

# SUPREME COURT OF YUKON

Citation: *Toquero v. Ramirez*, 2011 YKSC 81

Date: 20111102  
S.C. No. 10-D4253  
Registry: Whitehorse

Between:

**BENJAMIN SARMIENTO TOQUERO**

PLAINTIFF

And

**EVANGELINE RAMIREZ**

DEFENDANT

Before: Mr. Justice L.F. Gower

Appearances:

Norah E. Mooney  
Carrie E. Burbidge

Counsel for the Plaintiff  
Counsel for the Defendant

## REASONS FOR JUDGMENT

### INTRODUCTION

[1] This matter began as an action seeking a divorce and the division of certain family and business assets between the parties. Mr. Toquero is the plaintiff and Ms. Ramirez is the defendant. In the course of a number of pre-trial applications, it quickly became apparent that Mr. Toquero married a woman in the Philippines, and had five children from that marriage, prior to his marriage to Ms. Ramirez. The Philippines is the country of origin for both parties. At the trial of this action, counsel agreed that the prior marriage made the purported marriage between the parties void. Accordingly, no divorce can be

granted and the assets of the parties cannot be considered as “family assets” under the *Family Property and Support Act*, R.S.Y. 2002, c. 83.

[2] However, that is not the end of the matter, as there continues to be a significant amount of property jointly owned by the parties, as well as a number of related joint debts. Mr. Toquero seeks a 50% interest in the net value of the assets after payment of the debts, principally on the basis of his joint legal ownership of those assets.

Ms. Ramirez says she should be entitled to retain 100% of both the assets and the debts, on the basis that her contribution to the acquisition of those assets far exceeded that of Mr. Toquero and, to the extent that Mr. Toquero made a contribution towards the acquisition of the assets, he has already been adequately compensated. In the alternative, Ms. Ramirez says that if Mr. Toquero is entitled to a percentage of the net assets based upon his contribution in acquiring them, it should not exceed 25%.

## **ISSUES**

[3] The global issue is whether there should be any division of the joint net assets of the parties, and if so, in what proportions. However, because of the rather extensive and somewhat complicated evidence over the course of this six-day trial, counsel have further suggested a number of sub-issues which have to be particularized and addressed. While the lists of these sub-issues of each counsel differed somewhat, they can generally be reduced to the following:

1. Is the evidence of each of the parties credible?
2. What findings of fact should be made on the conflicting evidence?
3. Was the marriage between the parties void?

4. (a) Should the joint assets of the parties be divided equally, in some other proportions, or not at all?
- (b) Should an adverse inference be drawn against Ms. Ramirez due to her incomplete financial disclosure and her failure to abide by previous court orders?
- (c) Is the remedy of constructive trust applicable to the property issue?
5. Is Mr. Toquero entitled to spousal support?
6. Should there be a global order and, if so, what would that be?

### **UNDISPUTED FACTS**

[4] Mr. Toquero was married in the Philippines in 1966 and had five children from that marriage. His wife is still alive. He moved by himself from the Philippines to Saudi Arabia in approximately 1987 to obtain employment.

[5] In the late 1980s, the parties became pen pals. They met in person in Singapore in approximately 1990 and spent nine days together.

[6] Ms. Ramirez immigrated to Canada and arrived in the Yukon in 1991. Pursuant to a visa, she was permitted to work as a live-in caregiver (nanny) in Whitehorse. She became a landed immigrant in 1993 and started a janitorial services business which she called "B & E Janitorial". As there is no evidence to the contrary, I infer this was a sole proprietorship registered in the name of Ms. Ramirez.

[7] Ms. Ramirez sponsored Mr. Toquero to come to Canada as her fiancé. Pursuant to that sponsorship, Mr. Toquero arrived in the Yukon in September 1994, without any significant assets.

[8] Soon after his arrival, Mr. Toquero began working with Ms. Ramirez in B & E Janitorial (the “business”).

[9] On November 5, 1994, the parties went through a marriage ceremony in the Roman Catholic Church in Whitehorse.

[10] The business prospered, as B & E Janitorial acquired numerous contracts cleaning various commercial establishments. In addition, the parties cleaned several private homes.

[11] In 1995, Ms. Ramirez began working as a school custodian for the Yukon Government, five days a week from 3:00 p.m. -11:00 p.m. She continued her home cleaning contracts before these shifts, as well as working on the commercial janitorial contracts after the shifts. The parties would commonly work together on the contracts.

[12] Mr. Toquero acquired his own Yukon Government school custodian employment in approximately 1996 and worked five days a week from 3:00 p.m. to 11:30 p.m. As with Ms. Ramirez, he continued to clean houses and to work on the commercial contracts before and after these shifts, generally with Ms. Ramirez. In 2000, his employment with the schools was terminated because of a complaint of sexual harassment made against him. Following an investigation and an unsuccessful appeal by Mr. Toquero<sup>1</sup>, he received a net payment of \$9,000, which I infer was some type of severance payment.

[13] Mr. Toquero gave \$4,500 of this severance money to Ms. Ramirez so that she could travel to the Philippines for a medical procedure.

