

SUPREME COURT OF YUKON

Citation: *McGrath v. Chartrand*, 2009 YKSC 02

Date: 20090115
S.C. No. 07-B0057
Registry: Whitehorse

Between:

CHERYL MCGRATH

Plaintiff

And

GILLES CHARTRAND

Defendant

Before: Mr. Justice L.F. Gower

Appearances:

Debbie Hoffman
Peter Morawsky

Counsel for the Plaintiff
Counsel for the Defendant

REASONS FOR JUDGMENT

INTRODUCTION

[1] This trial involves a claim by the plaintiff, Ms. McGrath, for compensation for her financial and other contributions to certain joint property acquired by the parties, as well as to the business of the defendant, Mr. Chartrand.

[2] The couple were involved in a common-law relationship in Watson Lake for about nine and a half years. Ms. McGrath made a number of varied financial contributions to the relationship through a combination of bank loans and credit cards. Some of these were intended to benefit Mr. Chartrand's woodworking business, while others were more generally for miscellaneous expenses arising from the relationship, including the

construction of a house. Ms. McGrath kept records of these various loans and obtained written agreements from Mr. Chartrand to repay them. Mr. Chartrand admits that Ms. McGrath made loans to him to help him establish his business and also to assist the couple in purchasing their joint property on Canyon Boulevard. However, he says that his labour largely balances out the unequal financial contribution made by Ms. McGrath.

ISSUE

[3] The global issue in this trial is whether there should be an unequal division of the parties' communal property, and if so, what that division should be.

[4] More specifically, Ms. McGrath says that she should receive full title to the Canyon Boulevard property in compensation for her contributions to the relationship, but that Mr. Chartrand can retain all of the equipment, tools, inventory and other moveable assets associated with his woodworking business.

[5] Mr. Chartrand argues that allowing such a remedy would essentially give him no credit for his contributions to the relationship through his labour in improving the Canyon Boulevard property and in developing and expanding his woodworking business. He also takes issue with the way that Ms. McGrath has framed her claim, saying that it is essentially the argument of a creditor in respect of a debtor, and that this is inapt in the context of a common-law relationship.

[6] Finally, the parties disagree on the values to be attributed to a number of the various assets acquired during the relationship and the consequential accounting for those assets against the liabilities incurred.

FACTS

[7] At the time of trial, Ms. McGrath was 47 years old and Mr. Chartrand was 53 years of age. During the relationship, Ms. McGrath was principally employed as the manager of the Big Horn Hotel in Watson Lake, Yukon, a business owned by her mother, Phyllis Bergeron. During the same period, Mr. Chartrand was mainly self-employed as a cabinet-maker and furniture builder. He has less than a Grade 10 education and English is his second language.

[8] The parties met in 1993 in Watson Lake. Mr. Chartrand left the Yukon after a fire destroyed a shop he had set up containing hand tools to build furniture and kitchen cabinets. He returned briefly in 1994, and in 1996 he moved permanently to the Yukon from Quebec and began a relationship with Ms. McGrath.

[9] There was a dispute between the parties as to whether Ms. McGrath had loaned Mr. Chartrand \$2,500 in 1994 to assist him with his moving expenses. The dispute was typical of the conflicts in the evidence between the parties. Mr. Chartrand initially denied that Ms. McGrath had sent him the \$2,500, claiming that she only sent \$1,500. However, on cross-examination he was shown a copy of a bank statement produced by Ms. McGrath which suggested that she had in fact forwarded \$2,500. Prior to being shown the statement, Mr. Chartrand denied that Ms. McGrath had assisted with any of his moving expenses from Quebec to the Yukon. Then he said that he did not remember and ultimately he agreed that he had in fact received \$2,500 from her.

[10] In 1996, Ms. McGrath again loaned Mr. Chartrand \$1,485 to assist him with his move back to the Yukon from Quebec. Mr. Chartrand arrived in Watson Lake with all his worldly belongings packed in a small car. For the first couple of years he worked at a

number of small jobs, but was not bringing in much money. He obtained full-time employment with the Town of Watson Lake from 1998 to 2000. Ms. McGrath was already employed as the manager of the Big Horn Hotel at that time and receiving a regular income.

[11] The couple began living together in November 1996. They rented premises at 808 Finlayson Avenue for the duration of the relationship. While Mr. Chartrand was steadily employed with the Town of Watson Lake, he made periodic contributions to household expenses. Mr. Chartrand testified that from the beginning "I always put my money (paycheque) on the table", referring to his contribution to the household expenses. However, Ms. McGrath stated that she was paying 80 to 85% of the household expenses, since, for much of the time, Mr. Chartrand did not have much work and what he did earn he put back into his woodworking business. For reasons which I will get to later, I find Ms. McGrath's evidence on this point and others to be more credible.

[12] Eventually the relationship became peppered with periodic arguments and occasional short separations varying from a day or two to longer periods. There was a lengthy separation of 11 months from August 2005 to July 2006.

[13] In 1999, the couple decided to purchase the Canyon Boulevard property. This was Mr. Chartrand's idea and he convinced Ms. McGrath to buy the land so that he could put a woodworking shop on the property, and later a house for the two of them. When asked by his counsel what was discussed between them at the time, he answered "to build a future, to create my own job". Of course, Mr. Chartrand was referring to his trade as a cabinet-maker. Ms. McGrath confirmed that it was

Mr. Chartrand's idea to purchase the property primarily to use for the construction of a shop for his business, and secondarily to build his "dream house", and that it was his plan, not hers, to live and work on the property. She decided to assist Mr. Chartrand financially with the purchase of the property because of their relationship. She admitted that had she not done so, he may have left her. She stated that there was no need to create a job for her on the property, as she already had employment, but there was such a need for Mr. Chartrand. She assisted him because she loved him and wanted to be with him. She acknowledged that he was a very hard worker and a master carpenter, but was not very successful working with other people. She said, "I wanted a happy, employed man".

