concerned about spending money on Ms. Robbins' children and was documenting what was spent and who paid for it, would not have made some written record of the agreement or have even referred to it in a written document at that time.

[65] Ms. Robbins did find employment as a substitute teacher and as a childcare worker during this time. Mr. Marshall says that the income was not enough to cover the living expenses of herself and her children. Clearly her income during those years was very limited.

[66] Mr. Marshall says that the parties had to borrow money from his parents and that they agreed to pay that money back. That indebtedness continued to grow. They would provide money for vacations and travel to Ontario for visits. Mr. Marshall said the debt rose to be about $50,000 in 2004. Neither the loan

agreement nor the growing balance was documented. That, along with the "support agreement" makes for two undocumented agreements that Mr. Marshall says were in place. Again, unwritten agreements are still agreements. But given the degree of acrimony about money that Mr. Marshall recalls, it is strange that nothing recorded that agreement with his parents. As with the "support agreement" there is not even a reference to that agreement in any written material from the time. These were not unsophisticated parties. They could easily have recorded any agreement.

[67] Ms. Robbins had no recollection of borrowing that money.

[68] The parties' oldest child was born on December 1, 1997. The relationship began to deteriorate.

[69] Ms. Robbins got work with the Canada Border Services Agency in 1999 and eventually became full-time there. She has been with that agency now for 18 years. Mr. Marshall says that when she started, she was only earning about $30,000. Her income, he says, was more than offset by her commuting costs. He was still supporting the family and while she worked he did childcare and housework.

[70] It was in the early 2000's Mr. Marshall says that Ms. Robbins began to abuse him, emotionally, psychologically and physically. He says that her violent outbursts were worsening. In his affidavits he alleges that there were numerous instances of slapping and punching and in oral testimony referred only to what he called body checks. He reported slamming of doors and throwing of objects. He says that he was subjected to verbal insults and abuse. Mr. Marshall provided a great deal of detail about the nature and extent of the abuse. He suggested that Ms. Robbins would become angry and upset and was not capable of acting rationally.

[71] Mr. Marshall says that in addition to the hostility and abuse, Ms. Robbins withdrew physically and emotionally from him. He recalls one exception around Christmas of 2001. The couple's second child was born in September 2002.

[72] Ms. Robbins recalls things very differently. She says that she lacked self - confidence and though at times she wanted to leave, Mr. Marshall convinced her that if she did, she would take her two children but would have to leave the baby with him. Mr. Marshall's behavior during the course of this litigation supports the suggestion that he would make supremely confident and self-serving statements about his rights and Ms. Robbins' lack of them.

[73] Ms. Robbins described how, after their first child's birth Mr. Marshall became increasing intolerant of her two older children. She was trapped. Mr. Marshall says that her two children were fighting and acting disrespectfully. He did not want his own child exposed to that.

[74] Around this time Mr. Marshall presented Ms. Robbins with a cruel ultimatum. One of her children had to go. Not both. Just one. She could pick. But one had to go. Otherwise, she and the two children had to leave, while he kept their baby. In a stunning example of a lack of self-awareness, during this trial, Mr. Marshall insisted that he "gave" her a choice. She could pick which child had to go. He seemed to see that as an act of tolerance or forbearance. That was when Ms. Robbins sent her son away to Ontario to live with her family. He eventually came back to Nova Scotia and went into the care of the Department of Community Services.

[75] Ms. Robbins was distraught by all of that and it remains an upsetting and unsettling part of her life. Mr. Marshall says his regret was not having done it earlier and perhaps not insisting that her daughter be sent away rather than her son.

[76] So, by 2003, Mr. Marshall and Ms. Robbins were in a troubled relationship with their two very young children. They were living in the house on Muir Street that had been bought in 1996. Mr. Marshall says that the Victoria Street house came on the market and they both liked it. He says that the parties agreed that he would continue to own Muir Street and would convert it into a rental property. They would own the new house on Victoria Street as tenants in common, with 50% ownership to each of them. There is no record of that agreement.

