



# The Law Society of Manitoba

INCORPORATED 1877 | INCORPORÉ EN 1877

## FAMILY LAW

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### **Chapter 4**

#### Property and Pensions

July 2023

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# A. PROPERTY

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## 1. Introduction

The matter of property is within provincial jurisdiction. The most important statutes are *The Family Property Act* which governs both legally married couples and common-law partners, *The Law of Property Act* which governs jointly owned property, whether or not parties are married or have cohabited and *The Married Women's Property Act* which can be used to obtain a declaration of ownership, but has very limited significance.

The federal *Family Homes on Reserves and Matrimonial Interests or Rights Act* addresses the rights relating to the division of the value of a family home and other matrimonial property situated on a reserve which are not subject to provincial law.

In addition, the common law, particularly the principle of unjust enrichment and the remedy of constructive trust, may provide relief to parties whether legally married or not, with respect to property disputes.

## 2. *The Family Property Act*

*The Family Property Act* replaced *The Marital Property Act* on June 30, 2004. It extended Manitoba's family property regime to both opposite sex and same sex common-law partners.

*The Family Property Act* governs property matters between married partners and common-law partners.

Common-law partners are defined in section 1(1) as parties who have cohabited in a conjugal relationship for at least three years or who have registered their relationship under section 13.1 of *The Vital Statistics Act*. Those who register are immediately subject to all rights and obligations given to common-law partners under Manitoba legislation.

If married couples cohabited immediately before marriage, the period of cohabitation is included in the period of time subject to the division of property.

Termination of a common-law relationship is not the same as separation but rather is analogous to divorce for married spouses. A registered common-law relationship can only be terminated by registering its dissolution, and only once the parties have lived separate and apart for at least one year. Dissolution can be done jointly, or by one party alone after formal notice is given to the other. If a common-law relationship was never registered, it can only be terminated by three years of living separate and apart (s. 19.1).

*The Family Property Act* applies to all married couples regardless of whether they commenced cohabiting prior to or after the legislation's date of June 30, 2004, and to all common-law couples including those who were already cohabiting on June 30, 2004, so long as they registered or have cohabited for the required time period of three years.

If a relationship commenced before June 30, 2004 and continued after that date, the period of cohabitation before June 30, 2004 counts towards the time required to qualify as a common-law partner. Further, the value of the assets acquired while cohabiting before June 30, 2004 will be shareable. See *Stuart v. Toth*, 2011 MBCA 42 respecting the inclusion in an accounting under *The Family Property Act* of assets acquired while cohabiting but before the common-law relationship "crystallizes."

The legislation does not have retroactive effect to relationships that terminated, or to individuals who died, before the June 30, 2004 proclamation date.

*The Family Property Act* is not based on community of property. One spouse does not have an ownership interest in the property held in the name of the other. Rather, the spouse is entitled to a right to an accounting of the value of the property owned by the other.

As set out in section 6(1):

*No provision of this Act, nor the giving of an accounting under this Act, vests any title to or interest in any asset of one spouse or common-law partner in the other spouse or common-law partner, and the spouse or common-law partner who owns the asset may, subject to subsections (7), (7.1), (8), (8.1), (9), (9.1) and (10) and to any order of the court under Part III or IV, sell, lease, mortgage, hypothecate, repair, improve, demolish, spend or otherwise deal with or dispose of the asset to all intents and purposes as if this Act has not been passed.*

*The Family Property Act* applies to all assets, whether family or commercial, which are owned on the valuation day in each party's name alone (see s. 1 and s. 6).

There are exemptions from inclusion. Pre-acquired assets are excluded from sharing if acquired prior to marriage (s. 4(1)) or the commencement of a common-law relationship (s. 4(2.2)) unless the asset was acquired in specific contemplation of the marriage or cohabitation. However, any appreciation or depreciation in the value of the excluded asset or income acquired during the relationship is shareable (s. 4(3)). Any depreciation may only be offset against any appreciation.

Gifts, trust benefits and inheritances from third parties are also exempt from sharing, unless given with the intention of benefiting both parties. However, appreciation, depreciation and income are **not** shareable (s. 7).

There are other exemptions such as assets already equally shared (s. 10) which includes jointly held assets, assets disposed of by a spousal or common-law relationship agreement (s. 5), and personal injury proceeds for pain and suffering (s. 8). The portion of personal injury proceeds that compensates for loss of income during the relationship is shareable.

Liabilities existing on the valuation day (even pre-acquired ones) are also shareable unless they relate to a non-shareable asset (s. 11).

Assets no longer owned on valuation day, having been transferred for inadequate consideration, dissipated or excessively gifted are added back in to the inventory of assets owned by the party, provided an application is made within two years of the action or its discovery (s. 6).

Assets that are exempt from sharing are not converted to shareable assets by virtue of using the asset. However, such assets become shareable if the asset is sold or exchanged for a family asset (not a commercial one). (For example, an inherited car does not become shareable by permitting the non-owning spouse to drive it. However, selling that car and purchasing another car with the proceeds of sale will make the new car shareable.)

Intermingling an exempt asset with a shareable asset also generally causes the exemption to be lost, depending on the extent of the intermingling and whether the intermingled funds are traceable.

Each spouse or common-law partner is entitled to an accounting of assets and debts on the valuation day based on fair market value, as set out in section 15. The valuation day is usually the date of separation (s. 16). A negative total value is not permitted unless the court so orders (s. 11).

Each party has the right to the equalization of the value of assets and debts held by the parties (s. 13). The court has the discretion to vary the equal division although this is exercised rarely. Section 14 sets out the different tests for the unequal division of family assets and commercial assets.

Equalization payments are generally made in cash and/or by transfer of assets (s. 17). The court may order payments by installments with security or order sale to satisfy payment (s. 20).

### **3. Commencing a Claim**

In most cases, property claims are commenced in conjunction with other relief in a single petition or application. For example, if your client is seeking an accounting under *The Family Property Act*, partition or sale under *The Law of Property Act*, a declaration by way of constructive trust of a joint interest in property, or a declaration of ownership under *The Married Women's Property Act*, along with or without a divorce, you would complete the

petition for divorce (Form 70A) or petition (Form 70B), checking the appropriate boxes for *The Family Property Act* and *Law of Property Act* claims, and adding, next to “other”, the relief claimed under *The Married Women’s Property Act* and the common law.

A respondent may also institute property claims in their answer to the petition.

In the event that an application for an accounting or equalization of assets under *The Family Property Act* was not commenced during the course of the divorce proceedings and subsequent to the divorce being granted either former spouse wishes to commence such an action, section 19 of *The Family Property Act* will govern. Section 19(1) prescribes a limitation period to commence proceedings of 60 days after the divorce takes effect (which is 90 days after the divorce is pronounced unless the court orders an earlier effective date, which is unusual).

Section 19(3) provides certain exceptions to the limitation period and provides that the deadline might be extended in the event a party does not know the divorce took effect or in the event of circumstances beyond their control. There are also provisions in the event of a decree of nullity, which is exceedingly rare.

Section 19.1 of *The Family Property Act* sets out the limitation periods for common-law relationships. For those who registered their relationship under *The Vital Statistics Act*, the limitation period is after 60 days from the date on which the dissolution of the common-law relationship was registered. For common-law couples who did not register their relationship, the limitation period is three years from the date on which they began to live separate and apart (s. 19.1(3)). These limitation periods are also subject to similar exceptions which are set out in section 19.1(4) of the Act.

Where an issue related to the division of property is raised in either the petition or the answer, a sworn financial statement in Form 70D must be filed in court. See King’s Bench Rule 70.05(1).

#### **4. Interim Orders Under *The Family Property Act***

The Act permits the court to make interim orders for the use and enjoyment of the family home, subject to any occupancy order made under *The Family Law Act*, and interim orders for the use of other family assets, subject to any other order made, including under *The Domestic Violence and Stalking Act* (see s. 6(2) and 6(3) of *The Family Property Act*).

Section 18.1(1) of the Act permits the court to “make such interim order as it considers necessary and reasonable for the proper application of the Act.” Interim orders are useful to enjoin one party from parting with an asset, or to order preservation of assets or interim equalization payments.

Interim orders may also be useful in obtaining the right to file pending litigation orders against land, or in obtaining orders for financial disclosure or protecting the confidentiality of the parties.

Interim orders for the recovery of personal property are not available “in the guise of” an interim equalization payment. See *Cottyn v. Anderson*, 2014 MBCA 48.

The court may grant interim orders for the preservation of assets under sections 18.1(1) and 21(1) in the event one party has committed or is about to commit an act amounting to dissipation, or is about to abscond with assets. Sometimes, on separation, one spouse controls most of the family property. Depending on that person’s level of honesty or vindictiveness, those assets may be dissipated. It is important that assets be available for inspection and appraisal in the accounting process and exigible to satisfy a judgment.

The decision of the Court of Appeal in *Kim v. Kim*, 2014 MBCA 34 illustrates the practical application and limitations of a without notice interim preservation order. The appellate court struck down the subject order on the narrow basis that the transaction blocked by the order had already been completed. The order had not come into effect until after the transaction had been completed, not by the issuance of a new title from Land Titles Office, but rather because the basic contractual relationship was in place:

*[48] At the time the motion judge granted the preservation order, but unknown to him, Mr. Kim had sold the property and parted with its possession. Indeed, prior to the issuance of the preservation order, Ms An had paid the full purchase price and Mr. Kim had provided closing documents, including the transfer of land to transfer title to Ms An. Therefore, it was simply too late for Mr. Kim to comply with any aspect of the preservation order. Certainly, these are circumstances that fall within the exception articulated in Gale that s. 21 of the FPA does not apply to “transactions that have already been completed” (at para. 23). Moreover, Mr. Kim had already received the sale proceeds. The preservation order, when granted, and indeed when later registered, did not attach the sale proceeds, as the motion judge wrongly stated...*

*[50] I think it important to remember that Ms Kim did not have any equitable or proprietary interest in the property prior to Mr. Kim listing it for sale or anytime thereafter. Nor did the preservation order provide Ms Kim with an interest in the property. See Schreyer v. Schreyer, 2011 SCC 35, in which the Supreme Court of Canada explained that the FPA provides an equalization model for the valuation and division of family assets and not proprietary interests (at paras. 15, 17).*

Also of interest is the appellate decision in *Cottyn v. Anderson*, 2014 MBCA 48 overturning the interim orders under the FPA. The interim order against a non-party also was struck. The following paragraph builds on the foundation in *Kim v. Kim* in a very substantive way:

*We fail to see on these facts, pending a determination of the question of whether the Act applied at all to the parties, why it was “necessary” within the meaning of s. 18.1(1) for the respondent to disclose information relating to the cattle and for some of the herd to be transferred to the petitioner. The petitioner is not asserting a need of an*



*interim equalization order to finance the family-law litigation. The dispute as to whether the Act applies or not will soon be determined. There is no evidence of risk of dissipation of assets by the respondent pending determination of the family-law claim. There is no evidence of risk that the petitioner will not be able to get an accounting of the cattle if the Act applies, as the respondent has been keeping proper records for income tax purposes. The petitioner is not claiming a pressing and urgent financial need. There is no evidence that the respondent could not pay an equalization payment if the Act applies. Finally, the interim order was made against a non-party, the manager of the community pasture, without notice and consideration of his interests.*

In light of the above case law, while one party may find it advisable to have assets frozen or otherwise put under the court's control, the establishment of dissipation will first be necessary. See [Rochon v. McNeill](#), 2006 MBQB 74 and [Galnarneau v. Galnarneau](#) [2005] M.J. No. 55.

The court has the ability to make interim equalization payment orders. In [Thorndycraft v. Thorndycraft](#) (1991), 35 R.F.L. (3d) 410, Carr J. reviewed the case law and listed the following principles from the Manitoba cases:

1. One legitimate purpose for ordering an advance is to enable the financially disadvantaged party to finance the litigation.
2. If the reason for the request is other than to finance litigation, it is relevant to consider the stage of the litigation to determine how soon the matter can be expected to reach trial.
3. Are the assets at risk in the hands of the party resisting the request for an advance?
4. Has the financially disadvantaged party shown a pressing and urgent need?
5. Are there liquid assets from which an advance could be made, and, if not, what consequences flow from an order that would require a sale or transfer of assets? A person should not generally be required to reorganize their finances more than once so that, for example, if the ordering of an advance payment will necessitate mortgaging property, and mortgaging will almost certainly be required again after a trial, one would not expect an advance to be ordered.

From the Ontario cases comes the principle that:

6. When a party requests an advance to finance their litigation, although the court has the power to make an order for up front disbursements, it is appropriate, rather, to make an advance equalization payment and to leave the issue of costs for trial.

Other factors to consider may be:

7. As part of the requirement to show that an interim order is reasonable, the applicant must show that there is every probability that the advance being requested (or more) will indeed be ordered at trial. It would be unreasonable to order an advance only to find that the ultimate equalization payment is less than the interim advance.
8. Are there other sections of the Act which more properly address the concerns of the applicant? For example, section 20(3) of the Act allows a trial judge to order interest where equitable. Thus, where a party is requesting an advance merely because "I'm going to receive the money eventually," perhaps a section 20 order is the appropriate remedy. If dissipation is the problem, section 21 of the Act offers a number of powerful preservation tools. See *Gale v. Gale*, 2008 MBCA 134, where the Manitoba Court of Appeal discusses the test to apply for a preservation order under section 21 of the Act.

Also, in *Cattani v. Cattani*, [1999] 48 RFL (4<sup>th</sup>) 269, the Manitoba Court of Appeal found the following factors to be relevant to the making of an interim equalization payment award:

*The husband controlled the marital assets from the time of the separation. He had access to sizeable amounts of cash. The delays encountered by the wife in obtaining disclosure lay essentially at the feet of the husband. Two years had passed from the time of the separation. The cost of the litigation was substantial for the wife. In all likelihood, the wife would be entitled to receive an equalization payment following the trial. The wife had depleted some of her capital assets. This evidence supports the making of an interim equalization payment.*

## **5. The Family Property Act: The Accounting and Reference to the Master**

### **a) Identifying the Assets and Debts**

The first step in dealing with family property issues, whether you expect to litigate the matter or not, is to identify the shareable assets and debts as of the valuation date. Form 70D (financial statement) is only a very preliminary starting point.

The client should be asked to provide as detailed information as possible about the existence of assets and debts, including corroborating documents such as bank statements, credit card statements and other proof, the circumstances of their acquisition, and their value as of the date of cohabitation and the date of separation.

## b) Commencing the Reference

King's Bench Rule 70.25 governs *The Family Property Act* references before the master. The [Practice Direction](#) issued August 12, 2021 Re-Revised Practice Direction Court of Queen's Bench of Manitoba re: New Model for Scheduling and Case Flow Management Practice Before the Masters contains procedural directions.

If the parties do not agree to their date of cohabitation and/or separation, a party may request a reference to allow the party to obtain, for later confirmation, a recommendation from the master identifying those dates. A motion for an order of reference must be brought on those issues alone prior to the triage conference.

The motion must be made on notice to the other party and must be supported by affidavit evidence. The responding party must file affidavit evidence in response no later than 14 days after being served with the notice of motion and affidavit. Failure to file responding evidence may lead to the triage judge's determination of the issue on the basis of the moving party's evidence only. (Rule 70.25(1.1)).

The affidavit must contain information on the nature of the dispute – which date(s) are in dispute, the party's position on the disputed dates and the evidence that supports that position.

A brief must also be filed outlining each party's position and summarizing the evidence.

The requesting party must also submit a form of a reference order to be considered by the triage judge.

The requesting party must obtain a date for a determination of the motion which is done by filing a requisition.

The triage judge will consider the motion solely on the affidavit evidence and without requiring the attendance of the parties or their lawyers, but will reserve the right to request evidence from the other party or an attendance if appropriate.

The triage judge will apply principles of proportionality and may determine the dispute without making a reference order, or determine that the reference is not supported by the evidence and/or is not proportionate to the issues in dispute, in which case the motion for the reference order will be dismissed, or adjourned to a hearing before the triage judge.

If the triage judge grants the reference, a reference order will be made and will include the following:

- a. A reference to the master to determine the date or dates in dispute, i.e., commencement of cohabitation, separation date, or both.
- b. The return date before the master, which will be the first hearing for directions. In the Winnipeg Judicial Centre it will be the third Tuesday after the date of the order, at a time to be assigned (either 11:00 a.m. or 11:30 a.m.). If there is no time available on the third Tuesday the matter will be assigned on the following Tuesday.
- c. Directions as determined by the triage judge regarding service of the order on the responding party. Counsel is expected to canvass with the opposing party or counsel appropriate dates and times as well as methods of service.
- d. Any other provision that the triage judge considers appropriate.

A copy of a sample form of [order](#) can be found in the August 12, 2021 Practice Direction.

The moving party must serve the reference order upon the opposing party as directed by the triage judge, and file an affidavit of service prior to the hearing for directions.

Both parties and their counsel must appear before the master at the first hearing for directions. A party's appearance may be waived, where that party's counsel is in attendance and can reach the party if necessary during the hearing. Failure to appear without reasonable explanation may result in the master issuing a report setting out the master's recommendation regarding the dates in dispute, without further notice.

At the first hearing for directions a determination will be made as to the manner in which the reference will be heard and how the evidence will be presented. The master will consider the most expeditious and least expensive process, taking into account the financial amount that may be at issue and other pending issues in the matter that are awaiting a triage conference.

The master may restrict the number of third party affidavits to be filed and determine whether cross-examination on affidavits will take place prior to or at the hearing. The master will determine whether the hearing will be an oral hearing, restricted to cross-examination on affidavits or by argument based on affidavits filed and cross-examinations held prior to the hearing.

At the first hearing for directions the master will set a date for the formal hearing with the intent that the hearing be considered a prioritized hearing to be held within 30 days or as soon thereafter as possible.

The formal hearing may or may not be heard by the master presiding at the first hearing for directions.

How the reference will proceed will be determined, considering the objectives set out in Rule 70.02.1(2):

*Securing the just, most expeditious and least expensive determination of a family proceeding on its merits includes, so far as is practicable, conducting the proceeding and allocating appropriate court resources to the proceeding in ways that are proportionate to*

.....

*(b) the importance of the issues in dispute;*

.....

*(d) the complexity of the proceeding; and*

*(e) the likely expense of the proceeding to the parties.*

Rule 70.25(11.1) provides that if a party opposes confirmation of a master's report that deals with the determination of the date of cohabitation, the separation date, or both of those dates, that party must notify the judge presiding at the triage conference for the proceeding.

The triage judge then must set a prioritized hearing date to deal with the opposition to the confirmation of the master's report at the same time as the judge schedules the case conference for the family proceeding. Until the prioritized hearing takes place, the master's report cannot be confirmed. (Rule 70.25(11.2)).

Where other family property matters are in dispute a party may bring a motion for a reference prior to the triage conference, with the consent of both parties, or at the triage conference, for determination by the triage judge. (Rule 70.25(1.4)).