[14] In approximately 2001, Mr. Toquero obtained employment as a motor vehicle technician at Walmart. Sometime in approximately the mid-2000's, for approximately 10

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<sup>1</sup> Apparently also in 2000, according to Ms. Ramirez' second affidavit, exhibit “B”.

months, Mr. Toquero moved to similar employment at Canadian Tire, but then returned to Walmart, where he remains employed to date.

[15] In 1999 the parties' business name was changed to "Ben & Vangie's Janitorial Services".

[16] In 2002, the parties held themselves out as a "partnership" with the Yukon Government, Department of Community Services, Corporate Affairs.

[17] In 2009, the parties sponsored Ms. Ramirez' two daughters, as well as two of her nieces, to come from the Philippines to work as employees of Ben & Vangie's Janitorial Services. These family members arrived in Whitehorse in June 2009 and began that employment. Prior to that point, the only people working for the business were the parties themselves.

[18] In or about June 2010, Ms. Ramirez retired from her employment with the Yukon Government and began receiving a pension.

[19] On or about June 18, 2010, the parties separated.

[20] The parties are joint tenants of two homes. The first was purchased in 1995 and is located at 12 Peel Road, Whitehorse. The second was purchased in 2007 and is located at 68 Keewenaw Drive, Whitehorse.

[21] The parties are also joint owners of the following motor vehicles:

1. 2010 Ford Flex, purchased for \$55,000;
2. 2009 Chevrolet Malibu, which the parties agree is to remain with Ms. Ramirez, providing that Mr. Toquero is no longer jointly responsible for the outstanding loan for that vehicle;

3. 2006 GMC truck, purchased for \$45,000 (registered in the names of the parties operating as Ben & Vangie's Janitorial);
4. 1996 Plymouth Breeze, purchased for \$13,000;
5. 1991 Winnebago motor home, purchased for \$52,000;
6. 2008 Arctic Cat ATV, purchased for \$9,000; and
7. two "junk" vehicles, purchased for \$300 and \$400 respectively.

[22] Mr. Toquero is the registered owner of a 1998 ATV trailer.

[23] The parties also own assets in the Philippines consisting of a vehicle, a house and property, and another piece of real estate, totalling approximately \$70,000 Canadian in value. However, this Court has no jurisdiction over those assets.

[24] At the time of separation, Ben & Vangie's Janitorial Services had the following commercial cleaning contracts, which generated the stated amounts of monthly revenue:

1. North 60 Petro	\$ 2,200.00
2. Northwestel	\$ 1,490.00
3. Yukon Housing Corporation	\$ 2,050.00
4. Yukon Government	\$ 2,741.34
5. Finning	\$ 900.00
6. Scotiabank	\$ 900.00
7. Whitehorse Chamber of Commerce	\$ 850.00
8. United Church	\$ 760.50
9. Northern Glass	\$ 600.00
10. Ajax Limited	\$ 450.00
11. Mobile Maintenance	\$ 450.00

12. Family Practice	\$ 300.00
13. Listers Motors	\$ 150.00
14. Hospice Yukon Society	\$ 75.00
15. Ron Gorrell Building	\$ 600.00
16. TA Firth	\$ 900.00
17. Nlye Ndsaye Daycare 2000)	\$ 900.00 (expired February 2000)
18. Ta'an Kwach'an Council	\$ 1,550.00 (expired June 2011)
19. FASSY	\$ <u>195.00</u> (expired March 2011)
<b>Total</b>	<b>\$ 18,061.84/month</b>

[25] At the time of separation, Ben & Vangie's Janitorial was also bringing in income from private housecleaning, but the amount of this income is not currently known.

[26] At the time of separation, Ben & Vangie's Janitorial also owned a polisher purchased in 1998, a shampooer purchased in 2000, and four vacuum cleaners, one of which was purchased in 1998, and three of which were purchased in 2000. The value of these items was not specified in the evidence.

[27] At the time of separation, Ben & Vangie's Janitorial had the following debts:

Scotia Line Business Visa, number ... 10270	as of June 25, 2010	\$5,069.90
Canada Revenue Agency	as of December 13, 2010	\$1,004.35
Canada Revenue Agency	as of May 12, 2011	\$7,906.84
<b>Total</b>		<b><u>\$13,981.09</u></b>

[28] At the time of separation, the parties had the following credit cards and lines of credit:

CIBC Visa Select, number...

1901, in the name of Ms. Ramirez	as of August 25, 2010	\$29,373.71
CIBC Visa Aerogold, number... 5065, in the name of Ms. Ramirez	as of February 27, 2010	\$30,079.43
CIBC Personal LOC, number... 5631, in the name of Ms. Ramirez	as of July 15, 2010	\$15,101.06
CIBC Visa Select, number... 0405, in the name of Ms. Ramirez	as of December 25, 2010	\$27,296.63
CIBC Visa, number... 9170, and the name of Mr. Toquero	as of September 2006	\$19,925.72
Scotia Bank Visa, number... 0031 jointly held	as of June 25, 2010	\$23,354.61
Scotia Bank Visa, number 0023, jointly held	as of June 25, 2009	\$28,585.85
Scotia Bank Visa, number... 9027, jointly held		balance unknown
<b>Total</b>		<b>\$173,717.01</b>

[29] At the time of separation, Mr. Toquero owed the Canada Revenue Agency \$9,287.41 in taxes for 2009, which amount is still outstanding.