[77] Mr. Marshall says that Ms. Robbins had no assets at the time and no substantial savings. He would use some of the equity from Muir Street to provide a down payment on Victoria Street and Ms. Robbins would cover the monthly mortgage payments and property taxes going forward.

[78] The couple approached the Royal Bank. Mr. Marshall says that the bank insisted that Ms. Robbins be the mortgagor. In his direct testimony he seemed unable to explain why. He said that he owned Muir Street which was now assessed at twice the purchase price and he had only missed a few mortgage payments. Earlier he suggested that it was because "my creditworthiness had been adversely impacted in a deliberate effort to improve the Plaintiff's creditworthiness. The Plaintiff received yet another benefit at the Defendant's expense" (para. 43, July 17, 2015 affidavit).

[79] The parties then agreed to put both properties in Ms. Robbins' name. Mr. Marshall recalls that this was on the express understanding that he would have a "100% contingent beneficial interest in the Muir Street property" and the parties agreed that he would have a 50% interest in the Victoria Street property and that "all contingent beneficial interests would trigger at the end of their relationship or otherwise by mutual written consent and agreement" (para. 45, July 17, 2015 affidavit). None of that was ever reduced to writing. And it is hard to imagine what the verbal discussion would sound like when they were supposedly agreeing on the concept of a contingent beneficial interest. Along with the "support agreement" and the family loan, that would make the third undocumented agreement relied on by Mr. Marshall.

[80] Mr. Marshall acknowledged that during discussions with a lawyer, David Parker, he was told that provincial laws could possibly give title in both properties to Ms. Robbins if the relationship "went south". There were discussions about the possible imposition of a resulting trust arising from the transfer of the title to Muir Street. Mr. Marshall was satisfied that he knew a lot about trust law. The resulting trust would help him with Muir Street but he was told that a unique feature of Nova Scotia law was that he would not have an interest in Victoria Street. He says that he asked David Parker to protect his interests. He said that David Parker assured him that he would. Mr. Marshall said that he told David Parker, who is now deceased, that if Ms. Robbins did not agree to whatever arrangement Mr. Parker proposed that the entire deal would be off.

[81] That is all quite peculiar. While the relationship had not "gone south", to use Mr. Marshall's term, it was already, he insists, tense and abusive. The parties had argued about money. There were disputes about the payment of Ms. Robbins' debts at the expense of keeping Mr. Marshall's current. This had been going on for some time. Mr. Marshall was aware of what he understood to be the precarious nature of his rights in Victoria Street. He was so adamant that if the arrangements were not agreed to the refinancing and purchase were off. Yet, Mr. Marshall never saw what those arrangements were. He was never told what they were. There was never any written agreement or even a letter confirming who would own what. That was with legal counsel involved, by a person with a law degree who had, what he suggests, was a sophisticated understanding of trust law.

[82] What Mr. Parker did was to have Ms. Robbins sign a warranty deed from herself to herself and Mr. Marshall as joint tenants. It was placed in the file and not registered. It conveyed both Muir Street and Victoria Street, evidencing an

intention that both would be jointly owned. Mr. Marshall said that David Parker never showed it to him. He said as his lawyer, he assumed that David Parker had looked after his interests, so he made no detailed inquires. That is highly improbable.

[83] Mr. Marshall was shown an email that he sent to Ms. Robbins on February 19, 2014. In it he says that "you are aware that we both executed legal & enforceable documents giving a 50% interest in both real properties (legal title) to each of us, subject only to any indebtedness to the bank (mortgages)". Mr. Marshall said that he was emotionally upset when he wrote the document and in any event, he never signed anything to that effect. It is evident that Mr. Parker had the deeds signed by Ms. Robbins to confirm not that Mr. Marshall was the sole beneficial owner of Muir Street, but that despite the properties being in Ms. Robbins name alone, both houses were owned by them both.

[84] In mid-2003 the couple left Muir Street and moved into Victoria Street. Mr. Marshall says that he did substantial renovations on the Victoria Street property. He described that work in painstaking detail. Victoria Street was bought using proceeds from a refinancing of Muir Street.