The motion must be supported by an affidavit that includes a Comparative Family Property Statement (Form 70D.5). See the Appendix for an example.

The Comparative Property Statement sets out the assets and debts held by each party, the value each party assigns to their own assets and debts and the assets and debts of the other party. It contains comments from each party with respect to differences in valuations and identifies documents to support the valuation. It also sets out each party's position on equalization.

A separate section is used to provide the same information with respect to joint assets and debts.

A motion for a reference order where dates are agreed will be considered by a triage judge solely on affidavit evidence, without an oral hearing and without personal appearances (Rule 70.25(1.6)).

The moving party must have the order prepared, signed and filed within 15 days of the reference order being granted (Rule 70.25(4.1)) and must bring a motion to initiate the reference within 15 days after the order of reference has been signed by the judge, unless all applicable issues between the parties in relation to the reference have been resolved (Rule 70.25(5.1)).

Form 70U summary of assets and liabilities with respect to the initiating party's assets and debts must be filed and served at least 25 days prior to the date the motion is returnable before the master. The responding party has 10 days to file and serve their own Form 70U summary of assets and debts and their response to the initiating party's statement. The initiating party must respond by 2:00 p.m. the day prior to the hearing. Supporting documentation shall also be served by each party. See the Appendix for examples.

Trial dates are to be assigned within 12 to 15 months of the first case conference. Therefore, any family property reference will need to be concluded and the Master's Report completed approximately 45 to 60 days prior to the trial dates.

In order to meet that deadline, procedures will be streamlined. Non-compliance with orders and deadlines, including deadlines for disclosure and documents may attract significant costs consequences.

At the motion to initiate the reference, a date will be set for the first hearing for directions within approximately 30 to 60 days.

At the first hearing for directions the positions and evidence of the parties to support their positions will be reviewed. Orders will be made for any outstanding production of documents with strict timelines for compliance, as well as for any appraisals that have not been obtained.

A date for a formal hearing will be set which will need to be early enough to ensure the hearing is completed and the master's report released well in advance of trial dates. The same master that presides at the hearings for directions will preside at the formal hearing. A second hearing for directions will be conducted as a pre-trial conference approximately 45 to 60 days prior to the formal hearing.

In appropriate cases, a settlement conference may be requested and scheduled to be heard by another master approximately one month before the formal hearing date.

References to value household contents are discouraged, based on principles of proportionality and on the basis of the argument that household contents are jointly owned and therefore not to be valued as family property. If reference orders are made including household contents, the parties must have detailed lists of the items in their respective possession at separation.

If the value of a residential or commercial property or the value of automobiles and other vehicles such as boats, ATVs and trailers, farm equipment and any other heavy equipment is in issue the parties should obtain a binding joint appraisal.

If binding joint appraisal is not obtained, the owner of each asset must obtain an independent appraisal (or two opinions of value in the case of a residential property). If the other party disputes that value, they will need to obtain their own appraisal.

All appraisals should be obtained prior to the first hearing for directions, and if not, these will be ordered at the first hearing for directions.

Prior to the first hearing for directions, the parties are required to obtain statements showing the value of securities, bank accounts, etc. as of the date of separation, and the date of cohabitation if applicable. If they have not, they may be ordered to provide an authorization to the other party and pay any cost of the other party obtaining the documents.

Masters may limit the use of viva voce evidence in conducting a reference and may require evidence to be placed before the court in affidavits.

Failure to comply with the rules or directions given at a reference may lead to the court dismissing the party's action or striking out the party's answer and making an order for costs (Rule 70.25(13)).

### **General Reference Rules**

The general reference rules that are applicable to references pursuant to Rules 70.25(1.1) and 70.25(1.4) include the following:

- a) Rule 55.01(1) - A master shall, subject to any directions contained in the order directing the reference, devise and adopt the simplest, least expensive and most expeditious manner of conducting the reference and may,
  - a. give such directions as are necessary; and
  - b. dispense with any procedure ordinarily taken that the master considers to be unnecessary, or adopt a procedure different from that ordinarily taken.
- b) Rule 55.02(3) - At the hearing for directions, the master shall give such directions for the conduct of the reference as are just, including,
  - a. the time and place at which the reference is to proceed;
  - b. any special directions concerning the parties who are to attend; and
  - c. any special directions concerning what evidence is to be received and how documents are to be proved.

- c) Rule 55.02(7) – A party who is served with notice of a reference under subrule (2) or (5) and does not appear in response to the notice is not entitled to notice of any step in the reference and need not be served with any document in the reference, unless the master orders otherwise.
- d) Rule 55.02(13) – The following rules apply, with necessary changes, to the conduct of a reference:
  - a. Rule 30.1 (deemed undertaking);
  - b. Rule 52 (trial procedure), other than rules 52.08, 52.09 and 52.11;
  - c. Rule 53 (evidence at trial), other than rule 53.08.
- e) Rule 55.02(14) – The master may require any party to be examined and to produce such documents as the master thinks fit and may give directions for their inspection by any other party.

The *Practice Direction* issued August 12, 2021 Re-Revised Practice Direction Court of Queen’s Bench of Manitoba re: New Model for Scheduling and Case Flow Management Practice Before the Masters should be reviewed for information on transitioning matters into this process, including matters where there are existing orders for family property references that have not been completed or commenced.

### **c) Confirmation of the Master’s Report**

At the conclusion of the reference, the master prepares a report (Rule 54.06). The report, outlining the master’s findings and conclusions, becomes an order of the court upon confirmation (Rule 54.06(3)).

Unless a motion to oppose its confirmation is filed and served before the deemed confirmation date (35 days after the report is signed by the master), the report is deemed to have been confirmed (Rule 54.09).

If a party wishes to oppose confirmation of a master’s report on a *Family Property Act* accounting, they must file a motion to oppose confirmation (Rule 70.25(11.3)). The motion will be heard at trial based on the evidence before the master (Rule 70.25(11.4)(11.5)).

The judge’s order is a final order and is not reviewable (Rule 70.25(11.5)). In all other respects Rules 54 and 55 continue to apply.



The decision of *Poersch v. Castro*, 2018 MBQB 109 dealt with a motion by one of the parties to oppose confirmation of the master's report and includes a review of the relevant principles to consider at paragraph 40.

#### **d) Special Valuation Issues**

Assets such as real estate, personal property and vehicles must be appraised where values are not agreed. Personal opinion, newspaper or online ads such as Kijiji, or car book values are not acceptable.

- **Marketable Items**

Assets are valued at "fair market value", defined in sections 15(2) and 15(3). Those which have a ready and open market are generally valued in accordance with the protocols of those markets. These might include dealers in the items, expert appraisers, or evidence of recent comparable sales. Stocks, openly and freely traded on one of the major stock markets, will likely be valued at their daily price on the appropriate day, for example. Similarly, there are markets for coins, stamps and other collectibles.

- **Real Estate**

Commercial real estate must be appraised. Residential property should be appraised, or two opinions of value must be obtained. If possible, parties should obtain a binding joint appraisal. Alternatively, the owner of the property must obtain an independent appraisal (or two opinions of value in the case of a residential property). If the other party does not agree with the value, they will need to obtain their own appraisal.

- **Business Interests**

Corporate and business interests are extremely difficult to value. Generally, a chartered business valuator (C.B.V.) will have to be engaged. They will consider the assets and liabilities of the business, tax ramifications, goodwill, the value of the business (if it can be sold as a going concern), and its liquidation value. Some forensic accounting will likely be necessary.

- **Personal Property**

Including personal property in a reference order is discouraged. As well, the value of used items at auction or garage sale prices is often unsatisfactory to clients who have a sentimental attachment or who must replace the item at current full price.

If parties cannot agree on the value or the division of these items, consider suggesting other means of division including a private auction between the parties, or a sealed single bid auction with the highest bidder paying the other party and retaining the item. A collection of items might be divided by one party dividing the collection into two groups and the other party choosing which group to retain.

A list of household items in dispute could be divided by flipping a coin; the winner chooses the first item, the loser the next two, then each chooses two, in succession, until all items have been chosen. Each takes possession of the items chosen without further adjustment. This method has the advantage of allowing the parties' preferences to come to the fore, but with a modicum of fairness thrown in. It obviously will not work where there is only one highly valued item to which no two others would compare.

- **Vehicles**

If the value of automobiles and other vehicles such as boats, ATVs and trailers, farm equipment and any other heavy equipment is in issue the parties should obtain an appraisal.

### **e) Costs of Disposition**

There are legitimate questions relating to value where there are anticipated costs of disposition, such as brokerage fees, or latent costs that materialize on disposition, such as capital gains tax, or recapture of depreciation on the sale of capital property. Such costs, which are inevitable in some cases and only probable or possible in others, may be seen as part of value and detailed evidence will be required.

Section 15(2) of the Act defines value as "the amount that the asset might reasonably be expected to realize..." There may be a reasonable argument to say that value is, therefore, not gross proceeds, but net proceeds. Of course, not all notional disposition costs will be incurred just because they are probable or are usual in relation to the normal marketing of a particular kind of asset. It will likely be a question of fact in each case, and in relation to each class of asset.

Notional costs of disposition might be deducted from appraised value only where a near future disposition is a reasonable probability. The argument against deduction of such costs is predicated on the lack of foreseeability as to whether the asset will ever be sold, or if such costs will necessarily be incurred.

Another argument may be made that the disposition costs (such as income tax consequences, for example) have nothing to do with the asset, are personal to the taxpayer at some future time, and therefore are not part of what "the asset might be reasonably expected to realize." The arguments in favour of their inclusion suggest that an asset will be disposed of sometime between now and the death of the owner, and that such costs are normal and usual.

Where it can be successfully argued that the issue is too remote, there being no foreseeable intention to dispose of the asset (a family home that will not be sold in deference to the needs of the children, for example) the costs may not be allowed, or may be discounted.

How much of these notional costs should be allowed is the next question, once it is determined they should be deducted. The courts have approached these problems in varying ways, from setting arbitrary discounts on the values of the assets in question (e.g., items with contingent tax liabilities), to allowing the full tax cost, as if the asset was disposed of on the date of valuation, at whatever the owner's tax picture would have then shown.

Contingent tax liabilities on RRSPs have been considered by the court in the case of *Johnson v. Johnson* (1995), 11 R.F.L. (4th) 395, (Man. Q.B.). A 33-1/3% deduction for taxes was permitted, rather than utilizing a deduction equal to the owner's actual tax bracket. Reasoning that the taxpayer is likely to organize their affairs in the most prudent matter, consistent with their own needs, the courts do not necessarily take the highest of such discounts, if any at all (*Lev v. Lev* (No. 5) (1991), 34 R.F.L. (3d) 412, aff'd (15 May 92), A1 91-30-00548 (Man. C.A.)).

## **f) Dividing Items in Specie**

Parties may agree to exclude items from a *Family Property Act* accounting and reference, and divide them *in specie* instead. This is particularly common in relation to household contents as discussed above, RRSPs, RRIFs etc. and registered pension plans.

When RRSPs (including RRIFs etc.) are utilized, the party will pay tax at their then marginal rate. This means that the inherent tax (which cannot be avoided) should be considered in valuing the RRSP. RRSPs are commonly discounted at 30% - 33-1/3% given the tax implications. (See *Poersch v. Castro*, 2018 MBQB 109).

Dividing RRSPs in specie, such that each party will ultimately hold half of the RRSPs avoids this valuation issue. Section 146(16) of the *Income Tax Act* permits RRSPs to be transferred from the RRSP of one party to the RRSP of the other on relationship breakdown, provided the transfer is authorized by court order or written agreement and the appropriate CRA form T2220 is used.

## **g) Liabilities and Bankruptcy**

Section 11 of *The Family Property Act* requires spouses or common-law partners to deduct liabilities, other than those relating to assets exempted by section 4 (pre-acquired assets) and section 7 (gifts, trust benefits, inheritances), from the total inventory of the assets of that party.

This provision does not ordinarily permit the deduction of debts or liabilities that would result in a negative value, unless the court on application under Part III or IV so orders (s. 11(2)).

In *Schreyer v. Schreyer*, 2011 SCC 35, the Supreme Court of Canada upheld a decision of the Manitoba Court of Appeal, and ruled that the federal *Bankruptcy and Insolvency Act*, R.S.C.1985, c.B-3 covered the debt the husband owed to the wife (an unsecured creditor) for her equalization payment. His discharge from bankruptcy released him from an obligation to pay the debt.

The wife was subsequently successful in obtaining an order from the registrar in bankruptcy under section 187(5) of the *Bankruptcy and Insolvency Act*, setting aside any order discharging the trustee and setting aside the absolute discharge from bankruptcy. The husband had failed to disclose the pending family property proceedings when making his assignment into bankruptcy and when seeking his discharge and had failed to advise the wife of his bankruptcy or discharge until a pre-trial two years after the discharge. The decision was upheld on appeal. See *Schreyer v. Schreyer* 2014 MBQB 44 (CanLII).

## **h) Interest**

Pursuant to section 20(3) of *The Family Property Act* the court, if satisfied that it is equitable under the circumstances, may order a spouse to pay interest on all or a portion of the equalization payment. The rate of interest is fixed by the court and is calculated from a date which is not earlier than the valuation date.

Typically, the court will look to the particular asset to determine an appropriate rate of interest. In some instances, it will be the rate the owner of the investments received, in others the prejudgment interest rate or some other measure. Awards of interest discourage efforts to delay the process.

## 6. Partition or Sale of Jointly Owned Real Property

### a) Proceedings to Sever Joint Tenancy Under Section 79 of *The Real Property Act*

The right of survivorship of a joint tenant is often a matter of concern to separating parties. If each party wishes to have their own estate retain the property interest owned by them on their death, they can agree to execute a transfer to themselves as tenants in common.

Often one party is not in agreement. If you are acting for the party who wishes to sever the joint tenancy, consider taking the proceeding under section 79 of *The Real Property Act*. It is a simple and cost-effective procedure, although it may not achieve the severance.

The party who wishes severance may serve the other party with a notice of intent to sever the joint tenancy. After 30 days have elapsed, the district registrar will accept a transfer of land into tenancy in common without the other party's consent, unless court proceedings have been initiated to deal with the issue. This has the effect of requiring action on the part of the dissenter.

While the party may not have been prepared to give their consent, they may not be prepared to take active steps to prevent the severance.

For more information on **severing joint tenancy**, see the [Manitoba Land Titles Guide](#).

### b) Sale Proceedings Under *The Law of Property Act*

An application for partition or sale is an originating application which can stand on its own, or be joined with other family proceedings.

This is not interim relief. Where part of other proceedings, dealing with it on a final basis (before the final determination of all issues) will require severance of the issue which commonly will require consent of the other party. The courts tend to lean against severance of issues and, therefore, the adjudication of this claim might be delayed significantly, while issues such as support, parenting, and the other family property issues are sorted out.

On the other hand, certain facts may be sufficient to convince a court that severance should be granted and this type of relief might then be obtained more quickly. *Chevalier v. Chevalier*, 2012 MBQB 208 addressed the issues of severance and partition or sale. In this case, the husband withdrew his opposition to the severance of the partition or sale issue and Yard, J. ordered the sale of the lands in question.

While the court has the discretion whether to grant an order of partition or sale, a co-owner has a prima facie right to such an order. Accordingly, the court must exercise its discretion in accordance with certain principles.

The court may refuse to grant an order for partition or sale if the respondent can meet the onus of demonstrating that:

- i. the application is vexatious or oppressive, or in “unusual circumstances”. Mere hardship or inconvenience will likely be insufficient unless it rises to the level of oppression. Severe hardship to a parent residing with children who cannot move to a new home may result in a denial of the application, or a postponement of the right; or
- ii. the applicant has unclean hands in relation to the application.

It is rare for the court to order partition of the land, as that is not usually practical. Sale is generally found to be more advantageous to the parties unless there is some equitable way to divide the property.

Generally, when sale is ordered, the proceeds of sale will be equally divided, unless the court orders otherwise. Joint owners are not expected to account to each other for the possibly unequal contributions they may have made throughout the years of joint ownership.

For more information, including detailed summaries of Manitoba cases on partition and sale, see the Law Reform Commission’s February 2022 Consultation Paper on [The Law of Partition and Sale](#) and in particular Appendix D.

Partition and sale proceedings are governed by *The Law of Property Act* and King’s Bench Rule 66. Rule 66.01(1) specifies that a proceeding for partition or sale may be commenced by a Notice of Application.

Rule 66.01(3) requires an applicant for partition or sale to serve a copy of the document by which the proceedings are commenced on every person with a registered interest in the land. This includes all mortgagees. This requirement has often been overlooked, resulting in the proceedings being delayed. This is now one of the requirements for triage.

Where the court has granted an order of sale of real property under *The Law of Property Act*, it will also make a reference to the master to manage conduct of the sale. The general rules for references apply, including Rule 55.01(1):

*A master shall, subject to any directions contained in the order directing the reference, devise and adopt the simplest, least expensive and most expeditious manner of conducting the reference and may,*  
*(a) give such directions as are necessary; and*  
*(b) dispense with any procedure ordinarily taken that the master considers to be unnecessary, or adopt a procedure different from that ordinarily taken.*

Governed by Rule 55.06, this procedure is similar to a family property reference, though the issues are more defined.

Directions on sale may be set at a hearing (Rule 55.02(3)). The master might be required to dispose of some of the following issues (Rule 55.06(1) to (4.1)):

- i. Method of sale (usually by auction or multiple real estate listing).
- ii. Where sale is by real estate listing:
  - (a) settle the name of the listing agent(s);
  - (b) settle the commission rate and terms of the listing;
  - (c) give directions for obtaining any further appraisals or opinions of value;
  - (d) give directions as to any right of first refusal, including provisions relating to commission payable in the event of a right of first refusal being exercised;
  - (e) give directions with respect to viewing the property, including notice provisions and any other conditions with respect to the maintenance of the property during the sale period;
  - (f) settle the procedure for seeking court approval in the event an offer is received that is not acceptable to all parties; and
  - (g) give any other directions necessary or incidental to the sale of the property.
- iii. The conditions of a sale by auction or tender are those set out in Form 55E, "subject to such modifications as the master directs" (Rule 55.06(3)). On a hearing for directions, the master will fix the time and place for sale, settle the form of advertisement, name the auctioneer if required, fix a reserve bid if any, give directions as to any right of first refusal, direct the obtaining of appraisals, and make all other arrangements as may be necessary (Rule 55.06(4)).

All parties to the reference may bid for the property unless the court orders otherwise (Rule 55.06).

When the master approves a sale, the master will make a Report and Order on the Sale. A party may object to the sale by bringing a motion to the master to set it aside. The notice of motion must be served on all parties, including the purchaser.

Where the property is sold, the master may be required to make an order concerning the adjustments between the vendor and purchaser. A vesting order may be required if the parties will not cooperate in completing a transfer of land (Rule 55.06(12.1)), or a writ of possession may be required (Rule 55.06(13)). The master has various powers to ensure the completion of the sale, and to ensure the payment into court of the funds required to complete the sale.