[30] According to her 2009 tax return, Ms. Ramirez owed Canada Revenue Agency \$7,506.47 in taxes. It is unknown whether any portion of that amount remains outstanding.

[31] The parties have not completed their respective tax returns for 2010.

[32] Since the separation, Mr. Toquero has resided in the Peel Road house and has rented out a portion of that house. Ms. Ramirez has been residing in the house at 68 Keewenaw Drive, together with her two daughters, one of whom has five children, as well as one nephew. Ms. Ramirez covers the room and board for all of these residents.



[33] Since the separation, Ms. Ramirez has continued to operate Ben & Vangie's Janitorial Services. On July 22, 2010, Ms. Ramirez started a new business in the name of the "Vangie's Janitorial Services".

[34] Mr. Toquero continues to be employed at Walmart and has had occasional additional employment as a handyman and as a janitor.

## **ANALYSIS**

### **A. CREDIBILITY**

[35] There are credibility problems with the evidence of both parties, but, as will become evident shortly, the credibility problems of Ms. Ramirez far outweigh those of Mr. Toquero.

#### ***Mr. Toquero's Credibility Problems:***

##### **1. Lying about his previous marriage**

[36] Mr. Toquero clearly lied when he signed the Government of Canada Immigration document, issued June 8, 1994 (the "Immigration document"), certifying that his claim that he was single was true and correct. Mr. Toquero also lied when he completed the pre-nuptial inquiry form with the Roman Catholic Church in Whitehorse, where he was asked the question "Have you ever contracted a civil or religious marriage?" Mr. Toquero answered "No". At the time of its signing on November 5, 1994, this form was witnessed by Reverend Beaudette at the Sacred Heart Cathedral in Whitehorse. Mr. Toquero also lied to the Yukon Government when he signed the Registration of Marriage form, by indicating that his marital status was "never married". Finally, Mr. Toquero lied to this Court when he instructed his lawyer to file the statement of claim commencing the within

proceedings on July 23, 2010, which indicated that he was “single” at time of his marriage to Ms. Ramirez.

## **2. The Valentine in 1990**

[37] Mr. Toquero testified in direct examination that he moved from the Philippines to Saudi Arabia in approximately 1987, leaving his wife and five children behind. He said his marriage had not been a happy one and that his wife was very demanding and cruel towards him, and was sometimes physically violent. In particular he said he told his wife that he was separating from her when he left for Saudi Arabia. Although he returned to the Philippines every two years after that time, he said he did not resume cohabitation with his wife. However, in her third affidavit, Ms. Ramirez attached as an exhibit a copy of a Valentine apparently sent from Mr. Toquero to his wife, Carmen Toquero, dated February 14, 1990, pledging his love. The authenticity of this document was not challenged by Mr. Toquero.

## **3. The sexual harassment complaint**

[38] In cross-examination, Mr. Toquero testified that the complainant in the sexual harassment investigation, R.D., had sex with him “one time” at his apartment sometime between 1995 and 1997. He was specifically asked whether they had sex while working together at the Finning building or any other building where Ben & Vangie's Janitorial had cleaning contracts at that time. He denied having sex in any other location besides his apartment. However, in a letter dated February 11, 2001, Mr. Toquero referred to the occasion of having sex with R.D. at his apartment, but also admitted “to having sex with her every time we were at the worksite. She seduced me at the building that we were cleaning.”

#### **4. The debit card**

[39] In his first affidavit, at para. 26, Mr. Toquero swore that he never had a debit card for any of the parties' joint bank accounts and only received one in July 2010. However, on cross-examination, Mr. Toquero admitted that he had a debit card from Scotiabank prior to the separation, although he qualified that he never used it.

#### **The death of Mr. Toquero's family**

[40] Meldy Mola, a friend of Ms. Ramirez' since 1991 and a witness on her behalf, testified that when she met Mr. Toquero she asked him about his family and he said his dad was dead and all his relatives had passed away. However, when this issue was put to Mr. Toquero in cross-examination, he was asked if he had ever told Ms. Ramirez that his family was dead, not Ms. Mola. Mr. Toquero seemed confused by the question and had not answered it by the time Ms. Ramirez' counsel moved on to her next question. Because of this confusion, and the failure to squarely challenge Mr. Toquero about the alleged conversation with Ms. Mola, I am inclined not to give her evidence on the point much weight. Also, while Mr. Toquero's wife and children were clearly alive at the time of the alleged conversation between him and Ms. Mola, there was no evidence about the status of his father or other relatives.

#### ***Ms. Ramirez' Credibility Problems:***

##### **1. The meeting in Singapore in 1990**

[41] Mr. Toquero deposed in his third affidavit that when he went to Singapore to visit Ms. Ramirez he stayed for nine days. He said that Ms. Ramirez told her employer that he was her "husband", but they were not married at that time. Mr. Toquero repeated this

evidence in his direct examination and added that the two of them spent this time together sleeping in the same room in the home of Ms. Ramirez' employer.

[42] Although Mr. Toquero was complicit with this falsehood, the idea came from Ms. Ramirez and this was never denied by her in any of her subsequent affidavits or in her testimony at trial.