[85] In the fall of 2004 Ms. Robbins indicated that she wanted a separation. She decided to stay, and Mr. Marshall says that the relationship never recovered. He said that after that, whenever she got angry, she would say that both properties belonged to her. When he asserted his ownership her response, according to Mr. Marshall was "Not in Nova Scotia buddy". "It was clear to me that the legal advisor had advised her of the Supreme Court of Canada decision that unmarried cohabitants in Nova Scotia maintain their respective proprietary rights and interests throughout the duration of their relationship and at its end." (para. 68, July 17, 2015 affidavit). His June 27, 2018 affidavit at para. 79 says much the same thing with a bit more detail. "I believe that she had consulted a lawyer and said lawyer had given her advice based on *Walsh v. Bona* and at this point, my lack of trust in the Plaintiff was almost complete".

[86] Mr. Marshall started making plans himself to separate. What he did and didn't do in preparation for that is rather strange. Ms. Robbins, he says, was asserting total ownership of the two homes. That isn't what she asserts now of course. It would have been prudent at that time, to have asked Mr. Parker to show him what had been done to preserve his interests. He didn't do that.

[87] What he did was to "sell" the bulk of his personal property to his parents. He gave them antique furniture, glass, and highly valuable coin and stamp collections. He didn't tell Ms. Robbins of course because he was planning to leave. She didn't notice what had been done. She didn't notice that the furniture, glass and other items had been transferred because as Mr. Marshall says he retained possession of them. He transferred them to his parents, but he was holding the items in trust for them.

[88] Ms. Robbins might argue that he couldn't just give stuff away like that, for no consideration. He had an answer if that should come up. The $50,000 undocumented loan from his parents, for travel and other expenses, was reduced by the $30,000 value of the items "transferred' to them. Some might see that as being shady while others might see it as an elegant solution. It may depend on the direction in which one's moral compass points.

[89] There is no record of that agreement to transfer $30,000 worth of items. Mr. Marshall said that it was written on the back of an envelope and was signed by both of his parents. He remembered that his father had physically difficulties moving the pen and he had to help him. It's lost now. He has looked for it, but can't find it. With the "support agreement", the family loan, and agreement about property being held in trust by Ms. Robbins, this trust agreement is the fourth undocumented agreement relied on by Mr. Marshall.

[90] Despite the "preparations" the parties did not separate in 2004. And Mr. Marshall continued to hold the property in trust for his parents, unbeknownst to Ms. Robbins.

[91] They made renovations to Muir Street to make it more attractive to tenants. There is a major dispute about who paid for what in those renovations. Mr. Marshall says that from 2005 onward he was the *de facto* property manager for Muir Street as a rental property. He did the advertising, interviewing of tenants, dealing with tenant issues, collecting rents, service calls, and legal matters. The rents were paid to Ms. Robbins, Mr. Marshall says, because she was earning less, and that made sense from a tax planning perspective. Ms. Robbins says that while Mr. Marshall interviewed tenants and wrote the leases, she did most of the maintenance.

[92] Mr. Marshall says that the emotional and psychological abuse continued. He says that Ms. Robbins continued to threaten to kick him out of the house. He says that by 2007 his medical condition had worsened considerably. He declared

personal bankruptcy. As it happened, he did not to have to declare the $30,000 of items that had been transferred to his parents, because that had been done outside the time limit for reporting transfers of property. He had possession of the items but according him, they were not his. He didn't claim the Muir Street house either. He said that house was in Mr. Robbins name. That is true. He says that he did not have to disclose his interest in it, as a beneficial owner, because his interest did not crystalize until separation and they were not then separated. He says that he had a contingent beneficial interest. It was not touched by the bankruptcy. His interest only became an interest upon separation. He suggested that if Ms. Robbins had gone bankrupt the property could not have been taken because his contingent interest would "trump" the bankruptcy.