[14] The purchase of the property was facilitated by a gift of \$6,500 from Phyllis Bergeron and a loan which Ms. McGrath obtained in her name from the Canadian Imperial Bank of Commerce (CIBC) in the amount \$19,500. Mr. Chartrand was then, and subsequently, unable to obtain bank financing in his own name, as he had not established a credit rating. The total of \$26,000 was used to purchase the Canyon Boulevard property (\$16,950 plus 7% GST) with the balance going towards the purchase of a chainsaw and a sawmill, a truckload of logs which were subsequently milled into lumber, and miscellaneous building and milling supplies. The agreement for sale for the land was with the Government of Yukon and listed both Ms. McGrath and Mr. Chartrand as the joint purchasers. Ms. McGrath's evidence on this point, which I accept, is that she did this in order to help Mr. Chartrand establish a credit rating. She said she put her name on the property because she was the one borrowing money from CIBC to facilitate the purchase. Ms. McGrath referred to this as "Loan #1".

[15] The agreement for sale required the parties to make certain improvements to the land within three years. Mr. Chartrand cleared some standing trees from the centre of the property in order to allow for the construction of a shop. According to Ms. McGrath, whose evidence I again accept, Mr. Chartrand was assisted with that tree clearing by a mutual friend, François Grenier. In addition, Mr. Chartrand received help clearing the land from Ms. McGrath's step-father, Ron Bergeron.

[16] The actual construction of the shop began in approximately March 2001. Once again, the financing for the shop construction was obtained by Ms. McGrath who borrowed an additional \$34,419 from CIBC as a personal loan, which she in turn loaned to Mr. Chartrand's business, then a proprietorship under the name of "Paw Woodworks", and later a corporation called "All Time Yukon Furniture Ltd". That money was used for the purchase of two modular buildings from the Cassiar mine site in British Columbia, the cost of moving the buildings from Cassiar to Watson Lake, and all supplies needed to renovate the buildings into a 50-foot by 40-foot woodworking shop. Ms. McGrath referred to this as "Loan #2".

[17] Mr. Chartrand said that it took a total of about three months to build the shop, including travelling to Cassiar to move the buildings. In direct examination, he tried to suggest that he alone did the majority of the work in constructing the shop, but later conceded that he had help from his daughter and her boyfriend, as well as others who would attend from time to time to help him mill the lumber for the construction. Ms. McGrath's testimony, which I accept, was that she also helped in the construction of the shop on weekends, days off, and occasional evenings, by doing such things as mixing cement, moving beams, helping to jack up the buildings, ordering supplies,

picking up garbage, picking up supplies, providing meals to workers, making payments for supplies, and doing the bookkeeping for Mr. Chartrand's business. None of those contributions were acknowledged by Mr. Chartrand.

[18] In September 2001, Ms. McGrath borrowed an additional \$15,727.22 from CIBC as a personal loan, which she loaned in turn to Paw Woodworks to pay certain business expenses and to finish the last 10% of the shop on the Canyon Boulevard property. She referred to this as "Loan #3".

[19] Also in September 2001, on the advice of her accountant, Ms. McGrath prepared a "Loan Agreement" setting out the details Loans #1, #2 and #3. The conditions of the agreement included that:

1. Ms. McGrath would continue to make the monthly loan payments, until such time as Mr. Chartrand was able to do so.
2. Ms. McGrath would continue to pay all of the household bills for her and Mr. Chartrand, until such time as Mr. Chartrand was able to pay himself a regular wage.
3. Ms. McGrath would continue to perform bookkeeping services for Mr. Chartrand's business at no charge, until such time as Mr. Chartrand was able to pay for those services.
4. Mr. Chartrand agreed to repay Ms. McGrath all monies loaned by her to him, "when feasible to do so".

[20] This agreement was signed by the parties in the presence of a notary public on September 24, 2001. Mr. Chartrand acknowledged signing the agreement immediately below the follow statement:

"I Gilles Chartrand have read this four-page loan agreement between Cheryl McGrath and myself. I fully understand and agree with all statements and conditions listed within this following agreement."

[21] Ms. McGrath testified that she prepared this agreement to ensure that she would get her money back. She also said that Mr. Chartrand was more than willing to sign the agreement and that he understood it. I accept that evidence. Mr. Chartrand prevaricated on this point in his direct examination, but in cross-examination he generally acknowledged that he either read the agreement or had it read to him by Ms. McGrath and that he signed the agreement under the statement acknowledging that he read and understood it.

[22] In 2003, the parties obtained title to the Canyon Boulevard property as joint tenants.

[23] In February 2004, Ms. McGrath obtained a business Aerogold Visa card in her name, which was intended to be used strictly for Mr. Chartrand's business, Paw Woodworks. In fact, two cards were actually obtained, the second being a supplementary card in Mr. Chartrand's name, but both were the ultimate responsibility of Ms. McGrath. On March 5, 2004, Mr. Chartrand signed a "Credit Card Agreement" prepared by Ms. McGrath, again on the advice of her accountant, in which Mr. Chartrand agreed to be responsible for repaying all future debts incurred on either of the cards on this Visa account. Once again, he acknowledged signing immediately below a statement indicating that he had read the agreement, fully understood it, and agreed with all the statements and conditions in the agreement. I am satisfied that he did in fact understand that he was agreeing to be responsible for all debts incurred on these credit cards.

[24] Over the course of the relationship, Ms. McGrath made various other miscellaneous loans to Mr. Chartrand which she meticulously recorded and reproduced in a spreadsheet for trial entitled "Other Loans – Cheryl to Gilles – 1996 to 2007". In that spreadsheet she detailed each of the loans she made and each of the occasions on which Mr. Chartrand made repayments. One of the "loans" listed was the last land payment she made for the Canyon Boulevard property on November 8, 2002, in the amount \$3,267.94. In the event that she receives full title to the Canyon Boulevard property, she acknowledges that this amount should be deducted from the balance owing by Mr. Chartrand for the "Other Loans". That would result in a net amount of \$46,092.54 still outstanding from Mr. Chartrand for those loans.

[25] In 2005, the couple decided to start the construction of a house on the Canyon Boulevard property. Once again, Ms. McGrath facilitated the financing of the construction of the house by arranging to borrow \$20,000 from CIBC. However, in order to qualify for that loan, Ms. McGrath borrowed \$5,000 from her mother, Ms. Bergeron, to pay down her debt load with the bank. Once that was done, she further arranged to have Mr. Chartrand's name added to the loan documents, again to help him establish a credit rating so that he could do his own borrowing in the future. Although Mr. Chartrand made the initial payment on this loan in December 2005, Ms. McGrath has made all others since, and the loan is currently paid up to date. In addition, Ms. McGrath cashed in an RRSP in the amount \$19,446.27, pursuant to a new home construction program approved by Revenue Canada. The program requires repayment of the RRSP in due course, failing which penalties are annually assessed against Ms. McGrath.