## **2. The sponsoring of Mr. Toquero**

[43] Ms. Ramirez initially testified that she had nothing to do with helping Mr. Toquero with his immigration. She also said that she did not fill out any papers in that regard, but on cross-examination changed her testimony to indicate that she only filled out "my own paper". She then changed her testimony again, answering affirmatively to the question "You signed a paper in Canada sponsoring him as fiancé?"

[44] This accords with the evidence given in her second affidavit, where she deposed, at para. 6, that in 1993 "I provided the plaintiff with my papers so that he could come and visit me. The plaintiff was granted a fiancé visa in early 1994."

[45] After conceding at trial that she did indeed sponsor Mr. Toquero as her "fiancé", she said that she did not have any intention to marry him. She acknowledged that there was a condition attached to Mr. Toquero's Immigration document, that he "must marry sponsor within 90 days of landing...". She further acknowledged that the same document made reference to a "10 year undertaking of assistance", and she confirmed that she had signed such an undertaking. Notwithstanding that she was aware of these obligations (the Immigration document was also produced by Ms. Ramirez herself), Ms. Ramirez continued to insist that she changed her mind when Mr. Toquero arrived in Whitehorse and that she did not have any intention to marry him.

[46] The testimony of Joy Allen, who has known Ms. Ramirez since 1991 and describes her as a “very good friend”, was that she was aware the parties “had arranged this marriage” and that if Ms. Ramirez did not agree to marry Mr. Toquero, he would have had to have left Canada.

[47] In this factual context, given that Mr. Toquero arrived in Whitehorse on September 4, 1994 and that the parties were married on November 5, 1994, just two months later, I do not believe Ms. Ramirez when she said under oath that she had no intention of marrying Mr. Toquero.

### **3. Mr. Toquero's passport**

[48] In direct examination, Ms. Ramirez testified that she does not have Mr. Toquero's passport, that he has never showed her his documents since his arrival in Canada and that she has never had possession of his passport. However, in cross-examination, Ms. Ramirez said that she had possession of Mr. Toquero's passport in order to get a security clearance certificate for him for cleaning at the Whitehorse airport. She confirmed that she lied when she previously testified under oath that she never saw his passport. Mr. Toquero has still not regained possession of his passport.

### **4. Inaccuracies and mistakes in Ms. Ramirez' financial statement**

[49] Ms. Ramirez conceded on cross-examination that her financial statement has “a lot of mistakes” in it. This is a document which Ms. Ramirez swore to be “true and complete”.

[50] For example, she stated that the “value” of the 2010 Ford Flex vehicle was \$35,000, but testified in direct examination that she paid \$53,000 for the vehicle.

Although she acknowledged the former amount was a mistake, she also testified that she

did not subsequently try to correct that through her lawyer. Similarly, she said in her financial statement that the 2009 Chevrolet Malibu vehicle was valued at \$15,000, when she testified that she purchased the vehicle for \$26,000. In the same document, Ms. Ramirez valued the property at 12 Peel Road, at \$125,790, but acknowledged in her testimony that given that there was a mortgage of \$240,000 placed on the property in May 2007, it had to be worth at least that amount at that time. Similarly, in her financial statement, Ms. Ramirez valued the home at 68 Keewenaw Drive at \$258,380. Yet, the certificate of title for that property, dated May 17, 2007, shows that the "Consideration" was \$329,000 (which I find was the purchase price for the property). Additionally, the mortgage obtained for that property two days prior was \$307,563.75.

#### **5. The incomplete financial disclosure**

[51] Mr. Toquero made his initial request for financial disclosure from Ms. Ramirez in his statement of claim filed July 23, 2010. In particular, he sought from Ms. Ramirez one or more of the following: (1) an income statement; (2) an expense statement; and (3) a property statement.

[52] In an order made September 8, 2010, this Court required Ms. Ramirez to provide the financial disclosure required by the *Family Property and Support Act* to Mr. Toquero by October 8, 2010. By further order made March 15, 2011, Ms. Ramirez was required to provide a specific list of approximately twenty-six items of particularized financial disclosure.

[53] One item specifically required by the March 15, 2011 order was a pension division statement pertaining to Ms. Ramirez' pension, which she began receiving from the Yukon Government following her retirement in June 2010. In direct examination, Ms. Ramirez

testified that the previous Monday, which I find to be September 26, 2011, she received a statement showing the Yukon Government pension value. When asked by me why she had not disclosed that statement to her lawyer, she responded "I forgot".

[54] Ms. Ramirez further testified that she made several efforts to obtain a statement giving the value of her pension, including phoning telephone numbers provided and attending at the Yukon Government Administration building, but was unable to get the information. Interestingly, in her fifth affidavit sworn August 31, 2011, Ms. Ramirez deposed, at para. 12, that with the assistance of her lawyer and a worker with the Victim Services Unit, she finally contacted a pension authority office which indicated that they would be mailing her pension statement to her to and that it should arrive in approximately 10 days. That contact was made on or about August 26, 2011. By the close of the trial October 17, 2011, the Yukon Government pension valuation had still not been provided by Ms. Ramirez.