[93] Work at the NSCC had never been positive for Mr. Marshall. At the very beginning he felt under attack by local people as an outsider who had come to take a job here. He said that he was the target of harassment and discrimination at work. He says that some senior management people were out to get him and that this was widely known in the workplace. His health was failing due to stresses at home and at work and the employment situation got worse. In 2007 his diabetes had not stabilized, his blood pressure was dangerously high, his sleep disorder was affected, he was diagnosed with a malignant melanoma, and he had two surgeries. His doctor ordered medical leave. He got into a dispute with his employer about the form of evidence required for that leave.

[94] Without getting into the details of that dispute, his employer was claiming repayment of income that had been paid while he was on leave. They began to garnish his income. His response was to declare bankruptcy. That ended the employer's claim.

[95] By 2007, Ms. Robbins was working with Canada Border Services Agency and Mr. Marshall was on disability leave. He was receiving long-term disability, a small Workers' Compensation benefit related to an old back injury and was receiving Canada Pension Plan disability benefits, meaning that he was for those purposes, totally disabled from any form of employment.

[96] Mr. Marshall says that in 2012 the parties decided to refinance the properties to get money to do an addition to the Victoria Street home. He says that they borrowed about $65,000 for the specific purpose of doing that addition and the money was not to be used for anything else, except by mutual consent. He said that he believed that it had gone into a joint account, which he believed held insurance

money that had been received as well. He had never seen a statement for that joint account. There is nothing to document the existence of the joint account or setting out the restrictions on its use. Ms. Robbins said that the money was used to pay for among other things a down-payment on a new GM Suburban. That is a fifth example of an agreement about financial matters, in a relationship that was tense at best, that was for some reason never documented.

[97] In the spring of 2013 the parties bought a GM Suburban. Mr. Marshall says that it was at Ms. Robbins insistence. He resisted. He reluctantly agreed he said, under certain conditions. The truck would be for his use exclusively. He would pay all monthly payments and fees. Those could not be more than $650. GM would not approve the financing in Mr. Marshall's name. Ms. Robbins would take legal title for purposes of financing. Ms. Robbins went to finalize the deal and Mr. Marshall says that she agreed to payments that exceeded his stated, clear and firm monthly cap. He wanted the $1,500 GM loyalty rebate to be used toward the down payment so that the monthly payments would remain below $650. He said that she just took the cheque.

[98] Mr. Marshall's email to the dealership at the time was shown to him. It says explicitly that Ms. Robbins was to be given the cheque for $1,500 which he had promised her.

[99] Mr. Marshall says that a trust situation was created and that he has an undivided beneficial interest in the vehicle despite legal title resting in Ms. Robbins. Alternatively, he says, that a binding contract existed so that he had the right to possess the truck and use it subject to his making payments which he did from July 2013 to November 2014. That would be the sixth undocumented agreement, at a point in the relationship where there was clearly tension and after Ms. Marshall had already "divested" himself of property in the event of a separation.

[100] Mr. Marshall says the he was clear in saying that he didn't want to buy the truck. He resisted making such a large purchase. Ms. Robbins was adamant. Yet, the deal they reached was that he would have exclusive use of and pay all the costs related to the ownership of the truck that he never wanted in the first place. She could not use it without his permission and he refused permission. It is not clear why she would so badly want a truck that only he could use.

[101] When being cross-examined by Mr. Marshall, Ms. Robbins said in response to a question, "Greg, when you're involved everything is complicated." Her point

is taken. They had two houses, both in her name, but for which he claimed 100% and 50% contingent beneficial interest, and for which there was an unregistered warranty deed naming them as joint tenants, with articles valued at $30,000, unbeknownst to her, legally owned by his parents, though in his possession, an undocumented no interest loan from his parents, with fluctuating balance, unknown to her, a joint account subject to conditions that were not documented even informally, and now a truck, with legal title in her name, subject to a loan paid by her, which she owned in trust for him.