## **7. Applications Under *The Married Women's Property Act***

Section 7(1) of *The Married Women's Property Act* provides for application in a "summary way" to the court for determination of any question between spouses as to the title to or possession of property.

In *Have v. Krenn*, 1990 Can LII 11334 (MBQB), Carr J. held that this section is procedural only. The court can order return or possession of property but only if the applicant can establish ownership of the property. This Act cannot be used to grant an order of possession in favour of a non-owner. Note that section 59(1) of *The King's Bench Act* and Rule 44 also provide for interim orders for the recovery of personal property.

## **8. Family Homes on Reserves and Matrimonial Interests or Rights Act**

Provisions of the federal *Family Homes on Reserves and Matrimonial Interests or Rights Act* (FHRMIRA) respecting division of the value of a family home and matrimonial interests or rights situated on a reserve came into force on December 16, 2014. The federal Act sets out provisional federal rules, which will govern unless and until a First Nation passes its own matrimonial real property laws. These provisional federal rules came into effect as of December 16, 2014 and apply to First Nations communities in Manitoba if a First Nation has not passed their own matrimonial real property laws.

A division of the value of the family home and matrimonial interests or rights may occur as a result of the breakdown of a spousal or common-law relationship or on the death of a spouse or common-law partner.

The provisions dealing with the division of the value of matrimonial assets are intended to be comparable to provincial legislation respecting division of family property to the extent possible given the difference in the legal interests parties have in the property. Each spouse or common-law partner is entitled to a presumptive equal share of the value of an interest or right held by the other spouse or common-law partner in or to the family home.

The legislation provides for different entitlements regarding the value of matrimonial interests or rights for spouses or common-law partners who are First Nation members and for those who are not. The difference arises due to the fact that reserve lands are set aside for the use and benefit of a specific First Nation. As a result, only members of that First Nation can benefit from a division of the value in any interest or right in or to reserve land held by the other spouse or common-law partner.



A court can vary the amount payable under the division of the value of the family home and/or matrimonial interests or rights where it is satisfied that the amount would be unconscionable. The legislation provides a list of criteria to determine whether an amount would be unconscionable.

For more information on the FHRMIRA, see [New Rights, New Obligations: An Introduction to FHRMIRA](#) found on the Law Society of Manitoba CPD on Demand, Members Only CPD Resources site.

## B. PENSIONS

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### 1. Introduction

Pensions can be a veritable minefield for practitioners. Under *The Family Property Act*, pensions are clearly shareable family assets (see s. 1(2) and s. 9), but pensions have certain characteristics which render their sharing particularly problematic.

First, all registered pension plans in Canada are subject to the *Income Tax Act* (Canada) and may be subject to pension standards legislation, such as *The Pension Benefits Act* of Manitoba and the federal *Pension Benefits Standards Act*.

Second, unlike most other common family assets, pensions cannot be valued in the usual way, as they do not have a fair market value in the ordinary sense. This is because the regulatory legislation prohibits their purchase or sale.

Actuaries value pension benefits earned under defined benefit pension plans using the standards and assumptions set by the actuarial profession and the legislation. However, as benefits earned under defined contribution or money purchase pension plans and locked-in pension funds transferred to individual locked-in accounts are similar to bank accounts, these plans do have readily accessible market values.

The first thing to determine is what legislation applies to the pension.

#### a) Jurisdiction of Plan Registration

In Canada, the federal-provincial division of legislative powers is set out in the *Constitution Act, 1867* (formerly the *British North America Act, 1867*), which defines the scope of the power of the federal government and the powers of provincial governments. As a result of this constitutional division of powers, the responsibility for regulating pension plans in Canada is shared between the federal and provincial governments.

Federal pension legislation applies to plans covering members employed in sectors that fall within federal areas of constitutional authority, otherwise provincial pension legislation applies.

The jurisdiction of registration for multi-jurisdictional pension plans (plans with members in more than one jurisdiction) is determined according to where the plurality of active members of the plan are employed (major authority).

The major authority's pension standards legislation applies to the **administrative matters** concerning the plan, i.e., matters not related to members' benefits and rights, while all matters respecting **benefits** and **rights** accrued to plan members are generally subject to the pension standards legislation of the minor authority, i.e., the province of employment of the member.

## **b) Jurisdiction of Employment**

An **employee** is deemed to be employed in the province in which the establishment of the **employer** is located, and to which the person is required to report to work. A person who is not required to report to work at an establishment of the employer is deemed to be employed in the province in which the establishment of the employer is located from which the person's remuneration is paid.

Provincial pension legislation applies to members employed in a particular province. Federal pension legislation applies to members employed in sectors that fall within federal areas of constitutional authority (e.g., the federal public service, or the banking and telecommunications sectors), regardless of the province in which members are employed.

A member's pension will therefore be subject to the legislation of one of three jurisdictions. The jurisdiction of the plan member's employment can be confirmed by the **administrator**.

Generally, there are three regimes under which the pension benefits of an individual may fall.

## **c) Federal Public Service**

Employees of the federal public service, and certain corporations, participate in pension plans that are constituted under acts of the federal government. Aside from the *Income Tax Act* (Canada), these plans are not bound by provincial pension standards legislation. Some of these pension plans include:

- *Public Service Superannuation Act* and *Supplementary Retirement Benefit Act*
- *Canadian Forces Superannuation Act*
- *Members of Parliament Retiring Allowances Act*
- *Royal Canadian Mounted Police Superannuation Act*

For information concerning these and other federal public service plans, Public Service and Procurement Canada (formerly Public Works and Government Services Canada) should be contacted.

Public Service and Procurement Canada  
Government of Canada Pension Centre - Mail Facility  
P.O. Box 8000  
Matane, QC G4W 4T6  
Telephone (800) 561-7930  
Facsimile (418) 566-6298  
E-mail [PWGSC.PensionCentre-Centredespensions.TPSGC@pwgsc-tpsgc.gc.ca](mailto:PWGSC.PensionCentre-Centredespensions.TPSGC@pwgsc-tpsgc.gc.ca)  
Website [canada.ca/en/treasury-board-secretariat/topics/pension-plan](http://canada.ca/en/treasury-board-secretariat/topics/pension-plan)

The pension benefits of these employees are divisible according to the requirements of the *Pension Benefits Division Act* (PBDA)

Active plan members can obtain information at:

<https://www.tbs-sct.canada.ca/psm-fpfm/pensions/active-actif/divorce-eng.asp>

Retired plan members can obtain information at:

<https://www.tbs-sct.canada.ca/psm-fpfm/pensions/retired-retraite/ds-eng.asp>

#### **d) Federally-regulated Industries**

Federal pension standards legislation applies to members employed in sectors that fall within federal areas of constitutional authority which include, but are not limited to, aviation and airlines, banks, broadcasting and telecommunications, interprovincial transportation, marine navigation, shipping and rail, i.e., “included employment”.

Members who work and reside in the Yukon, Northwest Territories or Nunavut are covered by the *Pension Benefits Standards Act 1985*, R.S.C. 1985 (2nd supp.), c. 32 (PBSA).

The PBSA is administered by the Office of the Superintendent of Financial Institutions (OSFI). To determine if a particular pension plan falls under the PBSA, OSFI's database of federally regulated pension plans can be accessed at their [website](#).

Alternatively, OSFI may be contacted at:

Office of the Superintendent of Financial Institutions  
Pension Benefits Division  
255 Albert Street - 12<sup>th</sup> Floor  
Ottawa, ON K1A 0H2  
Telephone 1-800-385-8647  
Facsimile (613) 990-5591  
E-mail [information@osfi-bsif.gc.ca](mailto:information@osfi-bsif.gc.ca)  
Website <http://www.osfi-bsif.gc.ca/>

The pensions of members in “included employment” are divisible on the breakup of a marriage or common-law relationship according to the requirements of section 25, Divorce, Annulment, Separation or Breakdown of Common-Law Partnership of the PBSA. Section 25 states that applicable provincial property law will apply to members’ pensions and pension benefit credits.

Further, OSFI advises that provincial property law includes provincial pension standards legislation where that legislation provides the mechanism to affect a division of the pension or pension benefit credit.

### **e) Provincially-regulated Plans and Provincial Pension Standards Acts**

With the exception of Prince Edward Island, each province in Canada has pension standards legislation governing registered pension plans. Unless a member is in the federal public service, or in “included employment”, a member’s pension is subject to the pension standards legislation of the province of employment:

Alberta	<a href="#">Employment Pension Plans Act</a> , S.A. 2012, c. E-8.1
British Columbia	<a href="#">Pension Benefits Standards Act</a> , S.B.C. 2012, c. 30
Manitoba	<a href="#">The Pension Benefits Act</a> , C.C.S.M., c. P32
New Brunswick	<a href="#">Pension Benefits Act</a> , S.N.B. 1987, c. P-5.1
Newfoundland and Labrador	<a href="#">Pension Benefits Act, 1997</a> , S.N.L. 1996, c. P-4.01
Nova Scotia	<a href="#">Pension Benefits Act</a> , S.N.S. 2011, c. 41
Ontario	<a href="#">Pension Benefits Act</a> , R.S.O. 1990, c. P.8
Quebec	<a href="#">Supplemental Pension Plans Act</a> , R.S.Q., c. R-15.1
Saskatchewan	<a href="#">Pension Benefits Act, 1992</a> , S.S. 1992, c. P-6.001

## f) Federal Tax Legislation

The federal government controls the tax shelter provided to all registered pension plans through the *Income Tax Act (Canada)*, RSC 1985, c 1 (5th Supp) and its regulation, as well as various information circulars and interpretative bulletins.

## 2. Provincially (Manitoba)-regulated Pensions

If a member reports to work, or is deemed to report to work in Manitoba, their pension and/or pension benefit credit is subject to *The Pension Benefits Act (Act)* and the *Pension Benefits Regulation*, Man Reg 39/2010 (regulation).

The Office of the Superintendent - Pension Commission (OSPC) is responsible for the day-to-day administration of the Act and the regulations.

To determine if a particular pension plan falls under the Act, the OSPC may be contacted.

The Office of the Superintendent - Pension Commission  
Department of Finance  
824 – 155 Carlton Street  
Winnipeg MB R3C 3H8  
Telephone (204) 945-2740  
Facsimile (204) 948-2375  
E-mail [pensions@gov.mb.ca](mailto:pensions@gov.mb.ca)  
Website <http://www.gov.mb.ca/finance/pension/>

While *The Family Property Act* of Manitoba gives spouses and common-law partners the right to apply at any time to the court for an accounting and equalization of family property, including rights under a pension or superannuation scheme or plan, *The Pension Benefits Act* provides for a specific valuation and manner of the division of the pension benefit to be shared between the parties, as well as the options for its transfer or payment to the spouse, former spouse or common-law partner, substantively in sections 31(2) to 31(9) of the Act and Part 11 of the regulations.

### a) Relevant Terms (Act s. 1(1), Reg. 1.1, 10.2(1), 11.2)

The Act defines certain terms that are relevant to these provisions. For purposes of this paper, most of these terms are paraphrased below.

**“administrator”** means

- a) in relation to a pension plan, the person or body of persons that is responsible for administering the plan; and
- b) in relation to a prescribed plan or to a registered retirement income fund as in the Act, the financial institution responsible for administering the plan or fund.

**“common-law partner”** of a member or former member means

- a) a person who, with the member or former member, registered a common-law relationship under section 13.1 of *The Vital Statistics Act*; or
- b) a person who, not being married to the member or former member, cohabited with him or her in a conjugal relationship:
  - i) for a period of at least three years, if either of them is married, or
  - ii) for a period of at least one year, if neither of them is married.

**“common-law relationship”** means the relationship between two persons who are common-law partners of each other.

**“member”** of a pension plan means an employee or former employee who is accruing, entitled to or receiving a pension under the plan.

**“pension”** means a benefit in the form of a series of periodic payments that continues for the life of a member, whether or not it is continued to another person after the member’s death, and includes a future entitlement to such payments but does not include ancillary benefits until they become part of the pension under section 21.1(2) of the Act.

**“pension benefit credit”**

- a) of a person in relation to a pension plan means the value at a particular time of the pension and other benefits to which the person is then entitled, (member); and
- b) of an owner of a prescribed plan means the value at a particular time of the assets in the plan (former member).

The regulations contain additional terms and further distinguish the types of **“members”** with the definitions of **“member-owner”** and **“owner”**.

**“common-law partner”** of an owner includes a former common-law partner of the owner.

**“member-owner”** is the owner of a LIRA and LIF who transferred to that vehicle an amount that is directly or indirectly attributable to a pension benefit credit earned by the owner as a member of a pension plan (former member).

**“owner”** means

- a) the member whose pension or pension benefit credit is to be divided (aka member); or
- b) the member-owner whose pension or pension benefit credit is to be divided.

**“prescribed plan”** means a Locked-in Retirement Account (LIRA) or Life Income Fund (LIF).

**“separation date”** in relation to a division of an owner’s pension or pension benefit credit means the date that the owner and the person entitled to the division of it began living separate and apart because of a breakdown of their relationship.

**“spouse”** of an owner means the individual who is married to that person and includes a former spouse of the owner.

The Act and regulations use the terms **“pension benefit credit”** and **“pension”** in relation to pension benefits. **“Pension benefit credit”** is used in relation to an owner who is not receiving a pension, while **“pension”** is used in relation to an owner who is receiving a pension.

**“Pension benefit credit”** is also used in relation to a member-owner of a **LIRA** or **LIF**, who transferred directly or indirectly, his or her pension benefit credit earned as a member of a pension plan.

**NOTE:** For the balance of this section, the terms **“owner”** and **“member-owner”** will be used. The above definitions for **“spouse”** and **“common-law partner”** will also be used. A glossary of other pension terms follows this section.

## **b) Preconditions for Division (Act s. 31(2))**

The Act applies to the pension or pension benefit credit of an owner where the owner was employed or deemed to be employed in Manitoba according to section 2.

Effective May 31, 2010, section 31(2) of the Act requires that the pension of an owner and the pension benefit credit of an owner and member-owner must be divided in accordance with the regulations.

The division is triggered if:

- a) according to an order of the Court of King’s Bench made under *The Family Property Act*, family assets of the owner or member-owner or their spouse or common-law partner are required to be divided;
- b) according to a written agreement between the owner or member-owner and their spouse or common-law partner, their family assets are divided; or
- c) a division of the pension or the pension benefit credit, as the case may be, is required by an order of a court of competent jurisdiction in another province or territory of Canada, or an order of the Court of King’s Bench made under the Act.

According to *Sinclair v. McAuley*, 2012 MBQB 85, an order requiring the parties’ family assets to be divided may be granted by way of summary judgment and in relation to the pension only, in advance of an accounting and equalization of all family property.

While the parties may be subject to *The Family Property Act*, the mechanism to affect a division of the pension or pension benefit credit may be found in the pension standards legislation of the jurisdiction in which the owner is or was employed.



Conversely, if the parties are subject to the property legislation of another province and the owner is employed or deemed to be employed in Manitoba, the mechanism to affect the division would be found in *The Pension Benefits Act* of Manitoba. Hence under clause 31(2)(c) a division can be triggered by an order of a court of competent jurisdiction in another province or territory of Canada.

**c) Parties Subject to Mandatory Division (Act s. 31(3))**

Section 31(3) limits the application of section 31(2) to the following parties:

- a) spouses who began living separate and apart after 1983;
- b) common-law parties who
  - i) began living separate and apart on and after June 30, 2004;
  - ii) began living separate and apart on and after 1983 but before June 30, 2004, if the relationship had been declared according to section 31(5) of the Act as it read before June 30, 2004; or
  - iii) were living separate and apart on June 30, 2004, but resumed cohabitation after June 30, 2004 for at least 90 days.

With the repeal of section 31(5) of the Act, an owner or member-owner who is party to a common-law relationship is no longer required to file a written declaration with the administrator regarding the existence or the termination of that relationship.

Evidencing a common-law relationship for purposes of the Act is dependent upon the parties' ability to establish the existence of the relationship to the satisfaction of the administrator or provide proof to the administrator of its registration under *The Vital Statistics Act*.

Although parties who separate before the relevant date are not subject to the requirements of the Act, some entered into written agreements which provide for the division of pensions or pension benefit credits expressly as set out in the Act despite that it would not otherwise apply. The Office of the Superintendent has not taken a position contrary to such an agreement. However, it is incumbent on the parties to seek the concurrence of the administrator in order that the administrator can determine if, from its perspective, there is any impediment to such a division.

**d) Orders Made Under *The Pension Benefits Act* (Act s. 31(3.2) – (3.4))**

The definition of “common-law partner” in the Act differs from that in *The Family Property Act*.

*The Pension Benefits Act* now provides a mechanism for those parties who meet the cohabitation criteria in *The Pension Benefits Act*, but not *The Family Property Act* to obtain an order that a partner’s pension or pension credit be divided and trigger credit-splitting under section 31(2). Without this provision, this group of common-law partners could only affect a division if they entered into an agreement.

The parties must have cohabited with each other for at least one year but less than three years while neither of them was married. Further, their relationship must not have been registered under section 13.1 of *The Vital Statistics Act*; and their last common habitual residence or the last place they lived together must have been in Manitoba.

An application must be made within three years after the common-law partner and the owner or member-owner last began to live separate and apart; or within six months after the grant of letters probate of the owner’s or member-owner’s will or of letters of administration, whichever occurs first.

The court may order the division if it is satisfied that the requirements of the Act have been met.

**e) Portion to be Divided (Accrual Period) (Act s. 31(2.1 and 2.2), Reg. s. 11.3)**

When a person becomes entitled to a division under section 31(2), the pension plan administrator must provide the member or former member and the person entitled to the division with prescribed information.

A division under section 31(2) must only be made after the member or former member and the person entitled to the division receive the prescribed information required under section 31(2.1). The division must be made in accordance with the regulations and must not reduce the member or former member’s pension or pension benefit credit by more than the prescribed percentage.

The portion of a pension benefit credit or pension to be divided between an owner or member-owner and their spouse or common-law partner is the pension benefit credit or pension that accrued:

- a) in the case of a common-law relationship, from the first day of the period in which the parties cohabited with each other in a conjugal relationship and that continued until they became common-law partners to their separation date;
- b) in the case of a marriage, from the date of the marriage or, if there was a period in which the parties cohabited with each other in a conjugal relationship and which continued until they were married, from the first day of that period to their separation date; or
- c) in the case of spouses who began living separate and apart before June 30, 2004, the date of marriage to their separation date.

**f) Dividing a Pension or Pension Benefit Credits upon Relationship Breakdown – Impact of 2021 Amendments to *The Pension Benefits Act***

Amendments to *The Pension Benefits Act* that came into effect on October 1, 2021 have an impact upon, inter alia, the choices that spouses or common-law partners may have when it comes to dividing a pension or pension benefit credits.

Depending upon whether a couple were separated prior to October 1, 2021 or they separated on or after October 1, 2021, different rules will apply with respect to dividing pension benefit credits earned during the relevant accrual period.