[26] The house construction proceeded over the summer months of 2005. When asked about this in direct examination, Mr. Chartrand stated "I did the work", once again downplaying the amount of assistance he received from others, including Ms. McGrath. He stated that it took about three months to construct the house to its present state, which is about 50% complete. However, he admits that he was called away to a camp job for a portion of that time. He estimated that, in total, he worked about one month full time in the construction of the house, at the rate of eight hours per day and mostly seven days per week.

[27] Ms. McGrath testified, and I accept, that her step-brother, Steven Bergeron, laid the foundation for the house, and that her step-father, Ron Bergeron, cleared and hauled away a number of trees on the property to allow for the house construction. Further, I accept that François Grenier was a regular contributor to the construction of the house and that two persons, Adam MacDonald and Fred Filion, were employed to assist with the construction and both were paid out of the funds raised by Ms. McGrath. In addition, Jerry Lamha assisted by milling some lumber for the house construction, in exchange for the use of Mr. Chartrand's sawmill to mill some lumber for his own purposes. The photographs produced by Ms. McGrath also show a number of other individuals attending at the Canyon Boulevard property from time to time, apparently assisting with the construction.

[28] When asked in cross-examination whether Ms. McGrath had helped with the construction of the house, Mr. Chartrand's initial response was "Not at all". This is an example of the kind of categorical and oppositional testimony provided by Mr. Chartrand throughout the trial, which overall rendered his evidence less believable than that of

Ms. McGrath. Specifically, when further pressed on cross-examination, Mr. Chartrand conceded that Ms. McGrath did in fact assist with the house construction in the following ways:

- Painting
- Helping putting up the vapour barrier
- Going on supply runs
- Preparing meals
- Attending at the work site over her lunch hours
- Going to the liquor store to purchase beer for the workers

[29] I further accept Ms. McGrath's evidence that her contribution to the construction of the house included the same sorts of tasks she had done during the construction of the shop, including:

- the ordering, purchasing, and picking up of supplies
- doing extensive clean up on the property
- doing extensive painting of the entire house
- creating plans for the building inspectors
- taking extra time off her employment from the Big Horn Hotel to do work on the house.

[30] When pressed about the extent to which Ms. McGrath contributed to the construction of the house on the Canyon Boulevard property, notwithstanding his earlier testimony that she did not help with the construction "at all", Mr. Chartrand facetiously replied, under oath, "I think she built the whole house herself".

[31] A further reason for rejecting much of Mr. Chartrand's evidence where it conflicts with that of Ms. McGrath on critical points was his description of the nature of the conversations he had with Ms. McGrath about the couple's financial affairs. In direct examination, he said that "all the decisions" concerning finances came from Ms. McGrath and that he "never discussed none of it" with her. He said that he was aware of Ms. McGrath taking out various loans and that he asked her how much they still owed, but "never got a clear answer". He said that Ms. McGrath "never told [him] anything about [their] financial situation".

[32] Yet, in cross-examination, Mr. Chartrand stated that Ms. McGrath was "always" talking to him about money matters, saying "You owe more", etc. He said that he understood what she was talking about on those occasions.

[33] Another example of Mr. Chartrand's categorical testimony was in relation to whether or not he tried to obtain credit for himself during the relationship. In direct examination, he was asked about whether he failed to qualify for any loans in 2001 and responded that he "never tried". When asked about whether the business Visa was obtained by the parties in 2004 because he did not qualify for credit, he responded, "I didn't even try". Those categorical answers are completely contradicted by banking documents produced by Ms. McGrath confirming that Mr. Chartrand applied for and was refused a CIBC credit card in each of 2002 and 2003. Further, he applied for a Wells Fargo business credit card in 2005 and was refused. In 2007, he applied for an MBNA credit card and was also refused.

[34] Similarly, although Mr. Chartrand admitted to having a “sharp temper”, he denied that he was ever responsible for the periodic separations of the parties, but blamed them on Ms. McGrath’s recurring depression.

[35] Further, Mr. Chartrand was asked about the consent order filed by the parties on March 6, 2008, acknowledging a payment by him to Ms. McGrath of \$10,000, which in turn was applied to the CIBC business loan and the business Visa account in Ms. McGrath’s name. Importantly, Mr. Chartrand agreed in this order that he would make the minimum payment on the business Visa every month in the amount of \$500, commencing December 4, 2007, and on the first of each and every month after, until further order of the court or an agreement between the parties. When asked why he was in default of that order for three months immediately prior to the trial, he answered that Ms. McGrath “didn’t ask once” for payments, but that his lawyer had asked him to make the payments. He further acknowledged that he knew that he had to make the \$500 monthly payment on the business Visa and that he knew that he was in breach of the court order by failing to do so.

[36] There also appears to be a lingering hostility by Mr. Chartrand towards Ms. McGrath, which coloured his testimony. According to Ms. McGrath, Mr. Chartrand met her outside the courtroom on the second scheduled day of the trial and called her a “fat cow” and an “ugly bitch”. Mr. Chartrand denied that, but did admit calling her a “liar” and said that “she lied good” in her testimony in this trial. Given the tenor of Mr. Chartrand’s evidence throughout, in contrast of that of Ms. McGrath, I accept Ms. McGrath’s evidence on the point.

[37] My observations relating to Mr. Chartrand's credibility are coupled with the fact that, despite having retained earnings from his business at various times throughout the relationship, there is no evidence that Mr. Chartrand ever made any significant contributions to the couple's household expenses, or made any attempt to pay Ms. McGrath for her bookkeeping services prior to the separation (except for two occasions during the 11-month separation in 2005 – 2006). Indeed, the evidence suggests that, when Mr. Chartrand received cash from woodworking contracts, the money would either go into his pockets or into the purchase of tools, equipment or inventory for the business.

[38] Throughout the relationship, Ms. McGrath provided bookkeeping services for Mr. Chartrand's benefit. She had some familiarity and expertise in that area, having done similar work as part of her duties as the manager of the Big Horn Hotel. She was also sufficiently experienced to be able to teach an accounting course at the Yukon College campus in Watson Lake while the couple were together. Indeed, she was able to produce quite remarkably complete financial records of her dealings with Mr. Chartrand and his business, as well as other loans and loans relating to the construction of the house over the course of the relationship. A number of those documents include spreadsheets prepared by Ms. McGrath detailing the various loans and the repayment of same. Based on all this evidence, I am satisfied that Ms. McGrath provided a significant benefit to Mr. Chartrand through her bookkeeping services over the years. Ms. McGrath estimated that, at a minimum, she likely worked about 20 hours per month during the time they were together. She valued her work at \$25 per hour and

her counsel suggests that she be credited for about nine years of bookkeeping work, worth about \$54,000 in total. I accept that as reasonable.