[102] In February 2014 Ms. Robbins signaled her intent to end the relationship. Mr. Marshall was rushed to hospital in late March 2014 and spent the weekend in ICU after an almost fatal infection. He attributes the infection to a weakened immune system and stress, both arising from abuse at the hands of Ms. Robbins. When he got home from hospital, he found the children gone, some of his furniture gone and many of his other possessions gone.

[103] Ms. Robbins said that she took items that were for her and the children. The house was by no means cleaned out. Some time was spent by Mr. Marshall in cross-examining Ms. Robbins on what happened to various household items, like a jam cupboard and a $20 knife set.

[104] So, by April 2014 Ms. Robbins and Mr. Marshall had separated. Ms. Robbins moved into the Muir Street property and Mr. Marshall remained in the home on Victoria Street. At this point, the title to both homes was in Ms. Robbins' name alone. She alone was on the mortgage. Mr. Marshall says that throughout 2014 and 2015, Ms. Robbins kept demanding that he take over the mortgage on Victoria, take title to the GM Suburban and cover the payments. He says that she was aware that because he had gone bankrupt in 2007 both of those things were impossible.

[105] In the meantime, Mr. Marshall says that while Ms. Robbins made the payments on the GM Suburban, he was making a payment of $650 each month to her to cover that cost. The dispute arose when a Family Court order required Mr. Marshall to make child support payments. He said could not pay for both. He paid the $806 in child support as ordered but stopped payments on the Suburban. He says now that he was paying for the vehicle, not the child support.

[106] In January 2015 Ms. Robbins took the vehicle. She said that she was paying for it and he was using it. She told him that he had to start making the payments and he refused.

[107] Mr. Marshall reported what he regarded as a theft to the police. Mr. Marshall says that he has made payments totalling $10,400 on that vehicle. His personal belongings were in the truck. On February 5, 2015 Mr. Marshall sent this document.

> **DEMAND NOTICE re: 2013 Chevrolet Suburban VIN 1GNSKJE79DR324555**
>
> **This is a demand for $250,000 to be paid - by bank draft or certified cheque made payable to Gregory Marshall on or before 5:00 pm on Friday, February 13, 2015 at 5:00 pm.**
>
> This payment will generally provide compensation for your wrongful acts and omissions relating to the above-captioned vehicle, as well as injuries, loss(es) and deprivations I have suffered as a result. No further details will be provided at this time.
>
> If these monies are paid in full, as specified, and by the deadline (which will not be extended) I am prepared to relinquish all claims of entitlement, possession and/or ownership – whether beneficial or otherwise, whether in law or in equity – to this vehicle, and you will be free to deal with it as you wish.
>
> If you fail to fulfill this demand – as specified and by the deadline – legal action will brought against you, claiming significantly higher damage awards relating to the foregoing including, but not limited to – all or part of the borrowed funds used as a down payment, my cash down payment, any and all payments made by me to you or for maintenance, repairs, insurance premiums and deductibles, you negligent and/or intentionally tortious acts, restitution for the contents and personal property which were wrongfully taken on January 3, 2015 as well as additional claims seeking aggravated and punitive damages and the costs of the action.
>
> Please do not call me to discuss this matter. The terms of the demand are clear and unambiguous; however if you wish, you may conform you intentions by email at any time at ----------.

[108] Ms. Robbins did not return the truck. She didn't use it. She stored it, in a garage. She sold it and the proceeds were used to pay off the loan and the remainder was put towards the oldest child's university fees.

[109] During the same month, Mr. Marshall withdrew about $14,300 from the line of credit secured by the Muir Street property. Ms. Robbins didn't know about that and had not consented. Ms. Robbins has since then paid off that debt.

[110] Since then, most of the interaction between the parties has been in the context of the court proceedings.

Current Situation

[111] As things stand now, Mr. Marshall still lives in the home on Victoria Street. He pays $1,094.34 to Ms. Robbins as ordered. That is intended to cover the current mortgage payment but does not. The monthly mortgage payment was increased by $35 bi-weekly in August 2016. Ms. Robbins pays insurance for that property in the amount of $494.92 each month. Property taxes are $240.34 each month and exceed Mr. Marshall's contribution of $132.83.