For married or common-law couples who separated prior to October 1, 2021, the old provisions in *The Pension Benefits Act* (pre-dating the October 1, 2021 amendments) respecting division of an applicable pension remain in effect. This includes the option of opting out of a division of the pension that was previously provided for in section 31(6) of the Act.

While section 31(6) of the Act has been repealed as of October 1, 2021, section 18(2) of *The Pension Benefits Amendment Act* dealing with transitional provisions provides that section 31(6) of the Act continues to apply in respect of persons who separated by reason of a relationship breakdown prior to the coming into force of the amendments on October 1, 2021.

Therefore, in the case of those parties who separated before October 1, 2021, if there is a court order dividing the couple's family assets or requiring a division of a pension or a written agreement dividing family assets, the Act provides that there are three options for dividing a member's pension:

- the pension accrued during the relationship is divided equally on a 50-50 basis;

- if both parties have a pension, then divide the net difference between the two pensions on an equal basis; or
- the parties could opt out of a division of the pension by signing a waiver agreement.

However, for the latter option to opt out, such a waiver agreement not to divide a pension is only valid if it contains the terms set out in the regulations and the agreement is filed with the pension plan administrator or financial institution. In addition, before signing the agreement, each spouse or common-law partner must obtain independent legal advice and receive a statement from the pension plan administrator specifying the pension benefits to which they would have been entitled under the Act.

Section 11.6 of the Regulation provided that if both parties have a pension or pension benefit credits, they could agree in writing to divide equally the net difference. However, section 11.6 was repealed as part of the amendments that came into effect as of October 1, 2021.

For married or common-law partners who separate on or after October 1, 2021, the current provisions of the Act provide two options regarding division of a pension:

- A couple can now divide a pension up to a 50% basis. Parties must either have a written agreement or obtain a court order which specifies the percentage of the pension up to 50% to be divided in favour of the other party. The parties have more flexibility in dividing a pension because it can allow the percentage to be credited to the other party to be between 0% to 50%; or
- The parties can decide not to divide a pension by specifying in a written agreement or court order that a pension member's spouse or common-law partner is not entitled to any portion of the member's pension.

Unlike the pre-October 1, 2021 provisions of the Act, there is no requirement for couples separating on or after October 1, 2021 that they receive independent legal advice or a statement from the pension plan administrator specifying the value of the pension that accrued during their relationship before they agree to waive a division of the pension.

However, the Act provides that either spouse or common-law partner may request in writing a statement from the pension plan administrator or financial institution.

It is still good practise to recommend in appropriate cases that parties seek independent legal advice even though it is no longer required, particularly if they are uncertain about the potential impact of waiving a division of the pension.

**g) Method of Valuing a Pension or Pension Benefit Credit (Pro rata Method) (Act s. 21.1(2), Reg. s. 5.7(1), s. 11.4(1)-(4))**

**i. Pension or Pension Benefit Credit (Defined Benefit Plan)**

The percentage of a pension benefit credit or pension to be paid to a member's spouse or common-law partner on a division under section 31(2) must be specified in a written agreement or by a court order made pursuant to *The Family Property Act*. The percentage that is specified must be no more than 50%. A pension plan administrator must not divide a pension or pension benefit credit under an agreement or order that requires a higher percentage

For purposes of a pension benefit credit or pension under a **defined benefit plan**, the spouse's or common-law partner's share is to be calculated according to the following formula:

$$A = B/100\% \times C \times D/E$$

In this formula,

**A** is spouse's or common-law partner's share of the total pension benefit credit or pension;

**B** is the percentage specified in an agreement or order that complies with s. 11.4(1.1) of the Regulation as being payable to the spouse or common-law partner entitled to the division;

**C** is the total pension benefit credit or pension accrued to the member as of the separation date;

**D** is the accrual period determined under s. 11.3 of the Regulation;

**E** is the period during which the total benefit in **B** accrued.

The pension benefit credit of an owner who:

- is an **active member**, is the value on the separation date of the pension and any other benefits to which they have an unconditional or **vested** entitlement under the plan, including **ancillary benefits** as a result of satisfying any age or service requirements as of the separation date, determined as if the owner had ceased to be an active member on the separation date; or
- is a **former member**, is the value on the separation date of the pension and any other benefits to which they had an unconditional or vested entitlement under the plan, including ancillary benefits as a result of satisfying any age or service requirements as of the date they ceased to be an active member.

The pension benefit credit or **commuted value** to be shared is determined on the basis of actuarial assumptions and methods that are adequate and appropriate and in accordance with generally accepted actuarial principles, and in a manner acceptable to the Office of the Superintendent.

Presently, the Canadian Institute of Actuaries Revised Standards of Practice for Pension Commuted Values (Section 3800) adopted December 8, 2008 and effective April 1, 2009, is used for this purpose.

#### **ii. Excess Contributions (Reg. s. 5.10, s. 11.4(7))**

Under a defined benefit plan the employer must pay at least 50 percent of the pension benefit credit. If the owner has made required contributions in excess of 50 percent of the pension benefit credit, the owner is entitled to their excess contributions. Any excess contributions determined as of the date of separation must be included in the owner's pension benefit credit as of the date of separation.

### **h) Method of Valuing a Pension Benefit Credit (Value Added Method) (Reg. s. 11.4(1), s. 11.4(5))**

#### **i. Valuation (Defined Contribution Plan)**

The percentage of a pension benefit credit or pension to be paid to a member's spouse or common-law partner on a division under section 31(2) must be specified in a written agreement or by a court order made pursuant to *The Family Property Act*. The percentage that is specified must be no more than 50%. A pension plan administrator must not divide a pension or pension benefit credit under an agreement or order that requires a higher percentage.

For purposes of a pension benefit credit under a **defined contribution plan**, the spouse's or common-law partner's share must be calculated according to the following formula:

$$A = B/100\% \times (C - D)$$

In this formula,

**A** is the spouse's or common-law partner's share of the total pension benefit credit;

**B** is the percentage specified in an agreement or order that complies with s. 11.4(1.1) of the Regulation as being payable to the spouse or common-law partner entitled to the division;

**C** is the total contributions to the plan to the credit of the member, with interest in accordance with s. 5.18 of the Regulation, as of the date of separation;

**D** is the total contributions to the plan to the credit of the member, with interest in accordance with s. 5.18 of the Regulation, as of the date the relationship began as set out in s. 11.3 of the Regulation.

## **ii. Optional Ancillary Contributions (Defined Benefit Plan) and Voluntary Additional Contributions (All Plans) (Reg. s. 11.4(6))**

To the extent that the owner's pension benefit credit is attributable to **voluntary additional contributions**, or to **optional ancillary contributions** that have not been converted into **optional ancillary benefits**, these contributions must be divided and the spouse's or partner's share determined in accordance with section 11.4(5) of the Regulation.

## **i) Disclosure**

### **i. Statement for Division Under Pension Plan (Reg. s. 11.11(1)-(3), s. 11.13)**

If a member of a pension plan and their spouse or common-law partner are living separate and apart in a circumstance described in section 31(3) of the Act, the member or their spouse or common-law partner may request in writing that the administrator provide a statement that must set out:

- a) the dates specified in the request as the dates on which the accrual period began and ended;
- b) the value of the spouse's or common-law partner's total entitlement under section 31(2) of the Act as of the date specified under clause (a), as calculated under the regulations, including interest to the date of the statement;
- c) an explanation of their options, and for each option, a summary of the benefits to which each of them would be entitled on exercising the option;

- d) the date on which the member became a member;
- e) if the member is no longer an active member, the date on which they ceased to be an active member;
- f) if the member's pension has not yet commenced, the value of any voluntary additional contributions and optional ancillary contributions as at the statement date; and
- g) that before agreeing to receive less than 50% on a division, the member's spouse or common-law partner should seek legal advice respecting their family law entitlements and financial advice as to the implications of agreeing to receive less than 50%.

The administrator is not required to provide a statement if the request was received within 12 months after providing a statement in respect of the same division of a member's pension or pension benefit credit unless, after the statement was provided, the spouse or common-law partner became entitled under section 31(2) of the Act to a division of the pension benefit credit.

The administrator must provide the statement at no charge to the member and the spouse or common-law partner within 60 days after receiving the request.

**ii. Statement for Division of Prescribed Plan (Reg. s. 11.12, s. 11.13)**

If an owner of a prescribed plan and their spouse or common-law partner are living separate and apart in a circumstance described in section 31(3) of the Act, the owner or their spouse or common-law partner may request in writing that the administrator provide a statement that must set out:

- a) the dates specified in the request as the dates on which the accrual period began and ended;
- b) the value of the spouse or common-law partner's total entitlement under section 31(2) of the Act as of the date specified under clause (a), as calculated under the regulations, including interest to the date of the statement;
- c) an explanation of their options and, for each option, a summary of the benefits to which each of them would be entitled on exercising the option; and
- d) that before agreeing to receive less than 50% on a division, the member's spouse or common-law partner should seek legal advice respecting their family law entitlements and financial advice as to the implications of agreeing to receive less than 50%.



The administrator is not required to provide a statement if the request was received within 12 months after providing a statement in respect of the same division of an owner's pension or pension benefit credit unless, after the statement was provided, the spouse or common-law partner became entitled under section 31(2) of the Act to a division of the pension benefit credit.

The administrator must provide the statement at no charge to the member-owner and the spouse or common-law partner within 60 days after receiving the request.

## **j) Settlement of Spouse's or Partner's Share**

### **i. Options for Transfer of Pension Benefit Credit from Pension Plan Act (s. 21.3, s. 31(4), Reg. Part 10)**

When a person becomes entitled to a portion of a pension benefit credit under section 31(2) of the Act and section 21(4) (commutation of small pension) doesn't apply, the person is only entitled to:

- a) receive a portion of the payments payable under the pension plan;  
or
- b) transfer the portion of the pension benefit credit to:
  - i) another pension plan in which the person is a member, if permitted by the terms of that other pension plan;
  - ii) a pooled registered pension plan; or
  - iii) a prescribed retirement savings plan or retirement benefit plan.

In general, the purpose of a Locked-In Retirement Account (LIRA) is to provide a financial vehicle for the holding and investment of pension monies that are subject to locking in (with some exceptions) until it is all transferred to another vehicle for the purpose of securing a pension at **retirement** in a form and manner required or permitted by the Act. If the spouse or common-law partner should wish to defer retirement to a later date, a transfer of their share of the pension benefit credit could be made to a LIRA, or their own pension plan, if that plan permits.

In general, the purpose of a Life Income Fund (LIF) is to provide a financial vehicle for the holding and investment of pension monies that are subject to locking in (with some exceptions) and for the provision of retirement income in a form and manner required or permitted by the Act. Should the spouse or common-law partner wish to commence receiving retirement income, a

transfer may be made to a LIF, or a life annuity purchased through a life insurance company.

As a result of amendments to the Act and Regulation that came into force on October 1, 2021, persons who are 65 years of age or older are now permitted to unlock up to 100% of their funds in their Manitoba locked-in retirement accounts such as a LIRA or LIF. The requirements to be able to apply for a lump sum withdrawal or transfer from a LIRA or LIF are addressed in Part 10 - Division 11 of the Regulation.

As well, pursuant to the same amendments that came into effect on October 1, 2021, individuals, regardless of their age, who have pension credit funds in Manitoba locked-in retirement accounts such as a LIRA or LIF are now able to apply once per year for access to a portion of their locked-in funds due to certain specific financial hardships. The criteria to be able to apply for a portion of such locked-in funds are provided for in Part 10 – Division 12 of the Regulation.

The Superintendent, Office of the Superintendent – Pension Commission may be contacted for further information regarding institutions authorized to issue LIRAs and LIFs.

**ii. Options for Optional Ancillary Contributions, Voluntary Additional Contributions and Excess Contributions (Reg. s. 11.4(8))**

The spouse or common-law partner has the same rights in relation to these contributions as the owner would have had if the owner had ceased to be an active member on the separation date. The spouse or partner can elect from the following options:

- a) receive as a refund;
- b) if permitted under the terms of the plan, use to increase the amount of the pension;
- c) transfer to a registered retirement savings plan or registered retirement income fund as defined in the *Income Tax Act* (Canada), to the extent permitted by that Act.

**k) Division of Pension (pension-in-pay) (Act s. 31(4), Reg. s. 11.8)**

When a spouse or common-law partner becomes entitled to receive a portion of a retired owner's pension or pension-in-pay, if the parties do not opt out, the pension is divided and the spouse's or partner's share portion is paid from the income stream. The **form of pension** that was elected by the owner at retirement is not affected by the division.

For example, if the owner elected a joint and survivor 60% pension at retirement, the joint and survivor pension will continue to be paid; however, payments will be divided between the owner, spouse or partner, and their designated beneficiaries or estates in the proportion required by the Act and regulations and until they are both deceased.

However, if the plan so provides and the parties agree in writing, the regulations permit:

- a) in the case of a joint and survivor pension, it may be paid as two separate lifetime pensions without joint and survivor benefits, one to the owner, and the other to the spouse or common-law partner; and
- b) in the case of any other form of pension, the form must not be changed, but the pension may be adjusted so that it becomes payable as two separate lifetime pensions: one to the owner and one to the spouse or common-law partner.

The total of the actuarial present values of the two pensions as of the separation date must be equal to the actuarial present value of the pension as of that date.

This provision does not apply to a life annuity payable under an insurance contract that prohibits the annuity from being commuted.

**I) Adjustment of Pension Benefit Credit for Interest (Reg. s. 5.21(3), s. 5.22, s. 11.5)**

The spouse's or common-law partner's share of the pension benefit credit is to be credited with interest for the period up to the end of the month preceding the month in which the spouse's or partner's share is transferred or paid from the pension plan.

For purposes of a defined benefit plan, the pension benefit credit or commuted value must be updated with interest at a rate equal to the rate of return of the pension fund for the period from the separation date to a date no earlier than the end of the month preceding the month in which the transfer of the pension benefit is made. The pension benefit credit or commuted value is not re-computed at a subsequent date.

If the pension benefit credit is in respect of optional ancillary contributions, and excess contributions, the rate of interest must be either of the following rates:

- a) a rate equal to the rate of return of the pension fund; and
- b) the average of the CANSIM Series V 80691336 rates published by the Bank of Canada (long term Canada Bond rate);

from the later of the separation date or the date that interest was last credited, to a date no earlier than the end of the month preceding the month in which the transfer is made.

An administrator who chooses a rate of interest must use that rate for all divisions of pension benefit credits made within a fiscal year in respect of optional ancillary contributions and excess member contributions.

If the pension benefit credit is in respect of voluntary additional contributions, the pension benefit credit is to be credited with interest at a rate equal to the rate of return of the pension fund, from the later of the separation date or the date interest was last credited, to a date no earlier than the end of the month preceding the month in which the transfer is made.

If the pension benefit credit is in respect of a defined contribution provision, the pension benefit credit is to be credited with interest at a rate equal to the rate of return that can reasonably be attributed to the operation of the pension fund, from the later of the separation date or the date interest was last credited, to a date no earlier than the end of the month preceding the month in which the transfer is made.

**m) Division of LIRAs and LIFs (Reg. s. 11.1, s. 11.4(1), s. 11.4(9))**

**i. Valuation (Value Added Method)**

Should the parties have a prescribed plan such as a LIRA or LIF, these plans are also subject to the requirements on the breakdown of a marriage or common-law relationship.

On accepting pension monies that are subject to locking-in, the financial institution took the place of the administrator and is responsible for administering the plan according to the Act and regulations.

If a portion of the member-owner's pension benefit credit was earned before the date of marriage or the first day the parties cohabited with each other in a conjugal relationship, as the case may be, where possible the former pension plan administrator should be contacted to calculate the spouse's or common-law partner's share of the pension benefit credit that was transferred from the pension plan to the member-owner's prescribed plan as of the date the owner ceased to be an active member of the pension plan.

The percentage of a member's pension benefit credit or pension to be paid to a member's spouse or common-law partner on a division under section 31(2) must be specified in a written agreement or by a court order made pursuant to *The Family Property Act*. The percentage that is specified must be no more than 50%. An administrator must not divide a pension or pension benefit credit under an agreement or order that requires a higher percentage.

An agreement or court order may specify that the member's spouse or common-law partner is not entitled to any portion of the member's pension benefit credit or pension. For purposes of a pension benefit credit under a **Locked-in Retirement Account (LIRA) or Life Income Fund (LIF)**, the spouse or common-law partner's share is to be calculated according to the following formula:

$$A = B/100\% \times C \times D/E$$

In this formula,

**A** is the spouse or common-law partner's share of the total pension benefit credit;

**B** is the percentage specified in an agreement or order that complies with s. 11.4(1.1) as being payable to the spouse or common-law partner entitled to the division;

**C** is the total pension benefit credit as of the date of the calculation;

**D** is:

- (a) the portion of the pension benefit credit transferred to the prescribed plan that accrued during the accrual period determined under s. 11.3; or
- (b) if that portion cannot be determined, the pension benefit credit transferred to the prescribed plan;

**E** is the pension benefit credit transferred to the prescribed plan.

It should be noted that the member-owner may have split their pension benefit credit under the pension plan and transferred portions of it to two or more institutions.

Where the former pension plan administrator calculates the spouse's or partner's share of the pension benefit credit that was transferred from the pension plan to the member-owner's prescribed plan, the financial institution should calculate the spouse's or partner's share of the balance of the prescribed plan by prorating the balance of the plan by the amount determined by the former pension plan administrator to be the spouse's or

partner's share of the credit that was transferred from the pension plan to the member-owner's prescribed plan as of the date the owner ceased to be an active member.

However, if the pension plan administrator cannot be located or is unable to calculate the spouse's or common-law partner's share of the pension benefit credit, the spouse's or partner's share of the pension benefit credit should be assumed to be 50% of the balance of the prescribed plan.

Alternatively, the parties may wish to retain an actuary, at their expense, to calculate the spouse's or partner's share of the pension benefit credit that was transferred to the prescribed plan in the manner prescribed by the Act and regulations.

**ii. Options for Transfer of Pension Benefit Credit from Prescribed Plan (Act s. 31(4), Reg. Part 10)**

On division of a pension benefit credit under a prescribed plan, the spouse or common-law partner has the option of transferring their share to:

- a) a LIRA;
- b) a LIF; or
- c) another pension plan in which the spouse or partner is a member, if the plan so permits; or
- d) a pooled registered pension plan; or
- e) an immediate or deferred life annuity purchased through a life insurance company.

**n) Adjusting Owner's Pension Benefit Credit After Division (Defined benefit plan) (Reg. s. 11.7)**

The pension plan administrator must ensure that the owner's pension under a defined benefit provision after a division is adjusted in a manner that:

- does not result in a gain or loss to the plan; and
- follows generally accepted actuarial principles.

The following is an example of one method that may be used to adjust the owner's pension following a division.

The owner and spouse separate in 2014. The owner had a pension benefit credit under a defined benefit pension plan equal to \$100,000 at the separation date. The spouse's share was 50% or \$50,000.