[55] However, in cross-examination, Ms. Ramirez was directed to a document that she produced, which is a letter from the Public Works and Government Services Canada to Ms. Ramirez, dated December 6, 2010. (It is undisputed that the Government of Canada administers the Yukon Government pensions.) In the letter, Ms. Ramirez is informed that the final calculations on her public service pension have been completed, and that the amount she is receiving, \$938.54 monthly, is correct. The final sentence of the letter reads "For any additional information, please contact us at one of the numbers enclosed with this letter." The letter is signed by Lisa D. Boudreau, who provided her telephone and fax numbers as well as her e-mail address. When Ms. Ramirez was asked if she ever called this person to obtain her pension valuation, she initially responded "He is not

entitled to my pension.”, and later “I was in and out of hospital. Mr. Toquero is a bigamist and a perjurer.” These are unresponsive and wholly inadequate answers.

[56] Despite a very particularized order for financial disclosure regarding Ben & Vangie’s Janitorial Services, the only document which Ms. Ramirez provided indicating the existence of a bank account for the business was a single page showing an account number ...4710 at Scotiabank, and only for the one month period from December 31, 2008 to January 30, 2009. This bank statement includes a number of significant deposits ranging from a few hundred dollars to almost \$1500, which I find correspond with the monthly income earned by the business from the commercial janitorial contracts. Beyond that, Ms. Ramirez has failed to disclose any other documentation whatsoever to explain where the business’ monthly income of over \$18,000 (almost \$217,000 annually) was deposited.

[57] In an unfortunate, but consistent, concession in cross-examination, Ms. Ramirez testified that she does not have any idea how much Ben & Vangie’s Janitorial Services earned in 2010.

[58] When asked in direct examination about a particular Scotiabank savings account and whether money was deposited into that account, Ms. Ramirez said that she thought she had closed that account long ago, prior to separation, and although she could not remember when, she has “records in my house”. Later in direct examination, Ms. Ramirez was asked about how much was owing on a CIBC line of credit at separation. Although she could not remember the amount owing, again she answered “I have papers in my house”. Once again, when asked in direct examination about some of the assets of



the parties in the Philippines, she said she had a paper relating to those assets at her house.

[59] When Ms. Ramirez was asked in direct examination about the order of March 15, 2011, she gave confusing and contradictory answers. When asked if she has given any financial disclosure, her initial answer was "No", then she said she gave "some information" in the form of bank accounts and business accounts. Then, when asked whether she had provided "all" of her documents, she answered "Yes, except for the pension."

[60] On cross-examination, Ms. Ramirez was asked about why she had not provided records regarding wages paid to employees of the Vangie's Janitorial services. Ms. Ramirez responded "I gave [those] to my first lawyer". When reminded that she had previously testified in direct examination that she provided all financial disclosure except her pension information, Ms. Ramirez responded "No, because he is a bigamist and a perjurer" and that she has records of her employees' salaries and could provide them. She finished this portion of her testimony stating "I have everything".

[61] Lastly in this area, Ms. Ramirez conceded that she had failed to disclose copies of all of the commercial cleaning contracts obtained by Ben & Vangie's Janitorial Services, as ordered.

**6. Whether Ms. Ramirez paid Mr. Toquero in cash**

[62] The tax returns of the parties for 2007, 2008 and 2009 show that they were each 50% partners in their janitorial business. The net business income attributed to Mr. Toquero for each of those years was as follows:

2007	\$13,060;
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2008	\$22,903; and
2009	\$31,231.

[63] Mr. Toquero testified that he didn't actually receive any income from Ben & Vangie's Janitorial Services in either 2009 or 2010. In previous affidavits, Mr. Toquero deposed that even though the business is owned by both parties, Ms. Ramirez "controls all the money" (affidavit #1, para. 17), and that his "only income" is from Walmart (affidavit #2, para. 4). Ms. Ramirez testified in cross-examination that Mr. Toquero was paid for his work for the janitorial business by "some cheques", but mostly cash. No cancelled cheques for such payments were produced by her. Later in her re-examination, Ms. Ramirez testified that for 2009, she paid Mr. Toquero in cash on three or four occasions involving amounts of \$5,000 to \$10,000 each time, but did not keep a record of those payments "because I trusted him". However only moments before Ms. Ramirez testified that every time she paid Mr. Toquero "He [steals] from the drawer, he keeps stealing money." The internal inconsistency here is obvious. Lastly on this point, there is no reference anywhere in any of the five prior affidavits sworn by Ms. Ramirez about such cash payments. Thus, I do not believe her testimony that she paid Mr. Toquero his earnings from the business in cash.

#### **7. Whether Mr. Toquero contributed to joint assets and debts**

[64] Once again, Ms. Ramirez gave confusing and contradictory evidence in this area.