[39] Ms. McGrath prepared a spreadsheet detailing the business loan payments over the period from 1999 to 2007. I understand this to be in relation to Loans #1, #2 and #3, which Mr. Chartrand agreed to repay under the Loan Agreement dated September 24, 2001. In the spreadsheet, Ms. McGrath set out three columns, indicating the loan payments she personally made (including interest and insurance), the occasions on which Mr. Chartrand repaid her for making those loan payments, and the occasions on which Mr. Chartrand himself made the loan payments. I accept that spreadsheet as an accurate statement of the facts in this area. It shows that Ms. McGrath made a total of \$76,440.57 in loan payments, while Mr. Chartrand made \$39,447.06 in payments. In addition, Mr. Chartrand repaid Ms. McGrath \$5,024.75. Therefore, the balance notionally owing from Mr. Chartrand to Ms. McGrath to fully repay her for the loan payments she made on Loans #1, #2 and #3 is \$71,415.82 (\$76,440.57 - \$5,024.75).

[40] Of that amount, Ms. McGrath takes the position that, receiving full title to the Canyon Boulevard property would negate the portion of the business loan debt owing to her by Mr. Chartrand that is directly attributable to the property. This is significant, because, in my view, it neutralizes the argument of Mr. Chartrand's counsel that Ms. McGrath is trying to obtain, in effect, Mr. Chartrand's one-half undivided interest in the Canyon Boulevard property and all the debt he owes her besides. That is not the case if, upon taking full title to the property, Ms. McGrath reduces the debt owed by Mr. Chartrand by subtracting the loan payments made by her for the acquisition and development of the property.

[41] Specifically, Ms. McGrath submits that the total business loans used for the property can be calculated as follows:

\$16,950.00	Cost of Canyon Boulevard property (Loan #1)
+ \$1,186.50	7% GST on land purchase
+ \$34,419.00	Construction of shop (Loan #2)
+ \$3,400.00	Last 10% of shop (Loan #3)
- <u>\$3,267.94</u>	Final land payment made by Ms. McGrath
= \$52,687.56	Total business loans attributable to property

[42] I accept these figures as reasonable, with one exception. The full amount of Loan #3 was \$15,727.22, and I gathered from the evidence that the majority of that money was used to complete the last 10% of the shop. Ms. McGrath's counsel failed to explain (and I failed to ask) why she used the amount of \$3,400 and not the full \$15,727.22 here. In the absence of an explanation, it would be more fair to Mr. Chartrand to use the full amount of Loan #3. That would increase the total of the business loans attributable to the property to \$65,014.78. Therefore, the remainder of the business loans owing by Mr. Chartrand to Ms. McGrath, if title to the Canyon Boulevard property is transferred to her, would be \$6,401.04 (\$71,415.82 - \$65,014.78).

[43] The only evidence of the value of the Canyon Boulevard property is an appraisal by Holt Agencies in Watson Lake dated December 12, 2005, paid for by Ms. McGrath. She did not appraise the value of Mr. Chartrand's business, because she could not afford to do so. The Holt appraisal assessed the value of the raw land plus the improvements, being the shop and the house. The latter was considered to be 50% complete. The market value of the entire property was assessed at \$160,000.

[44] If Ms. McGrath receives the Canyon Boulevard property, she has acknowledged that she will be responsible for the cost of the electrical wiring installed in both the shop and the house by Joe Thomas, for which she has received relatively recent invoices in the total amount of \$26,145. Mr. Chartrand testified that he previously made an arrangement to pay Mr. Thomas for this wiring "in kind" by building certain office and kitchen furniture for him. He said that the office furniture has already been built. If that is the case, and Ms. McGrath ultimately pays the entire bill, then Mr. Chartrand will presumably be able to sell the office furniture to another customer.

[45] Also relevant to the net value of the Canyon Boulevard property is the RRSP contribution by Ms. McGrath towards the construction of the house in the amount of \$19,446. As I understood Ms. McGrath's evidence, the majority, if not all, of these RRSPs were purchased prior to the commencement of the relationship in 1996. Indeed, Mr. Chartrand's counsel conceded in his closing submissions that there is little or no evidence that Mr. Chartrand contributed to the RRSPs. Accordingly, I conclude that their entire face value should be deducted from the value of the Canyon Boulevard property in order to notionally repay Ms. McGrath that portion of her contribution to the purchase of the property.

[46] In the result, the net value of the Canyon Boulevard property is calculated as follows:

Holt appraisal value	\$160,000.00
Ms. McGrath's RRSPs to be repaid	-\$19,446.00
Joe Thomas (owed for wiring shop and house)	-\$26,145.00
2008 property taxes	-\$2,176.74

CIBC joint loan for house construction	-\$8,595.15 ¹
Loan from Phyllis Bergeron	<u>-\$5,000.00</u>
Net value of the property	\$98,637.11

[47] If this joint property is divided equally, the parties would each be credited with \$49,318.56. In other words, Mr. Chartrand's notional equity in the Canyon Boulevard property is \$49,318.56 at best. That is then to be balanced against what Mr. Chartrand owes Ms. McGrath pursuant to the Loan Agreement dated September 24, 2001 (Loans #1, #2, and #3), the Credit Card Agreement dated March 5, 2004, and for other miscellaneous loans made by Ms. McGrath to Mr. Chartrand over the course of the relationship.

[48] During the couple's 11-month separation in 2005 – 2006, Mr. Chartrand also purchased a second property in Watson Lake for \$20,000, plus \$5,000 interest, referred to here as "Lot 46". He continues to own that property in his own name today.

[49] The couple separated for the last time at the end of April 2007. Since then, Mr. Chartrand has had continuous use and enjoyment of the shop on the Canyon Boulevard property and, in the summer months, has used the partially constructed house as accommodation for himself and other employees. On the other hand, Ms. McGrath has had no use or benefit from the property since the separation.