The owner remained an active member of the pension plan until her retirement. In 2020 the owner retired by which time her pension benefit credit would have been \$200,000 had it not been divided due to the separation. So, to reflect the division, the plan administrator adjusted the owner's pension by the amount of the credit transferred to the spouse (\$200,000 minus \$50,000 = \$150,000). After the adjustment, the owner's pension benefit credit had a value of \$150,000.

**o) Addressing Spouse's or Partner's Interest in Pension Arrears (Defined benefit plan)**

In the event of a division after an owner has retired and is receiving pension payments, the spouse or common-law partner has an interest in the pension payments made after the date of separation.

While timely advice to the pension plan administrator is important, in some instances, the administrator will not be aware that the parties have separated, and may not receive a copy of the necessary order or agreement for some time. As a result, full pension payments may continue to be made to the member-owner after the separation date.

The administrator must address the matter of the spouse's or partner's interest in the full pension payments which were made to the owner from the date of separation until the pension payments were divided. The spouse's or partner's interest is referred to as the arrears and may be addressed as follows:

- Under one method, the owner may make a lump sum payment to the spouse or common-law partner, outside the pension plan, which must be equal to the actuarial present value of the arrears. The amount paid to the spouse or partner may take into consideration the tax implications for each of the parties. The administrator should satisfy itself that the spouse or partner received the payment in satisfaction of their full interest in these arrears.
- A second method involves the administrator authorizing a lump sum payment from the pension plan to the spouse or partner in an amount equal to the actuarial present value of the arrears. The owner's post-division pension payments must then be further adjusted to reflect the lump sum payment made to the spouse or partner.

- A third method requires a temporary reduction of the owner's post-division pension payments. The amount by which the owner's pension payments are further reduced, would be used to provide a corresponding increase to the spouse's or partner's pension payments in order to liquidate the arrears. Once the arrears to the spouse or partner are fully addressed, the owner's pension payments would then return to the post-division level. The repayment period should take into account the life expectancy of the owner. However, there is still a risk to the spouse or partner that the owner may die during the repayment period, and that pension payments will cease. The spouse or partner would then have to seek whatever remedies are available.

The lump sum payment from the pension plan to the spouse or common-law partner may be preferable, as the arrears represent payments that the spouse or partner should have received. Further, under this method the impact on the owner's post-division pension payments is lessened, as this value is spread over the owner's remaining lifetime, and the spouse or partner is not exposed to the mortality risk. It should be noted however, that it may be possible that under either of the latter two methods, there may be a temporary or permanent reduction of the owner's post-division pension payments to zero.

Lastly, if the actuarial present value of the spouse's or common-law partner's share of the pension (including the value of the arrears) exceeds the present actuarial value of the owner's remaining post-division pension (excluding the value of the arrears), that is a matter the parties must address outside the plan.

The administrator should provide the owner and spouse or partner with a statement, including the amount of arrears, and as applicable, the amount of post-division pension payments and the effects to that amount of the option(s) to address the arrears, the repayment period, if applicable, as well as any risks to the parties as outlined above. The administrator should also obtain a written agreement between the parties regarding the method that will be used to address the arrears.

#### **p) One-time 50% Transfer (Act s. 21.4, Reg. s. 10 s. 10.52-10.58)**

Pursuant to section 21.4 of the Act, a person is allowed, only once in their lifetime, to unlock up to 50% of the value of their pension plan, LIRA or LIF by transferring funds from such plans to a prescribed registered retirement income fund (prescribed RRIF).

Part 10, Division 4 of the Regulation specifies the conditions and the application process for such a transfer. The requirements of the application process are set out in section 10.56 of the Regulation and can only occur with the written consent of a cohabiting spouse or common-law partner after they have received certain prescribed information so that they are aware of their entitlements in respect of the plan or plans from which the transfer is to be made.

Like monies in a pension plan or individual locked-in funds such as LIRAs and LIFs, monies held in a "prescribed RRIF" may not be assigned, charged, anticipated or given



as security, and are exempt from execution, seizure or attachment. However, a “prescribed RRIF” is subject to attachment for purposes of satisfying *Family Property Act* claims and support orders, just as pension payments and pension benefit credits are subject to division on marriage/relationship breakdown and subject to attachment for support enforcement purposes by the Maintenance Enforcement Program.

### **q) Relevant Manitoba Case Law**

The following court cases are based on the legislation in force prior to May 31, 2010.

#### ***Sader v. Sader*, [1988] M.J. No. 605**

In the *Sader* case, the parties contended that no property order existed pursuant to *The Marital Property Act* and they both had sworn affidavits declaring they had not agreed to any division of family assets. The court looked at affidavit evidence to determine if the pension required division according to the Act. Therefore, the administrator may wish to consider obtaining such evidence from the parties as it and its legal counsel consider appropriate to determine if the pre-conditions under the Act have been met. Such evidence may, but is not necessarily limited to, include affidavits from the parties. Alternatively, the administrator may refer the parties to the courts for a determination.

#### ***Campbell v. Campbell*, [1995] M.J. No. 466**

In this case the Court of Appeal ruled upon the validity of a 1986 separation agreement in which the parties had waived any interest in each other's pension benefits and the effect of the 1992 amendments to section 31 of Act on such an agreement. The Court of Appeal found that the parties were bound by the 1986 separation agreement and that the pension benefits did not have to be divided. The facts of this case were as follows:

1. The parties had married March 12, 1955 and separated January 15, 1986. They were divorced on March 2, 1987.
2. On April 22, 1986, Mr. Campbell and Mrs. Campbell entered into a Separation Agreement. Mr. and Mrs. Campbell each received independent legal advice prior to signing the Separation Agreement; however, no formal financial disclosure was exchanged prior to the signing of the Agreement.
3. The Separation Agreement acknowledged each party had a pension plan and that each party released the other from any claims that he or she may have to the other's pension plan and that neither party would make a claim to these pension plans.
4. At the time of signing the Separation Agreement, each party was aware of s. 27 (now s. 31(2)) of the Act pertaining to the division of pension benefit credit and

each party was aware that the value of Mrs. Campbell's pension was greater than that of Mr. Campbell.

5. Notwithstanding the Separation Agreement, Mr. Campbell made claim to Mrs. Campbell's pension and relied upon s. 31(2) of the Act in support of his right to a division of the pension benefit. Mr. Campbell alleged that the parties had failed at the time of executing the Separation Agreement to comply with the subsequently enacted provisions of s. 31(6). That is that the parties had not received independent legal advice after the passage of the 1992 amendment and that he had not received a statement of the commuted value of the pension benefit.

The Court of Appeal ruled that the agreement not to split pension benefits was binding on the parties.

Since the Campbell decision, plan sponsors and administrators have been approaching the OSPC to ascertain what, if any, effect this decision has on them. Specifically, plan sponsors and administrators want to know the effect the decision has on parties who have entered into agreements prior to June 24, 1992 under which they have agreed not to divide pension benefits.

Administrators have also asked what steps, if any, the owner or member-owner and former spouse or common-law partner must take to give effect to the Separation Agreement or written agreement not to divide pension benefits.

The OSPC is of the view that if administrators are provided with a Separation Agreement which predates June 24, 1992, they are wise to consult with their legal counsel to determine if they can rely on the Campbell decision to not divide pension benefits.

Administrators could suggest that the member or former member and spouse or former spouse or common-law partner execute the agreement in accordance with section 31(6) of the Act to waive the division of pension benefits under section 31(2).

In the event the administrator cannot determine if *Campbell* applies, or the parties are not prepared to execute the agreement in accordance with section 31(6) of the Act, recourse to the courts for a determination is advisable.

### ***Foster v. Foster*, [2007] M.J. No. 298**

In the *Foster* case, the parties separated after an 11-year marriage and at the time of marriage, the husband had been contributing to a defined contribution plan for 20 years. The wife sought to share in the interest accrued during the marriage on contributions made prior to the marriage. In 2006, the Court of Queen's Bench found that because the husband's pension benefit was a defined contribution benefit, the wife was entitled to an equal share of the entire accumulation of the pension benefit credit accrued during the marriage.

On appeal, the Manitoba Court of Appeal affirmed the Court of Queen's Bench decision indicating that the regulations are consistent with *The Family Property Act* which stipulates that the appreciation in the value of family property (which includes pension), during the marriage, of an asset acquired before marriage, is shareable.

Therefore, in respect of a defined contribution or money purchase benefit the pension benefit credit as of the date of marriage and the pension benefit credit as of the date of separation are to be calculated as if the owner's employment had been terminated as of each of those dates, and the difference between the two amounts is shareable.

See also the following cases, which are based on the legislation in force after May 31, 2010:

***MacCoy v. MacCoy*, [2011] MBQB 273**

In this case, the parties were married and lived together for approximately 31 years and on separation agreed to a valuation date for a *Family Property Act* accounting. A consent Order was subsequently obtained for a reference to the Master for a *Family Property Act* accounting, which was to include joint assets and joint debts, the jointly owned family home, and certain other specified assets. The Order was not taken out, nor was an accounting ever commenced.

Both parties worked throughout the marriage and accumulated pensions. The husband had a pension regulated by *The Pension Benefits Act* of Manitoba, and the wife's pension was regulated by the *Public Service Superannuation Pension Act*, a federal statute.

The husband subsequently filed a Petition for Divorce and pled under various heads of relief including an equal division of family property pursuant to *The Family Property Act*. The wife filed an Answer and, among other things, agreed to an equal division of family property. Neither pleading made any reference to the existence of pensions owned by them, including the financial statements attached to the pleadings, which did not either identify or attempt to value the pensions. However, from the commencement of the proceedings the pension sharing had been at issue.

After separation and before any reference to the Master was commenced, both parties assigned themselves into bankruptcy. The husband was discharged in 2009 and the wife was discharged in 2010. It was agreed that post-bankruptcy, there were no assets left to be accounted for pursuant to *The Family Property Act*, with the exception of the two pension funds.

Subsequently, the husband brought a motion requesting a determination as to whether the pension assets owned by each party could be shared under *The Family Property Act* and/or the relevant pension legislation.

The court found by virtue of the application of the reasoning in *Schreyer*, the entitlement to equalize pensions arises upon separation and, as in *Schreyer*, the

parties were released from the equalization claims as a result of the intervening bankruptcies. The court refused to grant an order under *The Family Property Act*.

*Sinclair v. McAuley*, 2012 MBQB 85 - discussed earlier in this chapter.

*Dundas v. Schafer*, 2012 MBQB 87

In this case, MacPhail, J. held that the provisions of *The Family Property Act* and *The Pension Benefits Act* can be read as a cohesive scheme by recognizing that where individuals have no current entitlement under *The Family Property Act* and are therefore not entitled to a portion of a party's provincially-regulated pension, they may enter into a spousal agreement pursuant to which they will have no interest in the other's pension benefit credits provided they receive independent legal advice; the statement of valuation contemplated in *The Pension Benefits Act* could not be provided as the wife had no entitlement to the husband's pension when their prenuptial agreement was executed. MacPhail J.'s findings in this regard were upheld by the Manitoba Court of Appeal in *Dundas v. Schafer*, 2014 MBCA 92.

### 3. Glossary of Pension Terms

#### **Accrued**

Earned by an owner according to service, earnings, etc., up to a given date.

#### **Active member**

Member of the plan who is accruing a pension under the plan, or would be accruing a pension if it were not for a temporary interruption in employment.

#### **Administrator**

The person or persons who administer the pension plan. They arrange for pension and other benefit payments, ensure funding of the plan, etc. Many plans are administered by a pension committee, a board of trustees or similar body.

#### **Ancillary Benefits**

Benefits in addition to regular pension benefits and survivor benefits. These include bridging benefits and enriched early retirement benefits.

#### **Beneficiary**

A person who on the death of an owner or member-owner, may become entitled to a benefit under the plan.

#### **Benefit**

Generally, any form of payment to which a person may become entitled under the terms of a plan.

#### **Bridging Benefits**

A temporary benefit provided to members who retire prior to the age when Canada Pension Plan benefits are normally payable (age 65) in order to supplement pension income until the CPP benefits are payable.

**Commuted Value**

The amount of a lump sum payment payable today estimated to be equal in value to a future series of payments.

**Continuous Service or Membership or Employment**

Period where an employee is continuously employed by the same employer or continuously participates in his or her employer's pension plan, including periods of temporary absence or suspension or periods of layoff.

**Defined Benefit Plan**

A plan that provides a pension based on service, average earnings, etc. but not the total contributions. If the plan is contributory, the rate of employee contributions may be specified, with the employer contribution paying the balance of the cost of the pension benefit. To be distinguished from a defined contribution plan.

**Defined Contribution Plan**

A plan that provides a pension determined with reference to and provided by the accumulated contributions and the return on the investment of the contributions paid by or for the credit of a member and made to the member's individual account. Also known as money purchase plan.

**Employee**

An individual, employed to do work or to provide a service, who is in receipt of or entitled to remuneration for the work or service.

**Employer**

The person or organization from whom an employee receives remuneration. This includes any or all of the employers that are required to contribute to a multi-unit pension plan or multi-employer pension plan.

**Enriched Early Retirement Benefits**

An ancillary benefit paid on retirement prior to the normal retirement date, which is not reduced to the extent it should be to fully account for the longer period of time over which the pension is likely to be paid.

**Former Member**

A person whose membership in a plan has terminated, transferred his or her pension monies that are subject to locking in to a prescribed plan, a life annuity or another plan, and no longer retains an entitlement under the plan.

**Joint and Survivor 60% Pension**

A form of pension that pays a pension to the spouse or common-law partner for his or her life after the owner's death of at least 60% of the pension that the owner was receiving when he or she died. Spouse or partner can waive this entitlement using the form required by the superintendent.

## **Life Annuity**

Periodic payments (usually monthly) provided by the terms of a contract for the lifetime of an individual (the annuitant) or the individual and his or her designated beneficiary. An annuity may be a fixed or varying amount, and may continue to be paid for a period after the annuitant's death.

## **Life Income Fund (LIF)**

A prescribed pension arrangement that can be purchased with pension monies subject to locking in under pension legislation. The key characteristics of the LIF include:

- the LIF contract must be registered as a retirement income fund (RRIF) in accordance with the *Income Tax Act* (Canada);
- monies in the contract are subject to locking in;
- the owner of the contract must be paid a retirement income each year (except for the first year of the contract);
- the owner determines the amount of income to be paid each year at the beginning of the year, subject to certain minimum and maximum withdrawal rules;
- at any time, the owner of the contract may purchase a life annuity with the balance of the LIF, but the owner is never required to purchase an annuity; and
- the owner determines how the balance of the LIF is to be invested.

## **Locking In**

Legislative requirement that pension benefits cannot be withdrawn as a lump sum and must provide retirement income to the owner for his or her life.

## **Locked-In Retirement Account (LIRA)**

A prescribed savings arrangement that can be purchased with pension monies subject to locking in under pension legislation:

- the LIRA contract must be registered as a retirement savings plan (RRSP) in accordance with the *Income Tax Act* (Canada);
- monies in the contract are subject to locking in;
- non-assignable and exempt from seizure; and
- is administered as a deferred life annuity under the Act and regulations.

## **Form of Pension**

Subject to spouse's or partner's right to a joint and survivor 60% pension, elected by a member at retirement, the distribution of pension payments from the pension plan. Forms of pension may include joint and survivor 50%, 75% or 100% pension, life pension guaranteed 5, 10 or 15 years, or life only pension. Once pension payments commence, the form of pension can generally not be changed.

## **Member**

An employee or former employee who is accruing, entitled to or receiving a pension under the plan.

## **Normal Retirement Date**

The date at which the member becomes entitled to retirement benefits without reduction or increase according to the terms of the pension plan.

### **Optional Ancillary Benefits (OABs) (Flexible Benefits/Plan)**

Provided under a defined benefit pension plan. Members can make optional ancillary contribution to purchase optional ancillary or add-on benefits to augment their basic pensions as calculated under the basic formula. OABs can include enriched early retirement benefits, cost-of-living adjustments, bridging benefits or other specified benefits. The employer does not contribute to OABs. Also known as flexible benefits.

### **Optional Ancillary Contributions (OACs)**

Additional contributions made by an owner under a “flexible benefit” provision of a defined benefit pension plan to buy ancillary benefits of the owner’s choice. OACs are not locked-in.

### **Pension**

The aggregate annual, monthly or other periodic amounts payable to a member during their lifetime to which he or she will become entitled at the normal retirement age. The pension may also refer to the amount to which any other person is entitled upon the death of the member.

### **Pension Benefit Credit**

The value at a particular time of the pension benefits and any other benefits provided under the pension plan to which the employee has become entitled as of that time.

### **Prescribed**

As prescribed in the legislation; act or regulations.

### **Prescribed Plan**

A Locked-in Retirement Account (LIRA) or a Life Income Fund (LIF).

### **Prescribed Registered Retirement Income Fund (Prescribed RIFF)**

A prescribed RRIF is a retirement income fund as defined in the *Income Tax Act* (Canada) that it is also subject to certain rules set out in the regulations. Monies in a prescribe RRIF are not subject to locking in.

### **Registered Pension Plan (Pension Plan)**

A pension plan offered by an employer or supported by a group of employers for the benefit of employees. The term includes plans covering employees of governments and the private sector, but does not include the Canada Pension Plan or other public programs.

### **Regulations**

The Pension Benefits Regulations under *The Pension Benefits Act* of Manitoba.

### **Registered Retirement Income Fund (RRIF)**

A personal retirement income fund as defined by the *Income Tax Act* (Canada).

### **Registered Retirement Savings Plan (RRSP)**

A personal retirement savings plan as defined by the *Income Tax Act* (Canada).

### **Retirement**

Commencement of retirement income because of age. It may also be used in the sense of permanent withdrawal from the labour force for any reason, including disability.

## **Retirement Income**

Income from pension and other sources to which a retired person is entitled. Term may include both private and public pension payments, income from personal savings, government income supplements and certain other sources of income.

## **Vested (Vesting)**

When a member has unconditional entitlement under the plan as a result of any satisfying age or service requirements.

## **Voluntary Additional Contributions**

In addition to any required contributions, employees may make voluntary contributions to increase retirement savings. Extra or additional pension is bought by these voluntary additional contributions at retirement but no additional cost is borne by the employer. Voluntary additional contributions are not subject to locking-in under the Act.

# **4. Canada Pension Plan**

Canada Pension Plan (CPP) has its own regime. The division process provides that CPP credits earned by parties during married cohabitation or unmarried cohabitation be split equally, provided that the parties cohabited continuously for at least one year. The division of credits can take place upon the application of either spouse or common-law partner upon breakdown of the relationship.

The application for a credit split can be made at any time following separation, but the CPP will not process the request and split credits until the parties have been separated for at least a year.

For the purposes of the Canada Pension Plan, a common-law partner may be of the same or opposite sex as the other party. Parties in a common-law relationship must apply for a credit split within four years of their separation. Married spouses can apply at any time after their separation. The Minister has discretion, though, to refuse a division of credits where they are satisfied that the division is to the detriment of both parties.