[65] In her second affidavit, at paras. 35 and 39, Ms. Ramirez deposed that Mr. Toquero "never contributed" to the joint debts associated with the parties' two houses, their vehicles or credit cards. (my emphasis) She then went further to state that Mr. Toquero had "not contributed to any of our joint debts". (my emphasis) In her third

affidavit, at para. 14, Ms. Ramirez deposed that Mr. Toquero has “not contributed anything to the family assets...”. (my emphasis)

[66] In cross-examination, Ms. Ramirez was challenged with the suggestion that it was not true when she said that Mr. Toquero had not contributed anything to the business or assets and never paid any expenses. She replied “Yes, it is true.” Later in cross-examination Ms. Ramirez changed her testimony to say that during the relationship Mr. Toquero “did contribute, but not that much.” When asked whether she was now changing her testimony on the point, she replied “No, he did not.” However, Ms. Ramirez was then asked about the parties’ joint savings account at Scotiabank, number... 4221. She conceded that in 2010 there were a number of entries indicating deposits from Mr. Toquero's employment at Walmart, and further that the mortgage payments for both 12 Peel Road and 68 Keewenaw Drive came out of this joint account in 2010.

[67] Ms. Ramirez was then asked about a Scotialine Business Visa account, number ...1027, in the name of Ben & Vangie’s Janitorial. Statements for this account showed a number of payments towards the outstanding balance by Mr. Toquero in 2009 and 2010.

[68] Mr. Toquero also gave uncontradicted evidence in his third affidavit, at para. 10, that his paycheques were used to pay for the purchase of a Toyota Revo in the Philippines over a two year period. This was used as a family vehicle by the parties during visits to their home country.

[69] Finally, there is uncontradicted evidence that Mr. Toquero gave Ms. Ramirez \$4,500 to return to the Philippines for a medical procedure sometime after 2000. Had he not done so, Ms. Ramirez would likely have incurred a significant debt for that trip.

[70] In the result, Ms. Ramirez conceded that Mr. Toquero “did pay the bills sometimes”. However, her earlier absolute denials in this regard significantly detract from her overall credibility.

**9. The extent of Mr. Toquero’s contribution to the business**

[71] I find that Ms. Ramirez’ answers in this area did not reflect the reality of the couple’s working relationship, and were an attempt to minimize the extent of Mr. Toquero’s contributions.

[72] It was undisputed that Mr. Toquero worked for the business from about the time of his arrival in Whitehorse in September 1994 until the parties separated in June 2010 - a period of almost 16 years. Indeed, from 2002 on, the business was held out as a partnership (according to Yukon Government records), and from at least 2007 on, the parties reported to the Canada Revenue Agency that they were 50/50 partners. Yet, when asked about Mr. Toquero’s contributions to the business, Ms. Ramirez would say things like “He didn’t do anything, I did everything for him.” In her second affidavit, Ms. Ramirez deposed at para. 31 that Mr. Toquero “occasionally worked with my janitorial business but did so sporadically as he was working full-time at Walmart” (my emphasis). For example, in direct examination, when asked about the number of times Mr. Toquero cleaned at the Yukon Housing Corporation building, she answered “sometimes five times per week, but not all the time”. When asked about other commercial cleaning contracts, Ms. Ramirez would repeatedly answer that Mr. Toquero cleaned “sometimes”, although she could not remember the number of times per week. Similarly, when asked whether Mr. Toquero also helped clean the private houses they had under contract, she answered “sometimes”.

[73] Ms. Ramirez' answers in this area must be compared with the fact that for the first 15 years the couple operated their janitorial business, they were the only ones working for the business. The value of Mr. Toquero's labour to the business can be also inferred from the fact that, according to the T-4 slips in evidence, the business (referred to as "B & E Janitorial" on the T-4's) paid over \$80,000 in wages to nine employees in 2010. At one point in her cross-examination, Ms. Ramirez said all these wages were paid for work done from April to July 22, 2010. Then later, she agreed that the wages were for the entire year, although not all the employees were kept on throughout the year. I find that the wages were paid to these employees throughout 2010 and, given that Ben & Vangie's Janitorial Services only earned a gross income of \$109,911.40 the previous year, \$80,000 was a significant sum for labour costs. Further, it seems probable that a good portion of these labour costs would have been incurred after the separation, when the business no longer had the benefit of Mr. Toquero's labour. This tends to show that his contribution to the business was considerable.

**10. Ms. Ramirez' anger and vindictiveness over perceived wrongs by Mr. Toquero**

[74] This was another common theme throughout Ms. Ramirez' testimony. For example, in direct examination, when asked about the number of hours per week that she was putting into the janitorial business, she answered "I don't know, I work more than him, he [goes] to his mistress".

[75] Similarly, when asked why she suspended Mr. Toquero's cell phone account, she answered that she did so because "He used it to call his mistress in the Philippines."

Again, when asked why she terminated the insurance on Mr. Toquero's Plymouth Breeze automobile, she said "Because he is using it with women and girls."

[76] Indeed, as the trial progressed, Ms. Ramirez seemed to get more and more agitated in this regard. In cross-examination, when asked whether she discussed the issue of her financial disclosure with her new lawyer, she answered "Because there is no divorce, Mr. Toquero is a bigamist and a perjurer." She repeated this type of answer at least two more times in response to other questions about her incomplete financial disclosure. Finally, as I mentioned earlier, when asked why she did not contact the Government of Canada pension officer who provided Ms. Ramirez with the letter regarding her pension, Ms. Ramirez responded "I didn't receive this. I was in and out of the hospital. Mr. Toquero is a bigamist and a perjurer".

[77] I find these types of answers to be unresponsive and they detract from Ms. Ramirez' credibility.