¹ Mr. Chartrand's counsel submitted that the CIBC house loan was \$14,200 as of the date of separation at the end of April 2007. He explained that he based this on a recalculation of a document provided by Ms. McGrath from CIBC which indicated that the balance on the house loan as October 15, 2008, (the trial was scheduled to commence October 20, 2008) was \$8,595.15, after accounting for a payment made on October 3, 2008. To the extent I understood him, Mr. Chartrand's counsel explained that his recalculation of the CIBC house loan was based on an assumed amortization period with certain interest and principal payments, which he backdated to the date of separation. However, he failed to provide any further explanatory aid as to the precise nature of that recalculation and I am left questioning the accuracy of his figure. Therefore, it seems more appropriate to use the most accurate balance on the loan provided by Ms. McGrath's counsel. In any event, using Mr. Chartrand's figure of \$14,200 would result in a lower net value for the property, which in turn would provide further justification for awarding Ms. McGrath a 100% interest in the property, based on my analysis below (see para. 80).

Mr. Chartrand estimated that if he had to pay rent to use another shop at another location, he would likely pay in the range of \$800 per month for an equivalent space.

[50] Mr. Chartrand admits that he owes Ms. McGrath some money, but simply says that he does not know how much. He said that he “never take care of the money that much” and did not understand the bookkeeping system of Ms. McGrath. He also conceded that he did not know which bills were being paid from what accounts. On the other hand, he conceded that Ms. McGrath is a “master of numbers”.

[51] Ms. McGrath produced a spreadsheet estimating that the value of Mr. Chartrand’s woodworking tools in the shop at any given time was about \$3,841.98.² In her testimony at trial, she said that she believed that she underestimated in that regard, because of Mr. Chartrand’s tendency to purchase new tools with cash without providing her the receipts. Therefore, she revised her estimate to \$10,000. Mr. Chartrand provided some evidence to the contrary, but it was vague and difficult to follow. He also conceded that his small tools were “pretty much all brand new” at the time of separation and he admitted that he bought a lot of tools using cash. The “tools”, as defined by Ms. McGrath, would have cost no more than \$200 per unit. Assuming an average price of about \$150 per unit, and about 50 units, would result in a value of \$7,500. I therefore conclude that the value of tools in the shop at the time of separation would have been approximately \$7,500.

[52] Ms. McGrath produced a further spreadsheet estimating that the value of the equipment in the shop at separation was about \$22,567.77. She defined “equipment” as all larger tools over \$200 per unit. Once again, at trial she increased that estimate to

² In fact, this number was in error, because Ms. McGrath had divided her total value for tools accumulated over the relationship by six years, when she should have used seven years as the quotient. That would have resulted in an average of about \$3,300 in tools on hand at any given time.

\$35,000, based upon her further detailed review of a number of photographs of equipment in the shop, which were also placed in evidence. Mr. Chartrand again provided some contrary evidence, but it was less than persuasive. In cross-examination, he agreed that the information in Ms. McGrath's written estimate was accurate. Indeed, he conceded that his shop is now "fully operational" and that he has "every single tool" he needs to carry on his kitchen and furniture building business. His counsel argued that I should use the "depreciated" value for the equipment, as originally put forward by Ms. McGrath in her spreadsheet. I agree, in principle, that I should use the depreciated valued of the equipment at separation, but I estimate that to have been about \$25,000.

[53] Ms. McGrath produced similar spreadsheets for Mr. Chartrand's business inventory, wood and lumber on hand, and related vehicles. Yet again, at trial she increased her estimate of the inventory from \$19,197.50 to \$25,000, based on a more detailed consideration of the photographs and the fact that the inventory had accumulated over a period of more than six years. She was cross-examined about an earlier spreadsheet she prepared showing inventory at December 31, 2003, which was valued at \$9,810.70. However, she maintained that inventory was not complete. Given Ms. McGrath had some familiarity with the nature of Mr. Chartrand's business stock and its pricing over the years, as a result of her bookkeeping duties, and given the absence of any persuasive evidence to the contrary, I find that Ms. McGrath's estimate of \$25,000 is reasonable.

[54] Ms. McGrath fairly reduced her estimate for the wood and lumber down from that in her spreadsheet, of \$30,000, to \$25,000 to account for the amount of lumber used by Mr. Chartrand by the date of separation, in comparison with the amounts shown in the

photographs. She also took into account a handwritten note of Mr. Chartrand, which she found in the shop after the August 2006 reconciliation, in which he stated that the value of the wood and lumber then on hand was \$40,000. Once again, Mr. Chartrand did not seriously challenge these numbers or provide any persuasive evidence to the contrary. Therefore, I accept Ms. McGrath's estimate of \$25,000 as reasonable.

[55] As for Ms. McGrath's estimate of the value of the business-related vehicles at \$4,008.25, plus a boat valued at \$750, Mr. Chartrand's counsel put forward contrary figures in his written submissions, but I was unable to find support for them in my review of the evidence, other than Mr. Chartrand's testimony that the dust collection trailer (valued by Ms. McGrath at \$1,000) was a gift from a friend. Therefore, I find the value of all these items to be \$3,750.

ANALYSIS

[56] Mr. Chartrand's counsel argued that the total value of the couple's communal property at the time of separation was less than the amount of money that went into it, and that Ms. McGrath must share in any loss in that regard. He submitted that such is the result of the "value survived" approach to assessing the value of communal property referred to in the Supreme Court of Canada case of *Peter v. Beblow*, [1993] 1 S.C.R. 980.

[57] *Peter* authorizes the use of the equitable doctrine of unjust enrichment to remedy the situation where parties living in common-law relationships have no legislative means to claim an interest in communal assets on the basis of their respective contributions to the relationship. The case recognized that the provision of domestic services and other indirect or non-financial contributions to a longer term common-law relationship can give

rise to an unjust enrichment of the other partner. If there is a link between the services rendered and the property at stake, the remedy of constructive trust can be ordered, entitling each party to an interest in the communal property.

[58] In *Peter*, the couple had been in a common-law relationship for 12 years. The wife had performed domestic household work, made a number of improvements to the house and the exterior, and had raised the children of the blended family, all without compensation. The husband had purchased the house and was able to pay off the mortgage and purchase other property. At issue was whether the provision of domestic services by the wife was sufficient to establish the proprietary link required for the remedy of constructive trust to be applied to redress the unjust enrichment of the husband.