Employment and Social Development Canada, the federal government agency that administers the Canada Pension Plan, can be contacted by mail at:

Service Canada  
Income Security Programs  
P.O. Box 818, Stn. Main  
Winnipeg, Manitoba R3C 2N4  
Telephone 1-800-277-9914 (English)  
1-800-277-9915 (French)  
Website <https://www.canada.ca/en/services/benefits/publicpensions/cpp.html>



## C. PRECEDENTS

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### 1. Comparative FPA Statement

[Document follows on next page]

**IN THE KING'S BENCH (FAMILY DIVISION)  
Winnipeg CENTRE**

BETWEEN:

XXXXXXX

Petitioner,

and

YYYYYYYYY

Respondent.

TAB	ASSETS <i>(list all assets under each category below, excluding jointly owned assets)</i>	PETITIONER'S ASSETS		RESPONDENT'S ASSETS		COMMENTS  <i>(explanation for difference in value/ identify documentation to support valuation if applicable)</i>
		Petitioner's Valuation	Respondent's Valuation	Petitioner's Valuation	Respondent's Valuation	
<b>Real Property</b>						
<b>Household goods, furniture and appliances</b>						
		Settled	Settled	Settled	Settled	
<b>Tools, sports and hobby equipment</b>						
<b>Bank accounts and cash on hand</b>						
	Savings Account	\$ 218.19	\$ 218.19			Statement at DOS
	Chequing Account	Unknown	Unknown			Supporting documentation required
<b>TFSA's</b>						
<b>RRSPs (is discount rate at issue?)</b>						
	_____ Investment Acct administered by _____ (at DOM \$3,274.16 transferred into an RRSP account February 22, 2001) and value at DOS \$2,138.81* less 33% = <b>\$1,433.00</b>			\$ 1,433.00	\$ -	<b>Respondent:</b> *Pre-acquired, stmnts as at 00 06 16 and stmnt as at 19 10 28
<b>Life Insurance (cash value)</b>						
<b>Pensions (mark with ** if provincially regulated)</b>						

<b>Vehicles</b>						
2013 Buick	\$	15,000.00	\$	15,000.00		Settled at Triage Conference 21 06 07
2015 GMC Truck				\$	28,000.00	\$ 28,000.00 Settled at Triage Conference 21 06 07
2015 Harley Davidson				\$	12,000.00	\$ 12,000.00 Settled at Triage Conference 21 06 07
R's Dirt Bike				\$	4,000.00	\$ 4,000.00 Settled at Triage Conference 21 06 07
2005 Toyota				\$	14,500.00	\$ 14,500.00 Settled at Triage Conference 21 06 07
2 Trailers				\$	2,000.00	\$ 2,000.00 Settled at Triage Conference 21 06 07
<b>Other (corporate shares and others)</b>						
(A) TOTAL ASSETS	\$	15,218.19	\$	15,218.19	\$ 61,933.00	\$ 60,500.00

DEBTS	PETITIONER'S DEBTS		RESPONDENT'S DEBTS		DOCUMENT / COMMENTS & DIFFERENCE BETWEEN POSITIONS
	Petitioner's valuation	Respondent's valuation	Petitioner's valuation	Respondent's valuation	
<b>Mortgages</b>					
<b>Loans/Lines of Credit</b>					
<b>Credit Cards</b>					
Mastercard	\$	1,077.92	\$	1,077.92	Mastercard stmt 19 11 14
<b>Other</b>					
<b>(B) TOTAL DEBTS</b>	\$	1,077.92	\$	1,077.92	\$ - \$ -
<b>(A) - (B) = NET</b>	\$	14,140.27	\$	14,140.27	\$ 61,933.00 \$ 60,500.00

<b>POSITIONS ON EQUALIZATION</b>					
Petitioner's valuation:	R	owes	P	\$	23,179.87
	<i>(petitioner/respondent)</i>				<i>(petitioner/respondent)</i>
Respondent's valuation:	R	owes	P	\$	23,896.37

**JOINT ASSETS (SHARED ASSETS NOT SUBJECT TO FAMILY PROPERTY ACCOUNTING)**

	(list all joint assets under each category below)	JOINT ASSETS		COMMENTS
		Petitioner's Valuation	Respondent's Valuation	
<b>Real Property</b>				
	5 Columbia Street	\$ 360,000.00	\$ 360,000.00	<b>Petitioner:</b> Appraisal prepared in 2014 / <b>Respondent:</b> Appraisal required. Appraisal dated 21 04 07 The appraisal the Petitioner is relying on is dated and prepared for the purposes of the lender and not reflective of fair market value.
	7 Columbia Street	\$ 374,000.00	\$ 330,000.00	<b>Petitioner:</b> Appraisal prepared in 2017 / <b>Respondent:</b> Appraisal dated 21 03 02 The appraisal the Petitioner is relying on is dated and prepared for the purposes of the lender and not reflective of fair market value.
	9 Columbia Street	\$ 374,000.00	\$ 330,000.00	<b>Petitioner:</b> Appraisal prepared in 2017 / <b>Respondent:</b> Appraisal dated 21 03 02 The appraisal the Petitioner is relying on is dated and prepared for the purposes of the lender and not reflective of fair market value.
	11 Columbia Street	\$ 445,000.00	\$ 390,000.00	<b>Petitioner:</b> Appraisal dated 21 08 11/ <b>Respondent:</b> Appraisal dated 21 04 06. The appraisal the Petitioner is relying on is dated and prepared for the purposes of the lender and not reflective of fair market value.
	12 Peanut Street	\$ 395,000.00	\$ 430,000.00	<b>Petitioner:</b> Unknown / <b>Respondent:</b> Appraisal dated 21 04 06
	14 Peanut Street	\$ 245,000.00	\$ 230,000.00	<b>Petitioner:</b> Unknown / <b>Respondent:</b> Appraisal dated 21 03 10
	16 Peanut Street	\$ 430,000.00	\$ 355,000.00	<b>Petitioner:</b> Appraisal dated 21 08 11 <b>Respondent:</b> Appraisal dated 21 04 06
	232 Bluenose Crescent	\$ 1,100,000.00	\$ 1,250,000.00	<b>Petitioner:</b> Referred to a "market valuation from June 2020" in Triage Brief, Petitioner yet to provide same / <b>Respondent:</b> Appraisal dated 21 03 10
<b>Other (corporate shares and others)</b>				

ABCDE Limited	Unknown	\$ 516,938.00	<b>Petitioner:</b> Limited Critique Report dated 21 09 27 / <b>Respondent:</b> Valuation Report dated 21 06 30
Joint Personal Chequing	\$ 244.65	\$ 464.32	<b>Petitioner:</b> Unknown supporting documentation required / <b>Respondent:</b> as at 21 08 17
Security Deposits	\$ 1,206.70	\$ 3,383.03	<b>Petitioner:</b> Unknown supporting documentation required / <b>Respondent:</b> as at 21 08 17
Savings Account	\$ 11,807.15	\$ 1,978.54	<b>Petitioner:</b> Unknown supporting documentation required / <b>Respondent:</b> as at 21 08 17
Tax Account (as at May 20, 2020)	\$ -	\$ -	<b>Respondent:</b> as at 21 08 17
Income Tax Account (as at May 20, 2020)	\$ 2,027.23	\$ 3,590.55	<b>Petitioner:</b> Unknown supporting documentation required / <b>Respondent:</b> as at 21 08 17
<b>(C) TOTAL ASSETS:</b>			
<b>(list all joint assets under each category below)</b>	<b>JOINT DEBTS</b>		<b>COMMENTS</b>
	<b>Petitioner's Valuation</b>	<b>Respondent's Valuation</b>	
<b>Mortgage</b>			
5 Columbia Street	\$ 159,308.57	\$ 157,107.00	<b>Respondent:</b> as at 21 06 30
7 Columbia Street	\$ 251,271.04	\$ 249,068.00	<b>Respondent:</b> as at 21 06 30
9 Columbia Street	\$ 230,510.36	\$ 228,947.00	<b>Respondent:</b> as at 21 06 30
11 Columbia Street	\$ 168,092.91	\$ 165,767.00	<b>Respondent:</b> as at 21 06 30
12 Peanut Street	\$ 105,896.02	\$ 104,767.00	<b>Respondent:</b> as at 21 06 30
14 Peanut Street	\$ 320,891.83	\$ 318,523.00	<b>Respondent:</b> as at 21 06 30
16 Peanut Street	\$ 139,239.91	\$ 137,337.00	<b>Respondent:</b> as at 21 06 30
232 Bluenose Crescent	\$ 488,773.68	\$ 479,801.58	<b>Petitioner:</b> Unknown supporting documentation required / <b>Respondent:</b> as at 21 08 17
Line of Credit (Car acct)	\$ 59,347.33	\$ 59,347.33	<b>Respondent:</b> as at 21 08 17
Line of Credit/ chequing account	\$ 17,840.17	\$ 19,100.17	<b>Petitioner:</b> Unknown supporting documentation required / <b>Respondent:</b> as at 21 08 17
<b>Other</b>			

Visa (formerly joint)	P removed from Visa Account	R assumed responsibility for Visa Account now in his name alone	As agreed at the Triage Conference on 21 06 07		
Mastercard	Unknown	Unknown	<b>Petitioner:</b> Unknown supporting documentation required / <b>Respondent:</b> is not aware of a joint mastercard		
<b>(D) TOTAL JOINT DEBTS</b>					
<b>TOTAL JOINT ASSETS</b>					
<b>NET</b>					
<b>JOINT PROPERTY DIVISION</b>					

POSITIONS ON JOINT PROPERTY EQUALIZATION					
<b>Petitioner's valuation:</b>		owes		\$	
	<i>(petitioner/respondent)</i>		<i>(petitioner/respondent)</i>		
<b>Respondent's valuation:</b>		owes		\$	
	<i>(petitioner/respondent)</i>		<i>(petitioner/respondent)</i>		

- Notes:
1. "valuation": use "fair market value" amount that you would get for it if it was sold in the open market.
  2. Use values for assets and debts as of the date of separation for these items that are not jointly-owned.
  3. Use current fair market valuation for joint assets.

Filed by: Respondent \_\_\_\_\_ on \_\_\_\_\_ date 09-Feb-21  
*(petitioner/applicant/respondent)*

## 2. Order (FPA)

File No. FD XX-XX-XXXXX

**THE KING'S BENCH (FAMILY DIVISION)  
WINNIPEG CENTRE**

THE HONOURABLE            )  
JUSTICE                    )     The \_\_\_ day of \_\_\_\_\_, 20xx  
                                  )

BETWEEN:

**SELMA ANN LEWIS,**

Petitioner,

- and -

**HAROLD GEORGE LEWIS,**

Respondent.

### ORDER

1.0 This matter having proceeded at King's Bench Court Complex, Winnipeg Centre, 408 York Avenue, Winnipeg, Manitoba, R3C 0P9, at the request of SELMA ANN LEWIS;

2.0 This matter being a request for a reference to the Master for a Family Property Act accounting report;

3.0 In the presence of:

3.1 JANET DOUBLE, counsel for SELMA ANN LEWIS, and SELMA ANN LEWIS;

3.2 MELISSA GREENSMITH counsel for HAROLD GEORGE LEWIS, and HAROLD GEORGE LEWIS;

4.0 SELMA ANN LEWIS and HAROLD GEORGE LEWIS having consented to the content of this Order;

5.0 THIS COURT ORDERS pursuant to the *Family Property Act* that:

5.1 There shall be a reference to the Master of this Court for an accounting and valuation of the assets of SELMA ANN LEWIS and HAROLD GEORGE LEWIS pursuant to the provisions of *The Family Property Act*;

5.2 For the purposes of the reference, the date of closing and valuation is July 1, 2018;

5.3 For the purposes of the reference the date of commencement of cohabitation is May 1, 2006;

5.4 The master shall make such inquiries, hear such evidence, employ such experts as shall be deemed necessary or desirable for the purposes of the reference, assess such costs as may be appropriate, and shall make a report to this Court respecting same;

5.5 The Master shall make a determination as to the value of the following assets or liabilities and the extent to which the assets or liabilities are shareable or non-shareable:

5.5.1 The value and shareability of 6 Sapling Avenue, Winnipeg, Manitoba;

5.5.2 The value of 6 Blossom Blvd., Winnipeg, Manitoba;

5.5.3 The value and shareability of QRST Ltd.;

5.5.4 The value and shareability of HAROLD GEORGE LEWIS's Canadian and U.S. PIM accounts at RBC;

5.5.5 The value of a loan from QRST Ltd. to SELMA ANN LEWIS;

5.5.6 The value of all household contents, tools and sports equipment for SELMA ANN LEWIS and HAROLD GEORGE LEWIS;

5.5.7 The value of SELMA ANN LEWIS' TFSA;



5.5.8 The value of SELMA ANN LEWIS' accounts ending in 123 and 4567 at RBC;

5.5.9 The value and shareability of HAROLD GEORGE LEWIS's RRSP's;

5.5.10 The value of and shareability of HAROLD GEORGE LEWIS's GMC Canyon;

5.5.11 The value and shareability of HAROLD GEORGE LEWIS's Canadian Advisor Account;

5.5.12 The value of the appreciation in the condominium owned by HAROLD GEORGE LEWIS in Moncton, New Brunswick;

5.5.13 The value of HAROLD GEORGE LEWIS's RBC TFSA (US);

5.5.14 The value of SELMA ANN LEWIS' RBC line of credit;

5.5.15 The value and shareability of SELMA ANN LEWIS' LIRA.

5.6 The Master shall value the following assets or liabilities, which are jointly owned by SELMA ANN LEWIS and HAROLD GEORGE LEWIS and alleged to be excluded from the application of *The Family Property Act*, with the valuation date for such assets or liabilities being July 1, 2018;

5.6.1 The value and shareability of 12 Sprout Avenue, Winnipeg, Manitoba, and the mortgage registered against same;

5.7 SELMA ANN LEWIS shall have carriage of the reference.

6.0 THIS COURT ORDERS pursuant to the *King's Bench Rules* that a copy of this Order shall be served upon HAROLD GEORGE LEWIS by regular letter addressed to HAROLD GEORGE LEWIS, c/o Melissa Greensmith, Lawco LLP, Barristers and Solicitors, 14 White Street, Winnipeg, Manitoba, R5V 6Y7 within 20 days of the date of signing.

Date:

\_\_\_\_\_  
Master / Deputy Registrar

CONSENTED AS TO FORM:

Per: \_\_\_\_\_  
JANET DOUBLE, counsel for the Petitioner

Per: \_\_\_\_\_  
MELISSA GREENSMITH, counsel for the Respondent

Lawyer of record for the Petitioner is:  
DOUBLE MINT LLP  
Barristers and Solicitors  
4700 White Street  
Winnipeg, MB R5V 7Y9

JANET DOUBLE  
Telephone: (204) 768-9191  
Facsimile: (204) 768-9192  
Email:janet@doublemint.ca

Lawyer of record for the Respondent is:  
LAW CO. LLP  
Barristers and Solicitors  
14 White Street  
Winnipeg, MB R5V 6Y7

MELISSA GREENSMITH  
Telephone: (204) 895-7878  
Facsimile: (204) 895-7879  
Email: mgreensmith@lawco.ca

### 3. Summary of Assets and Liabilities of the Initiating Party

File No. FDXX-XX-XXXXX

THE KING'S BENCH (FAMILY DIVISION)  
WINNIPEG CENTRE

BETWEEN:

SELMA ANN LEWIS,

Petitioner,

- and -

HAROLD GEORGE LEWIS,

Respondent.

---

#### SUMMARY OF ASSETS AND LIABILITIES OF THE INITIATING PARTY, SELMA ANN LEWIS

---

DOUBLE MINT LLP  
4700 White Street  
Winnipeg, Manitoba  
R5V 7Y9

JANET DOUBLE

Phone (204) 768-9191  
Fax (204) 768-9192

THE KING'S BENCH (FAMILY DIVISION)  
WINNIPEG CENTRE

BETWEEN:

SELMA ANN LEWIS,

Petitioner,

- and -

HAROLD GEORGE LEWIS,

Respondent.

**SUMMARY OF ASSETS AND LIABILITIES OF THE INITIATING PARTY,  
SELMA ANN LEWIS**

I, SELMA ANN LEWIS, of the City of Winnipeg, in the Province of Manitoba, the initiating party in this reference under *The Family Property Act*, SWEAR (or AFFIRM) THAT:

1. To the best of my knowledge, information and belief, the information completed by me in this Summary of Assets and Liabilities, including Parts 1 to 9 attached, is true and complete.
2. Attached are the following Parts:

ASSETS	VALUE (total from Part)
Part 1 – Land	<u>\$nil</u>
Part 2 – Vehicles	<u>\$45,000.00</u>
Part 3 – Savings	<u>\$3,644.80</u>
Part 4 – RRSPs, RSPs and Pension Plans	<u>\$nil</u>
Part 5 – Securities	<u>\$nil</u>
Part 6 – General Household Items	<u>\$nil</u>
Part 7 – Business Interests	<u>\$nil</u>
Part 8 – Other Property	<u>\$nil</u>
<b>TOTAL ASSETS:</b>	<u><b>\$48,644.80</b></u>
<b>LIABILITIES:</b>	<b>VALUE</b>
Part 9 – Debts and Other Liabilities	<u><b>\$87,158.00</b></u>

OTHER:

Part 10 – Excluded Property \$82,952.53

Part 11 – Assets Already Shared \$240,000.00

SWORN before me at the City of )  
Winnipeg in the Province of Manitoba )  
on the \_\_\_ day of \_\_\_\_\_, 20xx )

SELMA ANN LEWIS

\_\_\_\_\_  
A Barrister and Solicitor in  
and for the Province of Manitoba

**PART 1 – LAND**

*(If columns 1 and 2 are completed by initiating party, column 3 must be completed by the responding party and vice versa.)*

Columns 1 and 2 completed by: SELMA ANN LEWIS, the initiating party.

Column 3 completed by: HAROLD GEORGE LEWIS, the responding party.

*(Include an interest in land owned on the valuation date, including any leasehold interest or mortgage interest. Show estimated fair market value of your interest as at the valuation date. List encumbrances in Part 9 – Debts and Other Liabilities. List land which is jointly owned with the other party in Part 11.)*

1	2	3
<b>Legal description and address of property</b>	<b>Fair market value of your interest as of valuation date and basis for value</b>	<b>State if you agree or disagree with the value, or require verification of the value. If you disagree with the value in column 2 state your value and the basis for your value</b>
		TOTAL: \$

## PART 2 – VEHICLES

*(If columns 1 and 2 are completed by initiating party, column 3 must be completed by the responding party and vice versa.)*

Columns 1 and 2 completed by: SELMA ANN LEWIS, the initiating party.

Column 3 completed by: HAROLD GEORGE LEWIS, the responding party.