#### **11. Ms. Ramirez' description of her relationship with Mr. Toquero**

[78] Ms. Ramirez' evidence in this area was also inconsistent and difficult to understand. She began by complaining about the fact that Mr. Toquero had borrowed \$600 from her when they had their meeting in Singapore in 1990 and never paid her back. She also said at one point in her direct examination, when asked to describe her relationship, "All the years, I have never been happy with him". In particular, she complained that in 1995 Mr. Toquero started sexually abusing her. However, later in her direct examination, when asked about the sexual harassment investigation that occurred in approximately 1999-2000, she stated, "I [stayed] with him because I loved him, I thought he's a nice man". Similarly, when asked why she made Mr. Toquero a partner in

their janitorial business in 2002, she answered “Because I pitied him and so he could have more money for his pension...because I love him.”

**12. The housecleaning income**

[79] In re-examination, Ms. Ramirez testified that the money she earned from cleaning houses was reported on her tax returns as “other income”. However, when cross-examined about her 2009 tax return, Ms. Ramirez was unable to explain why the line item “Other employment income” was blank. There is similarly no entry for “Other employment income” on Ms. Ramirez’ 2008 tax return.

**13. Ms. Ramirez’ contribution to the purchase of 12 Peel Road**

[80] In direct examination, Ms. Ramirez testified that when the parties purchased 12 Peel Road in 1995, the down payment was \$38,000 and \$15,000 of that down payment was from Ms. Ramirez’ savings from her earnings over the previous four years. In cross-examination, Ms. Ramirez said the \$15,000 of the \$38,000 down payment was “borrowed” and that the rest came from her savings, which would have meant that her contribution was \$23,000. This contradiction was never clarified. Ms. Ramirez also confirmed in cross-examination that the only money that she was earning for the first three and a half years she lived in Whitehorse, following her arrival in 1991, was from her employment as a nanny, which was only \$1,200 per month. At that rate, it would seem improbable that Ms. Ramirez could have saved \$23,000 over the four year period prior to the purchase of 12 Peel Road.

**14. Ms. Ramirez’ knowledge of Mr. Toquero’s previous marriage**

[81] It became readily apparent early on in this action that the main reason why Ms. Ramirez feels that Mr. Toquero is not entitled to any share of couples’ joint assets is

because, from her perspective, Mr. Toquero committed a fraud and misrepresentation by assuring her that he was single when they first met.

[82] On balance, keeping in mind the numerous problems I have already discussed with Ms. Ramirez' credibility, I find as a fact that it is more likely than not that Mr. Toquero did disclose his previous marriage and children to Ms. Ramirez at the outset as he testified.

[83] My additional reasons for this finding are as follows:

1. Although, by the time of trial, Mr. Toquero's admitted bigamy was clearly the major issue in the mind of Ms. Ramirez, and the major justification for her intention to deny him any share of their joint property, it is remarkable to me that Ms. Ramirez made absolutely no mention of this alleged misrepresentation in her first affidavit in this action sworn October 13, 2010. That is so notwithstanding the fact that, by her own evidence (affidavit number three, para. 6), Ms. Ramirez knew of the previous marriage on September 26, 2010.
2. Although Mr. Toquero clearly lied to this Court when he commenced the action by stating that he was single, and did not provide his explanation until after Ms. Ramirez raised the issue in her second affidavit, I find that his evidence on this point in direct examination was consistent. He claimed it was Ms. Ramirez' idea that he should say he is single when immigrating to Canada. After that point, he apparently continued the lie with the Catholic Church and his marriage in order to protect Ms. Ramirez. In particular, when cross-examined about this point, Mr. Toquero said "Yes, I told the church I



was single because that's what Ms. Ramirez told me to say. That's why I cover her". And later, Mr. Toquero said "Ms. Ramirez said she would sponsor me as a fiancé", and that this was "the only way" and "you say all single". Mr. Toquero then continued "So I cover her." I interpret his references to 'covering' Ms. Ramirez as Mr. Toquero going along with the lie, while at the same time protecting both he and Ms. Ramirez from being exposed for that lie.

3. Mr. Toquero has been consistent in his depiction of what happened when he and Ms. Ramirez first became pen-pals. He testified that when he disclosed to her that he was married and had children, but was separated, Ms. Ramirez wrote back saying "We are the same" or "I'm the same as you. I am separated and have children too."
4. Meldy Mola, whom I referred to above, is a friend of Ms. Ramirez who remembered Mr. Toquero coming to Whitehorse to marry Ms. Ramirez. She testified that Mr. Ramirez said to her "He told me he is single" referring of course to Mr. Toquero. I find that to be an unusual piece of evidence. First of all, it contradicts Ms. Ramirez' testimony about having no intention to marry Mr. Toquero. Further, it is an unusual thing for Ms. Ramirez to have attributed to Mr. Toquero, since normally when people agree to marry there is a mutual unspoken assumption that both are single. The evidence that Ms. Ramirez had specifically said to her friend at the time that "He told me he is single" seems more consistent with Mr. Toquero's position that the idea came from Ms. Ramirez.