[59] Both the majority and the minority agreed that an action for unjust enrichment arises when three elements are established:

1. an enrichment;
2. a corresponding deprivation; and
3. the absence of a juristic reason for the enrichment.

[60] If an unjust enrichment is established, the next question concerns the nature of the remedy. One option is payment for the services rendered in the form of a monetary award. Alternatively, where a monetary award would be insufficient or inappropriate, the equitable remedy of constructive trust is available.

[61] Both the majority and minority in *Peter* agreed that there was an unjust enrichment in that case, and their disagreement centered on the nature of the remedy. In *Peter*, at para. 21, McLachlin J., as she then was, speaking for the majority, stated:

"The other difficult aspect of this case is the question of whether the remedy which the trial judge awarded -- title to the matrimonial home -- is justified on the principles governing the action for unjust enrichment. Two remedies are possible: an award of money on the basis of the value of the services rendered, i.e. *quantum meruit*; and the one the trial judge awarded, title to the house based on a constructive trust."

[62] McLachlin J. then went on to confirm the majority view that there must be a "link" between the services rendered and the property which is claimed to be the subject of the constructive trust. She then continued, at paras. 25, 26 and 27:

[25] ... Where a monetary award is sufficient, there is no need for a constructive trust. Where a monetary award is insufficient in a family situation, this is usually related to the fact the claimant's efforts have given him or her a special link to the property, in which case a constructive trust arises.

[26] For these reasons, I hold the view that in order for a constructive trust to be found, in a family case as in other cases, monetary compensation must be inadequate and there must be a link between the services rendered and the property in which the trust is claimed. Having said this, I echo the comments of Cory J. at p. 1023 that the courts should exercise flexibility and common sense when applying equitable principles to family law issues with due sensitivity to the special circumstances that can arise in such cases.

[27] The next question is the extent of the contribution required to give rise to a constructive trust. A minor or indirect contribution is insufficient. ... As Dickson J. wrote in *Pettkus v. Becker*, supra, at pp. 852-53:

Although equity is said to favour equality, as stated in Rathwell, it is not every contribution which will entitle a spouse to a one-half interest in the property. The extent of the interest must be proportionate to the contribution, direct or indirect, of the claimant. Where the contributions are unequal, the shares will be unequal.

Cory J. advocates a flexible approach to determining whether a constructive trust is appropriate; an approach "based on common sense and a desire to achieve a fair result for both parties" (at p. 1023). While agreeing that

courts should avoid becoming overly technical on matters which may not be susceptible of precise monetary valuation, the principle remains that the extent of the trust must reflect the extent of the contribution.” (my emphasis)

[63] I pause here to note that in this case, the various contributions of Ms. McGrath are susceptible of a relatively precise monetary valuation, based upon her extensive bookkeeping records of the various loans. That may, as her counsel suggests, be a valid reason for distinguishing *Peter* from the case at bar. In other words, the suggestion is that, although one usually cannot make a detailed valuation of the parties' contributions to a common-law relationship, if these contributions can be precisely valued, then a court ought to do so.

[64] This issue of the valuation in turn feeds into the distinction raised in *Peter* as to the manner in which the extent of the constructive trust is determined, and the difference between the “value received” and the “value survived” approaches. The majority in *Peter* differed with the minority in expressing a clear preference for the value survived approach when assessing the value of a constructive trust. At paras. 29, 30 and 31, McLachlin J. said:

“[29] From the point of view of doctrine, “[t]he extent of the interest must be proportionate to the contribution” to the property: *Pettkus v. Becker*, supra, at p. 852. How is the contribution to the property to be determined? One starts, of necessity, by defining the property. One goes on to determine what portion of that property is attributable to the claimant's efforts. This is the “value survived” approach. For a monetary award, the “value received” approach is appropriate; the value conferred on the property is irrelevant. But where the claim is for an interest in the property one must of necessity, it seems to me, determine what portion of the value of the property claimed is attributable to the claimant's services.

[30] I note, as does my colleague, that there may also be practical reasons for favouring a “value survived” approach.

Cory J., alludes to the practical problems with balancing benefits and detriments as required by the "value received" approach, leading some to question whether it is the least attractive approach in most family property cases (see *Davidson v. Worthing* (1986), 6 R.F.L. (3d) 113, McEachern C.J.S.C.; *Hovius and Youdan*, supra, at pp. 136 et seq.). Moreover, a "value survived" approach arguably accords best with the expectations of most parties; it is more likely that a couple expects to share in the wealth generated from their partnership, rather than to receive compensation for the services performed during the relationship.

[31] To summarize, it seems to me that the first step in determining the proper remedy for unjust enrichment is to determine whether a monetary award is insufficient and whether the nexus between the contribution and the property described in *Pettkus v. Becker* has been made out. If these questions are answered in the affirmative the plaintiff is entitled to the proprietary remedy of constructive trust. In looking at whether a monetary award is insufficient the court may take into account the probability of the award's being paid as well as the special interest in the property acquired by the contributions: per La Forest J. in *Lac Minerals*. The value of that trust is to be determined on the basis of the actual value of the matrimonial property -- the "value survived" approach. It reflects the court's best estimate of what is fair having regard to the contribution which the claimant's services have made to the value surviving, bearing in mind the practical difficulty of calculating with mathematical precision the value of particular contributions to the family property." (my emphasis)

[65] At para. 37, McLachlin J. acknowledged that the value received by the husband in *Peter* was considerable and that the maintenance of the family enterprise through the wife's work in cooking, cleaning and landscaping helped preserved the property and "saved the [husband] large sums of money which he was able to use to pay off the mortgage and purchase a house-boat and a van." All those assets, including a lot purchased by the wife with her outside earnings, were ultimately viewed as assets of the "family enterprise", to which the wife had contributed substantially.

[66] It is also noteworthy that in *Peter*, the trial judge calculated the wife's contribution on a *quantum meruit* basis for her housekeeping services for 12 years at \$350 per month, and then reduced that figure by 50% "for the benefits she received", resulting in the final amount of \$25,200. At para. 33, McLachlin J. commented on the trial judge's approach:

"He then reasoned that, since the services rendered amounted to \$25,200 after appropriate deductions, it follows that the appellant should receive title to the respondent's property, valued at \$23,200. The missing step in this analysis is the failure to link the value received with the value surviving. As discussed above, a constructive trust cannot be quantified by simply adding up the services rendered; the court must determine the extent of the contribution which the services have made to the parties' property."