[112] Ms. Robbins says that she is subsidizing Mr. Marshall's occupation of Victoria Street.

[113] The property on Muir Street is now vacant. Ms. Robbins resides with her new partner. Ms. Robbins cannot afford to maintain the property.

[114] Ms. Robbins wanted to list Muir Street for sale. She told Mr. Marshall that on February 23, 2018. Mr. Marshall reasserted his claim to ownership of both properties and refused to give permission to have them listed for sale.

Torts

[115] Mr. Marshall argues that he should be compensated for his efforts and losses and for the multiple wrongs done to him. He is convinced that Ms. Robbins is planning bankruptcy to defeat the judgment that will be against her. He says that his money should come in the form of damages for intentionally inflicted bodily harm, the recovery of a debt under a support agreement and recovery of a liability arising out of fraud, embezzlement, misappropriation or defalcation while acting in a fiduciary capacity. He says that under s. 178(1) of the *Bankruptcy Act* a discharge would not release Ms. Robbins from such an order.

[116] Mr. Marshall's claims have been framed as torts for that reason. He says that he was assaulted, and that Ms. Robbins misappropriated money from him, in various ways. Mr. Marshall was not a credible witness. I do not accept his evidence that he was assaulted and abused or that Ms. Robbins defrauded him or misappropriated money from him. Her taking of the truck was not detinue or conversion. It was her truck. She was making payments on the truck. It was registered to her. There was no trust arrangement. He was paying child support and not compensating her for the payments that she was making on he truck. I do not accept his evidence that there were items of value in the truck.

[117] I do not accept Mr. Marshall's evidence with respect to trespass to the real property at Victoria Street. The parties disputed who owned the property. The situation was not analogous to a tenancy. It was a property owned by Ms. Robbins. She had a right to be on it. Even if it were a technical trespass the damages would be insignificant in the context of this matter.

[118] Each of Mr. Marshall's tort claims can be made out only if there is evidence to support them. His evidence is unreliable and there is no other evidence to support the torts as claimed.

Division of Property

[119] The parties have never been married. The law that governs the division of property for married couples doesn't apply to them. During their relationship, as a common law couple, they would have appeared to anyone like a married couple. But on separation they must rely on the *Partition Act*[3] and the common law principle of unjust enrichment to determine how their property will be divided.

[120] The Supreme Court of Canada in *Kerr v. Baranow*[4] provided an in-depth analysis of the law that relates to unjust enrichment in the context of the separation of common law couples. Justice Cromwell reviewed the elements of unjust enrichment and how they apply in the context of a common law relationship. There must be an enrichment and a corresponding deprivation. The plaintiff must show that he or she gave something to the other party which the other party received and retained. The plaintiff's loss is material only if there has been a corresponding deprivation. That benefit, and corresponding detriment must have occurred without a "juristic reason". There must have been no reason at law for the defendant to have retained the benefit. The remedy is restitutionary in the sense that the defendant is required to pay back or reverse the unjust enrichment.

[121] That legal framework applied in the context of a commercial matter can present challenges. In a family law context, it can be not only a daunting evidentiary exercise but runs the very serious risk of losing sight of the forest for the trees. Justice Cromwell took note of that in *Kerr v. Baranow*.

> Relationships of this nature are common in our life experience. For many domestic relationships, the couple's venture may only sensibly be viewed as a joint one, making it highly artificial in theory and extremely difficult in practice to

[3] R.S.N.S. 1989, c. 333
[4] 2011 SCC 10

> do a detailed accounting of the contributions made and benefits received on a fee-for-service basis. Of course, this is a relationship-specific issue; there can be no presumption one way or the other. However, the legal consequences of the breakdown of a domestic relationship should reflect realistically the way people live their lives. It should not impose on them the need to engage in an artificial balance sheet approach which does not reflect the true nature of their relationship.[5]

[122] Most people and most couples don't live their lives with an eye to a balance sheet of monetary and other contributions. The Supreme Court recognized the significance of a family venture, in which each party expects to share in the wealth and presumably the debts as well, generated by their partnership rather than receiving compensation for services performed or monetary contributions made during the course of that family venture.