*(Show fair market value (not cost of replacement or purchase price) for all motor vehicles, including boats and snowmobiles owned by you or in your possession on the valuation date. Designate the owner, if someone other than yourself under Column 1. Do not deduct encumbrances here, but show encumbrances under Debts and Other Liabilities. Place an asterisk beside vehicles which are owned by you but is in the possession of the other party.)*

1	2	3
Description of vehicles	Fair market value as of valuation date and basis for value	State if you agree or disagree with the value, or require verification of the value. If you disagree with the value in column 2 state your value and the basis for your value
2016 Audi	\$45,000.00: estimated value	
	TOTAL: \$45,000.00	TOTAL: \$

### PART 3 – SAVINGS

*(If columns 1 and 2 are completed by initiating party, column 3 must be completed by the responding party and vice versa.)*

Columns 1 and 2 completed by: SELMA ANN LEWIS, the initiating party.

Column 3 completed by: HAROLD GEORGE LEWIS, the responding party.

*(Value assets as at the valuation date by category. Include cash and accounts in financial institutions, deposit receipts and other savings or savings plans but list retirement savings plans and pension on Part 4. Include the cash value of life insurance policies.)*

1	2	3
Description including financial institution and account no.	Fair market value as of valuation date and basis for value	State if you agree or disagree with the value, or require verification of the value. If you disagree with the value in column 2 state your value and the basis for your value
RBC Account #123	\$2,943.62: bank statement	
RBC Account #4567	\$701.18: bank statement	
	TOTAL: \$3,644.80	TOTAL: \$



## PART 4 – RRSPS, RSPS AND PENSION PLANS

*(If columns 1 and 2 are completed by initiating party, column 3 must be completed by the responding party and vice versa.)*

Columns 1 and 2 completed by: SELMA ANN LEWIS, the initiating party.

Column 3 completed by: HAROLD GEORGE LEWIS, the responding party.

*(List all registered savings plans, retirement savings plans and pensions.)*

1	2	3
<b>Description including financial institution and account no.</b>	<b>Fair market value as of valuation date and basis for value</b>	<b>State if you agree or disagree with the value, or require verification of the value. If you disagree with the value in column 2 state your value and the basis for your value</b>
	TOTAL: \$	TOTAL: \$

**PART 5 – SECURITIES**

*(If columns 1 and 2 are completed by initiating party, column 3 must be completed by the responding party and vice versa.)*

Columns 1 and 2 completed by: SELMA ANN LEWIS, the initiating party.

Column 3 completed by: HAROLD GEORGE LEWIS, the responding party.

*(Show items owned on the valuation date by category. Include shares, bonds, warrants, options, debentures, notes, and any other securities.)*

1	2	3
<b>Description including category and number</b>	<b>Fair market value as of valuation date and basis for value</b>	<b>State if you agree or disagree with the value, or require verification of the value. If you disagree with the value in column 2 state your value and the basis for your value</b>
	TOTAL: \$	TOTAL: \$

**PART 6 – GENERAL HOUSEHOLD ITEMS**

*(If columns 1 and 2 are completed by initiating party, column 3 must be completed by the responding party and vice versa.)*

Columns 1 and 2 completed by: SELMA ANN LEWIS, the initiating party.

Column 3 completed by: HAROLD GEORGE LEWIS, the responding party.

*(Show fair market value (not cost of replacement or purchase price) for items owned by you or in your possession on the valuation date. Include all items in your possession or control whether they were in your residence, your cottage property, in storage or elsewhere. Do not deduct encumbrances here, but show encumbrances under Part 9 – Debts and Other Liabilities. Place an asterisk beside any item which is owned by you but is in the possession of the other party.)*

1	2	3
<b>Description</b>	<b>Fair market value as of valuation date and basis for value</b>	<b>State if you agree or disagree with the value, or require verification of the value. If you disagree with the value in column 2 state your value and the basis for your value</b>
	TOTAL: \$	TOTAL: \$

## PART 7 – BUSINESS INTERESTS

*(If columns 1 and 2 are completed by initiating party, column 3 must be completed by the responding party and vice versa.)*

Columns 1 and 2 completed by: SELMA ANN LEWIS, the initiating party.

Column 3 completed by: HAROLD GEORGE LEWIS, the responding party.

*(Show the fair market value of any interest you have in any unincorporated or incorporated business as of valuation date.)*

1	2	3
Description of Business Interest	Fair market value as of valuation date and basis for value	State if you agree or disagree with the value, or require verification of the value. If you disagree with the value in column 2 state your value and the basis for your value
	TOTAL: \$	TOTAL: \$

## PART 8 – OTHER PROPERTY

*(If columns 1 and 2 are completed by initiating party, column 3 must be completed by the responding party and vice versa.)*

Columns 1 and 2 completed by: SELMA ANN LEWIS, the initiating party.

Column 3 completed by: HAROLD GEORGE LEWIS, the responding party.

*(Show other property owned on the valuation date by categories. Include property of any kind not shown on the previous forms. Show fair market value as of valuation date. Include any assets in the form of mere rights, whether present, future or contingent. Include all monies owed to you on the valuation date. Do not include receivables which are accounted for under Part 7 – Business Interests.)*

1	2	3
<b>Description</b>	<b>Fair market value as of valuation date and basis for value</b>	<b>State if you agree or disagree with the value, or require verification of the value. If you disagree with the value in column 2 state your value and the basis for your value</b>
	TOTAL: \$	TOTAL: \$

## PART 9 – DEBTS AND OTHER LIABILITIES

*(If columns 1 and 2 are completed by initiating party, column 3 must be completed by the responding party and vice versa.)*

Columns 1 and 2 completed by: SELMA ANN LEWIS, the initiating party.

Column 3 completed by: HAROLD GEORGE LEWIS, the responding party.

*(Show your debts and other liabilities on the valuation date, by category such as mortgages, charges, liens, notes, credit cards, and accounts payable. Include contingent liabilities such as guarantees and indicate that they are contingent. Do not show debts already taken into account in determining fair market value under Part 7 – Business Interests.)*

1	2	3
Description	Fair market value as of valuation date and basis for value	State if you agree or disagree with the value, or require verification of the value. If you disagree with the value in column 2 state your value and the basis for your value
Line of Credit – RBC	\$13,950.00 – Bank Statement	
Loan from QRST Ltd.	\$72,424.00 – Financial Statement	
CIBC Visa	\$784.00 – Statement	
	TOTAL: \$87,158.00	TOTAL: \$

## PART 10 – EXCLUDED PROPERTY

*(If columns 1 and 2 are completed by initiating party, column 3 must be completed by the responding party and vice versa.)*

Columns 1 and 2 completed by: SELMA ANN LEWIS, the initiating party.

Column 3 completed by: HAROLD GEORGE LEWIS, the responding party.

*(Show the fair market value by category of property owned on the valuation date which you allege is excluded from the applicability of The Family Property Act. Indicate the specific section of The Family Property Act in column 2.)*

1	2	3
Description	Fair market value as of valuation date and basis for value	State if you agree or disagree with the value, or require verification of the value. If you disagree with the value in column 2 state your value and the basis for your value
LIRA – acquired from a previous marriage, prior to cohabitation	\$82,952.53 – Statement	
	TOTAL: \$82,952.53	TOTAL: \$

## PART 11 – ASSETS ALREADY SHARED

*(If columns 1 and 2 are completed by initiating party, column 3 must be completed by the responding party and vice versa.)*

Columns 1 and 2 completed by: SELMA ANN LEWIS, the initiating party.

Column 3 completed by: HAROLD GEORGE LEWIS, the responding party.

*(Include all jointly owned assets and assets which you allege have already been shared.)*

1	2	3
Description	Fair market value as of valuation date and basis for value	State if you agree or disagree with the value, or require verification of the value. If you disagree with the value in column 2 state your value and the basis for your value
Joint tenants of the property known as 12 Sprout Avenue, Winnipeg, Manitoba	\$240,000.00: based on tax assessment	
	TOTAL: \$240,000.00	TOTAL: \$



#### 4. Response of Responding Party to the Summary of Assets and Liabilities

File No. FDXX-XX-XXXXX

THE KING'S BENCH (FAMILY DIVISION)  
WINNIPEG CENTRE

BETWEEN:

SELMA ANN LEWIS,

Petitioner,

- and -

HAROLD GEORGE LEWIS,

Respondent.

---

RESPONSE OF RESPONDING PARTY, HAROLD GEORGE LEWIS,  
TO THE SUMMARY OF ASSETS AND LIABILITIES OF SELMA ANN LEWIS

---

LAW CO. LLP  
Barristers and Solicitors  
14 White Street  
Winnipeg, MB R5V 6Y7

MELISSA GREENSMITH  
Solicitors for the Respondent  
Telephone: (204) 895-7878  
Facsimile: (204) 895-7879  
Email: mgreensmith@lawco.ca  
File No. 567

THE KING'S BENCH (FAMILY DIVISION)  
WINNIPEG CENTRE

BETWEEN:

SELMA ANN LEWIS,

Petitioner, (Initiating Party)

- and -

HAROLD GEORGE LEWIS,

Respondent, (Responding Party)

**RESPONSE OF HAROLD GEORGE LEWIS, TO  
SUMMARY OF ASSETS AND LIABILITIES  
OF SELMA ANN LEWIS**

I, **HAROLD GEORGE LEWIS**, of the City of Winnipeg, in the Province of Manitoba, the initiating party in the reference under *The Family Property Act*,

AFFIRM AND SAY THAT:

1. To the best of my knowledge, information and belief, the information completed by me in this Response to Summary of Assets and Liabilities of SELMA ANN LEWIS is true and complete.

AFFIRMED before me at the City of )  
\_\_\_\_\_ in the Province of Manitoba, on )  
the \_\_\_\_\_ day of \_\_\_\_\_ 20xx. )  
)  
)

\_\_\_\_\_  
**HAROLD GEORGE LEWIS**

\_\_\_\_\_  
A Barrister-at-Law in and for the Province  
of Manitoba.

**NOTE: THIS PAGE IS NOT PART OF FORM 70U, HOWEVER YOU MAY FIND IT  
HELPFUL IN FILING THE RESPONSE OF ONE PARTY TO THE SUMMARY OF  
ASSETS AND LIABILITIES OF THE OTHER.**

THE KING'S BENCH (FAMILY DIVISION)  
WINNIPEG CENTRE

BETWEEN:

SELMA ANN LEWIS,

Petitioner,

- and -

HAROLD GEORGE LEWIS,

Respondent.

**RESPONSE OF RESPONDING PARTY, HAROLD GEORGE LEWIS, TO THE  
SUMMARY OF ASSETS AND LIABILITIES OF THE INITIATING PARTY,  
SELMA ANN LEWIS**

I, SELMA ANN LEWIS, of the City of Winnipeg, in the Province of Manitoba, the initiating party in this reference under *The Family Property Act*, SWEAR (or AFFIRM) THAT:

1. To the best of my knowledge, information and belief, the information completed by me in this Summary of Assets and Liabilities, including Parts 1 to 9 attached, is true and complete.
2. Attached are the following Parts:

ASSETS	VALUE (total from Part)
Part 1 – Land	<u>\$nil</u>
Part 2 – Vehicles	<u>\$45,000.00</u>
Part 3 – Savings	<u>\$3,644.80</u>
Part 4 – RRSPs, RSPs and Pension Plans	<u>\$nil</u>
Part 5 – Securities	<u>\$nil</u>
Part 6 – General Household Items	<u>\$nil</u>
Part 7 – Business Interests	<u>\$nil</u>
Part 8 – Other Property	<u>\$nil</u>
<b>TOTAL ASSETS:</b>	<u><b>\$48,644.80</b></u>
<b>LIABILITIES:</b>	<b>VALUE</b>
Part 9 – Debts and Other Liabilities	<u><b>\$87,158.00</b></u>

OTHER:

Part 10 – Excluded Property \$82,952.53

Part 11 – Assets Already Shared \$240,000.00

SWORN before me at the City of )  
Winnipeg in the Province of Manitoba )  
on the \_\_\_ day of \_\_\_\_, 20xx )

SELMA ANN LEWIS

\_\_\_\_\_  
A Barrister and Solicitor in  
and for the Province of Manitoba

## PART 1 – LAND

*(If columns 1 and 2 are completed by initiating party, column 3 must be completed by the responding party and vice versa.)*

Columns 1 and 2 completed by: SELMA ANN LEWIS, the initiating party.

Column 3 completed by: HAROLD GEORGE LEWIS, the responding party.

*(Include an interest in land owned on the valuation date, including any leasehold interest or mortgage interest. Show estimated fair market value of your interest as at the valuation date. List encumbrances in Part 9 – Debts and Other Liabilities. List land which is jointly owned with the other party in Part 11.)*

1	2	3
<b>Legal description and address of property</b>	<b>Fair market value of your interest as of valuation date and basis for value</b>	<b>State if you agree or disagree with the value, or require verification of the value. If you disagree with the value in column 2 state your value and the basis for your value</b>
		TOTAL: \$

## PART 2 – VEHICLES

*(If columns 1 and 2 are completed by initiating party, column 3 must be completed by the responding party and vice versa.)*

Columns 1 and 2 completed by: SELMA ANN LEWIS, the initiating party.

Column 3 completed by: HAROLD GEORGE LEWIS, the responding party.

*(Show fair market value (not cost of replacement or purchase price) for all motor vehicles, including boats and snowmobiles owned by you or in your possession on the valuation date. Designate the owner, if someone other than yourself under Column 1. Do not deduct encumbrances here, but show encumbrances under Debts and Other Liabilities. Place an asterisk beside vehicles which are owned by you but is in the possession of the other party.)*

1	2	3
Description of vehicles	Fair market value as of valuation date and basis for value	State if you agree or disagree with the value, or require verification of the value. If you disagree with the value in column 2 state your value and the basis for your value
2016 Audi	\$45,000.00: estimated value	Agree
	TOTAL: \$45,000.00	TOTAL: \$45,000.00

### PART 3 – SAVINGS

*(If columns 1 and 2 are completed by initiating party, column 3 must be completed by the responding party and vice versa.)*

Columns 1 and 2 completed by: SELMA ANN LEWIS, the initiating party.

Column 3 completed by: HAROLD GEORGE LEWIS, the responding party.

*(Value assets as at the valuation date by category. Include cash and accounts in financial institutions, deposit receipts and other savings or savings plans but list retirement savings plans and pension on Part 4. Include the cash value of life insurance policies.)*

1	2	3
Description including financial institution and account no.	Fair market value as of valuation date and basis for value	State if you agree or disagree with the value, or require verification of the value. If you disagree with the value in column 2 state your value and the basis for your value
RBC Account #123	\$2,943.62: bank statement	RBC Account #123: Disagree; value on bank statement as of July 1, 2018 is \$128,043.62; further discussions required regarding \$150,000.00 payment made by Respondent to Petitioner on June 18, 2018 to RBC Account #123
RBC Account #4567	\$701.18: bank statement	RBC Account #4567: Disagree; value on bank statement as of July 1, 2018 is \$7,201.18
	TOTAL: \$3,644.80	TOTAL: \$135,244.80

## PART 4 – RRSPS, RSPS AND PENSION PLANS

*(If columns 1 and 2 are completed by initiating party, column 3 must be completed by the responding party and vice versa.)*

Columns 1 and 2 completed by: SELMA ANN LEWIS, the initiating party.

Column 3 completed by: HAROLD GEORGE LEWIS, the responding party.

*(List all registered savings plans, retirement savings plans and pensions.)*

1	2	3
<b>Description including financial institution and account no.</b>	<b>Fair market value as of valuation date and basis for value</b>	<b>State if you agree or disagree with the value, or require verification of the value. If you disagree with the value in column 2 state your value and the basis for your value</b>
	TOTAL: \$	TOTAL: \$



## PART 5 – SECURITIES

*(If columns 1 and 2 are completed by initiating party, column 3 must be completed by the responding party and vice versa.)*

Columns 1 and 2 completed by: SELMA ANN LEWIS, the initiating party.

Column 3 completed by: HAROLD GEORGE LEWIS, the responding party.

*(Show items owned on the valuation date by category. Include shares, bonds, warrants, options, debentures, notes, and any other securities.)*

1	2	3
<b>Description including category and number</b>	<b>Fair market value as of valuation date and basis for value</b>	<b>State if you agree or disagree with the value, or require verification of the value. If you disagree with the value in column 2 state your value and the basis for your value</b>
	TOTAL: \$	TOTAL: \$

## PART 6 – GENERAL HOUSEHOLD ITEMS

*(If columns 1 and 2 are completed by initiating party, column 3 must be completed by the responding party and vice versa.)*

Columns 1 and 2 completed by: SELMA ANN LEWIS, the initiating party.

Column 3 completed by: HAROLD GEORGE LEWIS, the responding party.

*(Show fair market value (not cost of replacement or purchase price) for items owned by you or in your possession on the valuation date. Include all items in your possession or control whether they were in your residence, your cottage property, in storage or elsewhere. Do not deduct encumbrances here, but show encumbrances under Part 9 – Debts and Other Liabilities. Place an asterisk beside any item which is owned by you but is in the possession of the other party.)*

1	2	3
Description	Fair market value as of valuation date and basis for value	State if you agree or disagree with the value, or require verification of the value. If you disagree with the value in column 2 state your value and the basis for your value
		Household goods, furniture and appliances not included in Petitioner's Summary of Assets and Liabilities Value of items Petitioner retained \$2,500.00; estimate
		Tools, sports and hobby equipment not included in Petitioner's Summary of Assets and Liabilities Value of items Petitioner retained \$1,000.00; estimate
	TOTAL: \$	TOTAL: \$3,500.00

## PART 7 – BUSINESS INTERESTS

*(If columns 1 and 2 are completed by initiating party, column 3 must be completed by the responding party and vice versa.)*

Columns 1 and 2 completed by: SELMA ANN LEWIS, the initiating party.

Column 3 completed by: HAROLD GEORGE LEWIS, the responding party.

*(Show the fair market value of any interest you have in any unincorporated or incorporated business as of valuation date.)*

1	2	3
Description of Business Interest	Fair market value as of valuation date and basis for value	State if you agree or disagree with the value, or require verification of the value. If you disagree with the value in column 2 state your value and the basis for your value
	TOTAL: \$	TOTAL: \$

## PART 8 – OTHER PROPERTY

*(If columns 1 and 2 are completed by initiating party, column 3 must be completed by the responding party and vice versa.)*

Columns 1 and 2 completed by: SELMA ANN LEWIS, the initiating party.

Column 3 completed by: HAROLD GEORGE LEWIS, the responding party.

*(Show other property owned on the valuation date by categories. Include property of any kind not shown on the previous forms. Show fair market value as of valuation date. Include any assets in the form of mere rights, whether present, future or contingent. Include all monies owed to you on the valuation date. Do not include receivables which are accounted for under Part 7 – Business Interests.)*

1	2	3
<b>Description</b>	<b>Fair market value as of valuation date and basis for value</b>	<b>State if you agree or disagree with the value, or require verification of the value. If you disagree with the value in column 2 state your value and the basis for your value</b>
	TOTAL: \$	TOTAL: \$

## PART 9 – DEBTS AND OTHER LIABILITIES

*(If columns 1 and 2 are completed by initiating party, column 3 must be completed by the responding party and vice versa.)*

Columns 1 and 2 completed by: SELMA ANN LEWIS, the initiating party.