[67] In other words, McLachlin J. was not critical of the trial judge for initially taking a *quantum meruit* approach, but rather for his failure to link the value received with the value surviving. In any event, at the end of the day, McLachlin J. concluded that the evidence was capable of supporting the conclusion that awarding the house to the wife "reflected a fair approximation of the value of [her] efforts as reflected in the family assets".

[68] Cory J. referred to the question of the expectations of the parties at para. 84 of the minority judgment, which was not disagreed with by the majority:

"The test put forward is an objective one. The parties entering a marriage or a common law relationship will rarely have considered the question of compensation for benefits. If asked, they might say that because they loved their partner, each worked to achieve the common goal of creating a home and establishing a good life for themselves. It is just and reasonable that the situation be viewed objectively and that an inference be made that, in the absence of evidence establishing a contrary intention, the parties expected to share in the assets created in a

matrimonial or quasi-matrimonial relationship, should it end.”
[my emphasis]

[69] Despite Mr. Chartrand's reliance on *Peter*, the case at bar may be one of those rare cases where there is evidence establishing a contrary intention, insofar as Ms. McGrath specifically considered the question of compensation for her contributions and expected to be repaid for them. There is no other explanation for her preparation of the Loan Agreement, dated September 24, 2001, and the Credit Card Agreement, dated March 5, 2004. Further, her evidence as to her motivation for assisting Mr. Chartrand with the purchase of the Canyon Boulevard property is consistent with that intention. Primarily, she wanted to give him an opportunity to establish his woodworking business on the property, because she knew how important the business was to him and how he seemed to function better as a self-employed contractor, rather than as an employee working under and with others. She stated that she wanted Mr. Chartrand to remain in the relationship as “an employed, happy man”. The secondary reason for the purchase of the property was Mr. Chartrand's idea of building his “dream house”. That was not a dream which Ms. McGrath shared. Admittedly, as her counsel fairly conceded in her closing submissions, if the relationship had continued in a functional manner, Ms. McGrath may well have forgiven the various debts owed to her by Mr. Chartrand. However, that has not happened and that possibility does not outweigh the relatively strong evidence of Ms. McGrath's intention to be repaid. Indeed, Mr. Chartrand was well aware of that intention by virtue of having agreed to the commitments in the Loan Agreement and the Credit Card Agreement.

[70] Even if *Peter* is not distinguishable from the case at bar for the reasons argued by Ms. McGrath's counsel above, I believe that I can be true to the principles in that case while still granting Ms. McGrath the remedy she seeks.

[71] Ms. McGrath contributed to the relationship:

\$71,415.82	- in "Business Loans" (prior to deducting that portion of the loans attributable to the Canyon Boulevard property)
\$49,360.48	- in "Other Loans" (prior to deducting the final land payment)
\$54,000	- in free bookkeeping services
\$15,200	- in free shop rental (from separation to November 19, 2008)
\$5,296.50	- for the septic system
\$4,358.05	- for shipping charges by Northwest Transport
\$4,200	- in loans from the Big Horn Hotel (which Ms. McGrath is ultimately responsible for)
<u>\$910.36</u>	- for drywall for the house
204,741.21	TOTAL

[72] In addition, as result of Ms. McGrath's financial contributions, Mr. Chartrand was able to put the money he earned from his woodworking business back into the purchase of equipment, tools and inventory for the business. I have valued of the business assets as follows:

\$7,500	Tools
\$25,000	Equipment
\$25,000	Inventory

\$25,000	Wood and lumber
<u>\$3,750</u>	Vehicles (and boat)
\$86,250	TOTAL

[73] Further, I find that Ms. McGrath has been deprived by having made her contributions to the relationship. And, I am unable to conceive of any juristic reason why Mr. Chartrand should continue to benefit from those enrichments, particularly when he has expressly agreed to repay a good number of them and has failed to do so. Thus, Mr. Chartrand has been unjustly enriched.

[74] Having found there was an unjust enrichment, a monetary award here would seem to be inappropriate, taking into account the remote probability of such an award being paid by Mr. Chartrand. On his own admission, he knew he was in breach of the Consent Order of March 6, 2008 for a full three months immediately prior to the commencement of the trial. Technically, he was in contempt of court by his failure to pay. There was no evidence that he was unable to pay due to difficult financial circumstances. Rather, his purported explanation was simply that Ms. McGrath had not “asked” him for any payments and that he only did so when his lawyer advised him to. That total lack of regard for the import of a court order gives me no confidence that Mr. Chartrand would voluntarily pay any monetary award ordered to Ms. McGrath.

[75] Alternatively, there is a direct link between the majority of Ms. McGrath’s financial contributions and the Canyon Boulevard property. Thus, the nexus to give rise to the remedy of constructive trust has also been established.

[76] *Peter* dictates that the value the constructive trust should be determined on the basis of the actual value of the matrimonial property under the value survived approach.

That is to reflect the court's "best estimate" of what is fair, bearing in mind the practical difficulty ordinarily faced when calculating with mathematical precision the particular contribution to the family property. Once again, in this case, that difficulty has been significantly reduced by the extensive records maintained by Ms. McGrath over the years.

[77] Further, I am directed by *Peter* to take a flexible and common sense approach when applying the equitable principles in that case, with due sensitivity to the special circumstances that can arise in a particular case. Here, those circumstances include the fact that Ms. McGrath's contribution can be valued on a relatively precise and mathematical basis.

[78] It is also important to point out here that in addition to asking for full title to the Canyon Boulevard property, the only other monetary order Ms. McGrath seeks against Mr. Chartrand is one that he pay the outstanding balance on the CIBC business Visa, in full, immediately. This is the Visa account referred to in the Consent Order dated March 6, 2008. As I understand it, Ms. McGrath is technically liable for the non-payment of that account, which was the reason for obtaining the Consent Order in the first place. However, as a result of Mr. Chartrand's flagrant breach of that order for three months immediately prior to the commencement of the trial, I take it that Ms. McGrath has no confidence that Mr. Chartrand will pay the balance over time, if the Consent Order is allowed to stand. Beyond those two remedies however, Ms. McGrath agrees to be responsible for the following:

1. the balance of the CIBC joint house loan, which was \$8,595,15 as of October 15, 2008;

2. repaying her RRSP account in the amount of \$19,446;
3. repaying the outstanding loans to the Big Horn Hotel in the amount of \$4,200;
4. repaying Ms. Bergeron the loan of \$5,000 to purchase the Canyon Boulevard property;
5. repaying the balance on the TD Visa account, which was \$2,107.95, as of April 16, 2007; and
6. repaying the balance on the Sears Credit Card, which was \$2,097.96, as of April 19, 2007.