[123] If one party to the joint family venture retains a disproportionate share of the assets accumulated during the course of that venture, then a monetary remedy should reflect that fact. The parties are seen as creating wealth in a common enterprise that will help to sustain their relationship, their well-being and their family life. The wealth is treated as the fruit of the domestic and financial relationship though it will not necessarily be shared equally.

> Since the spouses are domestic and financial partners, there is no need for "dueling *quantum meruits*". In such cases, the unjust enrichment is understood to arise because the party who leaves the relationship with a disproportionate share of the wealth is denying the claimant a reasonable share of the wealth accumulated in the course of the relationship through their joint efforts.[6]

[124] Justice Cromwell went on to note that it is not the purpose of unjust enrichment to replicate for unmarried partners the legislative presumption that married partners are engaged in a joint family venture. The law of unjust enrichment should reflect the reality that there are unmarried domestic arrangements that are partnerships and those that are not. Where there is such a partnership one partner should not leave with a disproportionate share of assets acquired through their joint efforts. That sort of sharing is not presumed and nor is it presumed that the sharing will be equal.

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[5] *Baranow*, para. 69
[6] *Baranow*, para. 81

> Cohabitation does not, in itself, under the common law of unjust enrichment, entitle one party to a share of the other's property or any other relief. However, where wealth is accumulated as a result of joint effort, as evidenced by the nature of the parties' relationship and their dealings with each other, the law of unjust enrichment should reflect that reality.[7]

[125] Justice Cromwell set out factors that can be used in deciding whether the relationship was a joint family venture. Those factors are mutual effort, economic integration, actual intent, and the priority of family.

[126] The evidence in this matter, as hotly contested as it was, confirms that both Ms. Robbins and Mr. Marshall used their efforts for the benefit of the family. Mr. Marshall worked until he became disabled. Ms. Robbins provided childcare, did part-time work and eventually became employed on a full-time basis. The couple had two children. Both were involved in the upbringing of the children. Both performed household chores. First, Mr. Marshall had a higher income. Then, Ms. Robbins had a higher income.

[127] The parties had their own bank accounts during the relationship. They did not have joint investments. That said however, there remained a level of economic integration. They bought two homes. The decisions to do that were made together and each made their own contributions toward the purchase and upkeep of the homes. When one of the homes was purchased it was put in Ms. Robbins name because of financing concerns relating to Mr. Marshall's creditworthiness. Both homes were eventually in her name alone. Rental income was paid to her for tax planning purposes. The couple shared expenses that related to the children.

[128] While the couple was not financially integrated in a more traditional sense of having one bank account and joint investments, they were integrated in a way that reflects the reality of many modern families, in which both spouses work and make investments but still share family expenses.

[129] The intent of the parties, as is made clear from their evidence, is that both intended the relationship to be a long-term one. They chose not to be married but they had two children and without question, each treated the other as an equal parent. There was no sense in which this was intended to be a short-term relationship. It was entered as and became a long-term commitment in which both parties would assume that they would share both the benefits and financial risks.

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[7] *Baranow*, para. 85

The mutual intent, at the time, was to have an equal sharing of assets and debts over the course of a long family relationship.

[130] Both Ms. Robbins and Mr. Marshall put their children first. The family was a priority in that while there were at times fierce disagreements the parties recognized the importance of working on a relationship that could be sustained. Neither one left at the first sign of discord. The relationship was in many ways dysfunctional, but it was a relationship that each of them saw as being important enough, if perhaps only for the sake of their children, to try to salvage.

[131] The relationship among Ms. Robbins, Mr. Marshall and their two children was that of a family. The parents' partnership was not just as parents though. They were a financial partnership. It was not a situation in which either could have contemplated that if they were to separate, they would perform a detailed accounting of their financial and other contributions. This was a joint family venture.