Column 3 completed by: HAROLD GEORGE LEWIS, the responding party.

*(Show your debts and other liabilities on the valuation date, by category such as mortgages, charges, liens, notes, credit cards, and accounts payable. Include contingent liabilities such as guarantees and indicate that they are contingent. Do not show debts already taken into account in determining fair market value under Part 7 – Business Interests.)*

1	2	3
Description	Fair market value as of valuation date and basis for value	State if you agree or disagree with the value, or require verification of the value. If you disagree with the value in column 2 state your value and the basis for your value
Line of Credit – RBC	\$13,950.00 – Bank Statement	Do not agree, balance paid in full prior to date of Separation as per bank statement
Loan from QRST Ltd.	\$72,424.00 – Financial Statement	Agree
CIBC Visa	\$784.00 – Statement	Require verification of value (no statement provided for date of separation)
	TOTAL: \$87,158.00	TOTAL: \$72,424.00 plus amount owing on CIBC Visa

\* Mortgage on property (jointly held by Respondent, Petitioner, and the parties' son Joey Lewis as of the date of separation) not listed – value owing as of date the house was transferred to the Petitioner and their son Joey Lewis jointly was approximately \$106,371.11.  
RBC Mortgage Statement (Dec. 5, 2018)

## PART 10 – EXCLUDED PROPERTY

*(If columns 1 and 2 are completed by initiating party, column 3 must be completed by the responding party and vice versa.)*

Columns 1 and 2 completed by: SELMA ANN LEWIS, the initiating party.

Column 3 completed by: HAROLD GEORGE LEWIS, the responding party.

*(Show the fair market value by category of property owned on the valuation date which you allege is excluded from the applicability of The Family Property Act. Indicate the specific section of The Family Property Act in column 2.)*

1	2	3
Description	Fair market value as of valuation date and basis for value	State if you agree or disagree with the value, or require verification of the value. If you disagree with the value in column 2 state your value and the basis for your value
LIRA – acquired from a previous marriage, prior to cohabitation	\$82,952.53 – Statement	Require verification of the value (no statements provided)
	TOTAL: \$82,952.53	TOTAL: \$Unknown

## PART 11 – ASSETS ALREADY SHARED

*(If columns 1 and 2 are completed by initiating party, column 3 must be completed by the responding party and vice versa.)*

Columns 1 and 2 completed by: SELMA ANN LEWIS, the initiating party.

Column 3 completed by: HAROLD GEORGE LEWIS, the responding party.

*(Include all jointly owned assets and assets which you allege have already been shared.)*

1	2	3
Description	Fair market value as of valuation date and basis for value	State if you agree or disagree with the value, or require verification of the value. If you disagree with the value in column 2 state your value and the basis for your value
Joint tenants of the property known as 12 Sprout Avenue, Winnipeg, Manitoba	\$240,000.00: based on tax assessment	Agree; Property tax assessment and Transfer of Land to Petitioner and the parties' son jointly in November, 2018 (shortly after the date of separation)
	TOTAL: \$240,000.00	TOTAL: \$240,000.00

## 5. Summary of Assets and Liabilities of the Responding Party

File No. FDXX-XX-XXXXX

**THE KING'S BENCH (FAMILY DIVISION)**  
**Winnipeg Centre**

BETWEEN:

**SELMA ANN LEWIS,**

petitioner,  
(initiating party)

- and -

**HAROLD GEORGE LEWIS,**

respondent,  
(responding party)

---

### SUMMARY OF ASSETS AND LIABILITIES

---

**LAW CO. LLP**

Barristers and Solicitors  
14 White Street  
Winnipeg, MB R5V 6Y7

**MELISSA GREENSMITH**

Solicitors for the Respondent  
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File No. 567



**THE KING'S BENCH (FAMILY DIVISION)**  
**Winnipeg Centre**

BETWEEN:

**SELMA ANN LEWIS,**

petitioner,  
(initiating party)

- and -

**HAROLD GEORGE LEWIS,**

respondent,  
(responding party)

**SUMMARY OF ASSETS AND LIABILITIES**

SUMMARY OF ASSETS AND LIABILITIES OF HAROLD GEORGE LEWIS

I, HAROLD GEORGE LEWIS, of the City of Winnipeg, in the province of Manitoba, the responding party in this reference under *The Family Property Act*, AFFIRM THAT:

1. To the best of my knowledge, information and belief, the information completed by me in this Summary of Assets and Liabilities, including Parts 1 to 11 attached, is true and complete.
2. Attached are the following Parts:

ASSETS:	VALUE (total from Part)
Part 1 — Land	\$1,018,000.00
Part 2 — Vehicles	\$37,000.00
Part 3 — Savings	Nil
Part 4 — R.R.S.P.'s, R.S.P.'s and Pension Plans	Nil
Part 5 — Securities	Nil
Part 6 — General Household Items	\$7,000.00
Part 7 — Business Interests	Nil
Part 8 — Other Property	Nil
 TOTAL ASSETS:	 \$1,062,000.00

LIABILITIES:	VALUE (total from Part)
Part 9 — Debts and Other Liabilities	\$328,323.89
	<hr/>
OTHER:	
Part 10 — Excluded property	To be confirmed
	<hr/>
Part 11 — Assets Already Shared	\$240,000.00
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AFFIRMED BEFORE me at the City of )  
Winnipeg, in the Province of Manitoba, )  
this day of , 20xx. )  
) )  
) )

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**HAROLD GEORGE LEWIS**

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A Notary Public in and for the Province  
of Manitoba

**PART 1 — LAND**

*(If columns 1 and 2 are completed by initiating party, column 3 must be completed by the responding party and vice versa.)*

Columns 1 and 2 completed by: HAROLD GEORGE LEWIS, the responding party.

Column 3 completed by: SELMA ANN LEWIS, the initiating party.

*(Include an interest in land owned on the valuation date, including any leasehold interest or mortgage interest. Show estimated fair market value of your interest as at the valuation date. List encumbrances in Part 9 — Debts and Other Liabilities. List land which is jointly owned with the other party in Part 11.)*

1	2	3
Legal description and address of property	Fair market value of your interest as of valuation date and basis for value	State if you agree or disagree with the value, or require verification of the value. If you disagree with the value in column 2 state your value and the basis for your value.
6 Blossom Boulevard, Winnipeg, Manitoba  (put legal description here)	Value: \$797,000.00 [70D, CFPS] Estimate	
6 Sapling Avenue, Winnipeg, Manitoba  (put legal description here)	Value: \$221,000.00 Transfer of Land to Petitioner on November 27, 2018 shows fair market value (evidence given by Respondent) of \$221,000.00 [Attached hereto at TAB "A"]	
	TOTAL: \$1,018,000.00	TOTAL: \$ _____

**PART 2 — VEHICLES**

*(If columns 1 and 2 are completed by initiating party, column 3 must be completed by the responding party and vice versa.)*

Columns 1 and 2 completed by: HAROLD GEORGE LEWIS, the responding party.

Column 3 completed by: SELMA ANN LEWIS, the initiating party.

*(Show fair market value (not cost of replacement or purchase price) for all motor vehicles, including boats and snowmobiles, owned by you or in your possession on the valuation date. Designate the owner, if someone other than yourself, under Column 1. Do not deduct encumbrances here, but list encumbrances under Debts and Other Liabilities. Place an asterisk beside any vehicles which is owned by you but is in the possession of the other party.)*

1	2	3
Description of vehicles	Fair market value as of valuation date and basis for value	State if you agree or disagree with the value, or require verification of the value. If you disagree with the value in column 2, state your value and the basis for your value.
2018 GMC Canyon	\$37,000.00 email from Bill Smith (Gauthier Cadillac) to H Lewis dated January 8, 2021 <b>[Attached hereto at TAB "B"]</b>	
	TOTAL: \$37,000.00	TOTAL: \$ _____

**PART 3 — SAVINGS**

*(If columns 1 and 2 are completed by initiating party, column 3 must be completed by the responding party and vice versa.)*

Columns 1 and 2 completed by: HAROLD GEORGE LEWIS, the responding party.

Column 3 completed by: SELMA ANN LEWIS, the initiating party.

*(Value assets as at the valuation date by category. Include cash and accounts in financial institutions, deposit receipts and other savings or savings plans but list retirement savings plans and pensions on Part 4. Include the cash value of life insurance policies.)*

1	2	3
Description including financial institution and account no.	Fair market value as of valuation date and basis for value	State if you agree or disagree with the value, or require verification of the value. If you disagree with the value in column 2, state your value and the basis for your value.
	TOTAL: \$Nil	TOTAL: \$_____

**PART 4 — RRSPS, RSPS and PENSION PLANS**

*(If columns 1 and 2 are completed by initiating party, column 3 must be completed by the responding party and vice versa.)*

Columns 1 and 2 completed by: HAROLD GEORGE LEWIS, the responding party.

Column 3 completed by: SELMA ANN LEWIS, the initiating party.

*(List all registered retirement savings plans, retirement savings plans and pensions.)*

1	2	3
Description including financial institution and account no.	Fair market value as of valuation date and basis for value	State if you agree or disagree with the value, or require verification of the value. If you disagree with the value in column 2, state your value and the basis for your value.
	TOTAL: \$Nil	TOTAL: \$_____

**PART 5 — SECURITIES**

*(If columns 1 and 2 are completed by initiating party, column 3 must be completed by the responding party and vice versa.)*

Columns 1 and 2 completed by: HAROLD GEORGE LEWIS, the responding party.

Column 3 completed by: SELMA ANN LEWIS, the initiating party.

*(Show items owned on the valuation date by category. Include shares, bonds, warrants, options, debentures, notes, and any other securities.)*

1	2	3
Description including category and number	Fair market value as of valuation date and basis for value	State if you agree or disagree with the value, or require verification of the value. If you disagree with the value in column 2, state your value and the basis for your value.
	TOTAL: \$Nil	TOTAL: \$ _____

**PART 6 — GENERAL HOUSEHOLD ITEMS**

*(If columns 1 and 2 are completed by initiating party, column 3 must be completed by the responding party and vice versa.)*

Columns 1 and 2 completed by: HAROLD GEORGE LEWIS, the responding party.

Column 3 completed by: SELMA ANN LEWIS, the initiating party.

*(Show fair market value (not cost of replacement or purchase price) for items owned by you or in your possession on the valuation date. Include all items in your possession or control whether they were in your residence, your cottage property, in storage or elsewhere. Do not deduct encumbrances here, but list encumbrances under Part 9 — Debts and Other Liabilities. Place an asterisk beside any item which is owned by you but is in the possession of the other party.)*

1	2	3
Description	Fair market value as of valuation date and basis for value	State if you agree or disagree with the value, or require verification of the value. If you disagree with the value in column 2, state your value and the basis for your value.
Household goods, furniture and appliances Respondent kept	Value: \$5,000.00 Estimate [CFPS, 70D]	
Tools, sports and hobby equipment Respondent kept	Value: \$2,000.00 Estimate [CFPS, 70D]	
	TOTAL: \$7,000.00	TOTAL: \$ _____



**PART 7 — BUSINESS INTERESTS**

*(If columns 1 and 2 are completed by initiating party, column 3 must be completed by the responding party and vice versa.)*

Columns 1 and 2 completed by: HAROLD GEORGE LEWIS, the responding party.

Column 3 completed by: SELMA ANN LEWIS, the initiating party.

*(Show the fair market value of any interest you have in any unincorporated or incorporated business as of the valuation date).*

1	2	3
Description of Business Interest	Fair market value as of valuation date and basis for value	State if you agree or disagree with the value, or require verification of the value. If you disagree with the value in column 2, state your value and the basis for your value.
	TOTAL: \$Nil	TOTAL: \$ _____

**PART 8 — OTHER PROPERTY**

*(If columns 1 and 2 are completed by initiating party, column 3 must be completed by the responding party and vice versa.)*

Columns 1 and 2 completed by: HAROLD GEORGE LEWIS, the responding party.

Column 3 completed by: SELMA ANN LEWIS, the initiating party.

*(Show other property owned on the valuation date by categories. Include property of any kind not shown on the previous forms. Include any assets in the form of mere rights, whether present, future or contingent. Include all monies owed to you on the valuation date. Do not include receivables which are accounted for in Part 7 — Business Interests.)*

1	2	3
Description	Fair market value as of valuation date and basis for value	State if you agree or disagree with the value, or require verification of the value. If you disagree with the value in column 2, state your value and the basis for your value.
	TOTAL: \$Nil	TOTAL: \$ _____

**PART 9 — DEBTS AND OTHER LIABILITIES**

*(If columns 1 and 2 are completed by initiating party, column 3 must be completed by the responding party and vice versa.)*

Columns 1 and 2 completed by: HAROLD GEORGE LEWIS, the responding party.

Column 3 completed by: SELMA ANN LEWIS, the initiating party.

*(Show your debts and other liabilities on the valuation date, by category such as mortgages, charges, liens, notes, credit cards, and accounts payable. Include contingent liabilities such as guarantees and indicate that they are contingent. Do not show liabilities already taken into account in determining fair market value under Part 7 — Business Interests.)*

1	2	3
Description	Fair market value as of valuation date and basis for value	State if you agree or disagree with the value, or require verification of the value. If you disagree with the value in column 2, state your value and the basis for your value.
RBC Mortgage (account no. *897) (Pre-acquired asset excluded from the accounting, increase in value shareable) (See also Part 10)	Value: \$50,714.52 Letter from RBC Wealth Management to Respondent dated April 23, 2021 <b>[Attached hereto at TAB “C”]</b>  Value as of December 30, 2006: \$88,178.35 <b>[Attached hereto at TAB “D”]</b>  Approximate decrease of balance owing during cohabitation: \$37,463.83	
12 Sprout Avenue Mortgage (Asset already shared) (See also Part 11)	Value: \$106,371.11 owing as of December 5, 2018 RBC Mortgage Statement (Dec. 5, 2018) <b>[Attached hereto at TAB “E”]</b>	
6 Sapling Avenue Mortgage	Value: \$182,638.13 RBC Mortgage History Reports for June and July, 2018 <b>[Attached hereto at TAB “F”]</b>	
American Express (*2345)	Value: \$1,850.82 Statement for period ending July 20, 2018 <b>[Attached hereto at TAB “G”]</b>	
	TOTAL: \$328,323.89	TOTAL: \$ _____

## PART 10 — EXCLUDED PROPERTY

(If columns 1, 2 and 3 are completed by initiating party, column 4 must be completed by the responding party and vice versa.)

Columns 1, 2 and 3 completed by: HAROLD GEORGE LEWIS, the responding party.

Column 4 completed by: SELMA ANN LEWIS, the initiating party.

(Show the fair market value by category of property owned on the valuation date which you allege is excluded from the applicability of The Family Property Act. Include the specific section of The Family Property Act in column 2.)

1	2	3	4
Description	Reason for exclusion and applicable section of <i>The Family Property Act</i>	Fair market value as of valuation date and basis for value	State if you agree or disagree with the value, or require verification of the value. If you disagree with the value in column 3, state your value and the basis for your value.
RBC RRSP (*67-5-1)	Asset acquired in exchange for an asset to which the Act does not apply s. 6(5)	Value at date of separation: \$554,817.41 June 29, 2018 statement <b>[Attached hereto at TAB "I"]</b>	
RBC RRSP (*345-2-1) <b>[Attached hereto at TAB "H"]</b>	Pre-acquired asset owned by Respondent alone ss. 4(1)(c) and 4(2.2)(c)	Discounted by 33% = \$371,727.66  Value at date of cohabitation: \$69,394.11 June 30, 2006 statement <b>[Attached hereto at TAB "J"]</b> Discounted by 33% = \$46,494.05  Appreciation in value during cohabitation: \$325,233.61	
RBC CDN PIM Account (*987)	Assets acquired in exchange for an asset to which the Act does not apply s. 6(5)  Pre-acquired asset owned by Respondent alone ss. 4(1)(c) and 4(2.2)(c)	Value at date of separation: \$241,396.80 June 29, 2018 statement <b>[Attached hereto at TAB "K"]</b>	



		Value at date of cohabitation: Unknown <b>[Respondent obtaining statement]</b>	
345 Stern Street, Moncton, New Brunswick	Pre-acquired asset owned by Respondent alone ss. 4(1)(c) and 4(2.2)(c)  Appreciation in the value of the pre-acquired asset that occurred during cohabitation added to the inventory of assets of the Respondent s. 4(3)	Value at date of separation: \$199,500.00 2018 Property Tax Assessment <b>[Attached hereto at TAB "Q"]</b>  Value at date of cohabitation: \$134,500.00 (2006 Property Tax Bill) <b>[Attached hereto at TAB "R"]</b>  Appreciation in value during cohabitation: \$65,500.00	

<p>QRST Ltd.</p>	<p>Pre-acquired asset owned by Respondent alone ss. 4(1)(c) and 4(2.2)(c)</p> <p>Asset acquired in exchange for an asset to which the Act does not apply s. 6(5)</p> <p>QRST Ltd. is the corporation resulting from the 2016 amalgamation of QR Ltd. and ST Ltd. under the <i>Business Corporation Act</i> of Alberta, both wholly owned by the Respondent at the date of cohabitation.</p> <p>Depreciation in the value of the pre-acquired asset that occurred during cohabitation deducted from the inventory of assets of that spouse or the Respondent s. 4(3)</p>	<p>Significant depreciation in value of the asset during the period of cohabitation. The Respondent's position regarding the values of his net corporate assets as of the date of cohabitation and date of separation to be confirmed, and evidence in that regard to be provided</p>	
		<p>TOTAL: \$<u>To be confirmed</u></p>	<p>TOTAL: \$_____</p>

**PART 11 — ASSETS ALREADY SHARED**

*(If columns 1 and 2 are completed by initiating party, column 3 must be completed by the responding party and vice versa.)*

Columns 1 and 2 completed by: HAROLD GEORGE LEWIS, the responding party.

Column 3 completed by: SELMA ANN LEWIS, the initiating party.

*(Include all jointly owned assets and assets which you allege have already been shared.)*

1	2	3
Description	Fair market value as of valuation date and basis for value	State if you agree or disagree with the value, or require verification of the value. If you disagree with the value in column 2, state your value and the basis for your value.
12 Sprout Avenue, Winnipeg, Manitoba (put legal description here)	Asset was jointly held by the parties and the parties' son, Joey Lewis, as of the date of separation  The Respondent subsequently transferred his interest in the property to the Petitioner and their son (as joint tenants), with the transfer of land having been registered on November 8, 2018 Status of Title as of 34-4-56 <b>[Attached hereto at TAB "S"]</b>  Value at the time of the transfer: \$240,000.00 Estimate Transfer of Land <b>[Attached hereto at TAB "T"]</b>	
	TOTAL: \$240,000.00	TOTAL: \$ _____