[79] Ms. McGrath further agrees that Mr. Chartrand can retain all of his interest in his woodworking business. It is significant to me that this not only include the assets owned by the business, which I have found to be approximately \$86,250, but also the unvalued goodwill associated with the business. I expect that goodwill value would be considerable, given that Mr. Chartrand has now established himself as a highly skilled and hard working master cabinet-maker and furniture builder, with a fully operational shop. Furthermore, he has been able to establish that position, in large part, because of the financial and other contributions made by Ms. McGrath during the relationship.

[80] Awarding Ms. McGrath full title to the Canyon Boulevard property will give her an asset with a net value of \$98,637.11. That is to be contrasted with what value Mr. Chartrand will be left with in that event. The transfer of full title would eliminate Mr. Chartrand's liability for the net amount of the "other loans" of \$46,092.54 (see para. 24 above). Further, after deducting that portion of the business loans attributable to the property (\$65,014.78) from the total business loans owing by Mr. Chartrand

(-\$71,415.82) a remainder of \$6,401.04 would be left owing. That amount would also be forgiven. Similarly, Ms. McGrath is making no claim for free shop rental since separation (\$15,200 approximate value) and no claim for the free bookkeeping services provided to Mr. Chartrand over a nine-year period (\$54,000 value, approximately). The total value of these benefits to Mr. Chartrand is over \$121,000, and Ms. McGrath has not sought credit here for the value of the household payments she made over the term of the relationship. In addition, Mr. Chartrand would retain all of his business assets valued at \$86,250. Thus, the grand total of the value received would be in the vicinity of \$207,250. Even if I am in error by as much as 50% on these numbers, Mr. Chartrand would still be left with total benefits of a value greater than the net value of the Canyon Boulevard property. And finally, Mr. Chartrand will be left with a likely significant goodwill value as a master furniture builder in Watson Lake.

[81] As for Mr. Chartrand's contributions of skilled labour towards the construction of the shop and the house, I will value those contributions, on a *quantum meruit* basis, as I have done for Ms. McGrath's bookkeeping services. For the house, he estimated that he was employed about one month full-time for eight hours a day, seven days a week. If I value his labour at the same rate as Ms. McGrath, namely at \$25 per hour, that would result in an effective contribution to the relationship of about \$5,600. For the shop, Mr. Chartrand estimated that he was employed for a total of about three months, including the time it took to move the modular buildings from Cassiar to Watson Lake. He was less specific about the number of days each week that he was working on that project. Assuming he worked six days per week at a rate of \$25 per hour, times eight hours per day, times 12 weeks, would result in a total notional value of \$14,400.

Therefore, the total value of Mr. Chartrand's contribution in labour to the relationship for the construction of the shop and the house on a *quantum meruit* basis is somewhere in the vicinity of \$20,000. That is contrasted with the value of Ms. McGrath's bookkeeping services over a period of nine years, which is approximately \$54,000.

[82] The parties have essentially agreed that Mr. Chartrand can retain the other property he owns in Watson Lake, referred to earlier as Lot 46. Accordingly, Mr. Chartrand makes no claim against the 2001 Silverado truck, which Ms. McGrath intends to retain as her property following this judgment. However, the obvious significance of Lot 46 to Mr. Chartrand is that it provides a potential location for him to establish a new shop.

[83] In my view, the total value of the contributions made by Ms. McGrath over the course of the relationship are sufficient to justify granting her a 100% interest in the Canyon Boulevard property by way of the remedy of constructive trust. Simply put, the extent of her interest is proportionate to her contribution to the property. Therefore, title to the property will be transferred to her alone.

CONCLUSION

[84] For the foregoing reasons, I make the following orders:

1. I direct the Registrar of Land Titles to transfer Certificate of Title No. 2003Y0047, currently in the names of Cheryl A. McGrath and Gilles R. Chartrand as joint tenants to Cheryl A. McGrath alone. The transfer of the Canyon Boulevard property to Ms. McGrath is to include any remaining building materials and supplies currently on site and all household

contents, with the exception of a clock belonging to Mr. Chartrand for his daughter and his other personal belongings.

2. Ms. McGrath will retain ownership of the 2001 Chevrolet Silverado truck and Mr. Chartrand will sign all necessary transfer documents for her to obtain registration and insurance in her name alone. Upon receipt of these documents, Ms. McGrath will be solely responsible for repayment of all loans associated with that vehicle.
3. Mr. Chartrand will retain ownership Lot 46, Plan 500229, in Watson Lake, as shown on Certificate of Title No. 2006Y1323.
4. Mr. Chartrand and/or his corporation, All Time Yukon Furniture Ltd. will retain ownership of all moveable assets currently associated with Mr. Chartrand's woodworking business, including inventory, wood and lumber, tools, equipment, and associated vehicles.
5. The Consent Order of March 6, 2008 is varied, such that Mr. Chartrand shall pay the balance of the CIBC Business Visa, held in Ms. McGrath's name, in full, within 30 days of the date of this order.
6. Ms. McGrath will be responsible for repaying the following:
 - a) the balance of the CIBC joint house loan, which was \$8,595.15 as of October 15, 2008;
 - b) her RRSP account in the amount of \$19,446;
 - c) the outstanding loans to the Big Horn Hotel in the amount of \$4,200;

- d) Ms. Bergeron's loan of \$5,000, to purchase the Canyon Boulevard property;
- e) the balance on the TD Visa account, which was \$2,107.95, as of April 16, 2007;
- f) the balance on the Sears Credit Card, which was \$2,097.96, as of April 19, 2007.

7. Ms. McGrath may obtain the assistance of the Royal Canadian Mounted Police, or their delegate, to facilitate the transfer of the Canyon Boulevard property to her and to allow Mr. Chartrand to retrieve his moveable business property and other personal property from that location.
8. Mr. Chartrand is prohibited from removing any of the electrical wiring currently in place in the shop or the house at the Canyon Boulevard property.

[85] Should the parties be unable to agree on the issue of the court costs, either may request a further hearing before me to resolve that issue.

GOWER J.