[132] Mr. Marshall's contention that the Muir Street property was bought using his money as a down payment before the parties had lived together as a couple for two years does not change the reality. They bought the house as a couple, when they were a couple and that down payment is only a part of a much larger and nuanced picture.

[133] The parties bought the properties as a family and treated them like family properties, as they were maintained, renovated and refinanced.

[134] The court must consider the proportionate contributions of each of the parties to the accumulation of wealth. That should not degenerate into a detailed and picayune exchange of grievances. In a brief relationship, the financial contributions to the acquisition of property can be usually be determined. In a longer relationship, untangling things is so complicated that it can become meaningless and counterproductive.

[135] In *Soubliere v. MacDonald*[8] Justice Jollimore dealt with a claim under the *Partition Act.* She noted the presumption of an equal division when property is owned jointly. The presumption of equal sharing arises from the parties' decision to take title as joint tenants. That presumption does not arise from how the purchase was financed or how improvements were made to the property. The

[8] 2011 NSSC 98

notable difference here is that the houses were not held in joint tenancy but in Ms. Robbins name alone. She has been prepared to recognize that the manner in which title is held should not suggest a presumption in her favour.

[136] Justice Jollimore considered "certain equities" and how they might affect a division of the property. Justice Jollimore disagreed with the argument that pre-separation payments and contributions should be considered. Those payments can be considered in determining whether the presumption of equal division under the *Partition Act* has been rebutted but they are not considered "in the context of the equities of the division."[9]

[137] Justice Jollimore offered the example of *Anderson v. Wilson*[10] In that case Justice Grant said that work had been done by both parties. He did not consider it "to be a situation where one measures the contribution of one against the other in such a relationship." Justice Grant said that as is frequently the case in a relationship, one party may be directing his energy in one direction and the other directing an equal amount of energy in another aspect of the relationship.

[138] Payments made after the separation are different. Justice Jollimore in *MacDonald* observed that mortgage and property tax payments made by one party following separation while there is exclusive possession are routinely considered in dividing the value of jointly held property. Legal fees and HST would also be considered. Contributions to the maintenance and improvement of property after separation are relevant to determining the equities of an equal division.

[139] In *Darlington v. Moore*[11] Justice Lynch dealt with claims based on unjust enrichment and the *Partition Act.* She referenced the decision in *MacDonald*. In that case the parties had lived together for twenty years and had two children. The mother stayed at home and the father worked outside the home and provided financially for the family. The family home was held in both names, but the father had a pension, RRSPs and investments in his own name. Justice Lynch concluded that a joint family venture existed. The parties had worked together collaboratively toward common goals, jointly owned the family home, planned to be married and sacrificed for the benefit of the family unit. While the father had contributed most of the money toward the purchase of the home and the maintenance of the home, the court ordered an equal division.

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[9] *MacDonald*, para. 26
[10] (1986), 73 N.S.R. (2d) 1 (T.D.)
[11] 2011 NSSC 152

[140] In this case the relationship is a joint family venture. It was a long-term relationship in which it is practically impossible to untangle to respective contributions of the parties. Each contributed in his or her own way. They contributed in different ways at different times. For the first few years of the relationship Mr. Marshall appears to have been working and earning an income. Ms. Robbins contributions were both at home and in doing part-time work. As of 2000 she became employed on a full-time basis. By 2007 Mr. Marshall had become disabled and Ms. Robbins income was more substantial. This is not an accounting exercise. The equal division proposed by Ms. Robbins is appropriate.

[141] That equal division should be adjusted to reflect the equities after the separation. Before separation this was a family venture and assets are to be divided equally. After separation, there is no family venture. Ms. Robbins has paid off a line of credit that Mr. Marshall drew upon after the separation and without her knowledge of consent. She paid taxes on the property that he occupied. He owes her a substantial amount in legal fees in addition to the amount ordered in this trial. The remedies as noted earlier in this decision should be incorporated in an order drafted by Ms. Robbins' counsel. If the parties cannot agree on the form of the order I will resolve that matter by correspondence.

Campbell, J.