5. In any event, Ms. Mola said that, after Ms. Ramirez informed her Mr. Toquero was single, Ms. Mola told Ms. Ramirez not to marry him if she was not sure that he is single. She even went so far as to say that she told Ms. Ramirez “I doubt that he is single”. In other words, if Ms. Ramirez is to be believed - that she was totally ignorant of Mr. Toquero’s previous marriage when Mr. Toquero arrived in Whitehorse - she was clearly alerted to the possibility that he might be lying, and yet made no effort whatsoever to investigate or confirm Mr. Toquero's marital status. Here, I agree with Mr. Toquero's counsel that it is more credible that the reason Ms. Ramirez made no such inquiries was because she already knew that Mr. Toquero was not single.

**B. *ADDITIONAL FINDINGS OF FACT***

[84] Based on my assessment of the relative credibility of the parties, I find the following facts have been proven on a balance of probabilities:

1. When the parties became pen pals in the late 1980s, Ms. Ramirez asked Mr. Toquero to tell her about himself. In response, Mr. Toquero wrote to Ms. Ramirez explaining that he was married and had children, but was separated. Ms. Ramirez wrote back to Mr. Toquero saying that she was “the same” because she also had children and was separated from the father of those children.
2. The relationship between the parties became more intimate during their meeting in Singapore in 1990 when they shared the same room in the house of Ms. Ramirez’ employer. At that time Ms. Ramirez told her employer that Mr. Toquero was her “husband”. It was probably at that time

that the two discussed Ms. Ramirez' pending immigration to Canada in 1991 and her plan to sponsor Mr. Toquero after she became a landed immigrant.

3. About the time that Ms. Ramirez became a landed immigrant in 1993, she communicated with Mr. Toquero and suggested that the easiest way for her to sponsor him would be if he said he was her fiancé, in which case the two would have to marry within 90 days of Mr. Toquero's arrival. Accordingly, Ms. Ramirez instructed Mr. Toquero, if ever asked about his marital status, to say that he was single. Accordingly, Mr. Toquero identified himself as such on the Immigration document dated June 8, 1994.
4. The parties continued this ruse through their marriage in Whitehorse on November 5, 1994.
5. By the time Mr. Toquero arrived in Whitehorse, Ms. Ramirez had already begun the janitorial business, which she named "B & E Janitorial Services". I find that she did so in anticipation of the arrival of Mr. Toquero, as his first name is Benjamin and her first name is Evangeline, and that this was part of her plan that the two of them would effectively be equal partners in the business from that point on. I do not believe Ms. Ramirez when she says that she named the business as such to honour her firstborn grandson who is also named Benjamin.
6. The parties worked side-by-side with their private housecleaning contracts during the day and at the commercial buildings during the evenings. As time progressed, they acquired more and more commercial contracts.

7. Ms. Ramirez took on the role of the “directing mind” of the business, assuming chief responsibility for obtaining contracts, doing the bookkeeping for the business, doing the majority of the purchasing, obtaining the necessary permits and registrations, and doing the banking. In this regard, I agree with Ms. Ramirez’ description of herself as the “driving force” of the business. I also find that the reason that Ms. Ramirez had the time to perform all these additional managerial and administrative tasks was because Mr. Toquero diligently attended at all the locations where the parties had cleaning responsibilities and did the janitorial work required.
8. Indeed, after Ms. Ramirez obtained her employment with the Yukon Government in 1995, working a shift from 3 p.m. to 11 p.m., Mr. Toquero would work by himself at the various commercial locations until Ms. Ramirez arrived to help him finish up after her shift was over. That would have continued until Mr. Toquero himself obtained employment with the Yukon Government, lasting from about 1996 to 2000. During that period of time, both he and Ms. Ramirez would have been performing their responsibilities as school custodians from about 3 p.m. to 11 or 11:30 p.m., and then would have gone on to clean the various commercial establishments that the business had contracts with. Thus, as Mr. Toquero testified, the parties would often be working into the early hours of the morning during the weekdays. In addition, Mr. Toquero was helping clean houses both during the weekday mornings as well as on weekends.

9. In the early years of their relationship, Ms. Ramirez got involved in a restaurant business with one Helen Savoy. In order to capitalize that business, she and Mr. Toquero jointly borrowed \$80,000 from Dana Naye Ventures. The business made money for the first two or three months and then went downhill. The loan was eventually repaid from the couple's business income.
10. The parties' marriage was occasionally fraught with conflict. In 1996 or 1997, Mr. Toquero had the intimate affair with R.D., which began during a period of separation between parties. There was at least one other period of separation and, at both times, Mr. Toquero temporarily moved out of the family home.
11. In 1999, the name of the business was changed by Ms. Ramirez to Ben & Vangie's Janitorial Services.
12. After Mr. Toquero's employment with the Yukon Government was terminated in or about 2000, he worked exclusively for the couples' janitorial business until he obtained employment at Walmart about a year later.
13. While Mr. Toquero was employed at Walmart, and for the brief period at Canadian Tire, he continued to work for the couple's janitorial business after hours and on weekends. I find that his pay cheques from those companies were automatically deposited into one or more of the joint bank accounts maintained by the parties and that from such accounts the parties' business and personal expenses were paid (from time to time), including

the mortgage payments on each of the two houses at 12 Peel Road and 68 Keewenaw Drive.

14. Mr. Toquero and Ms. Ramirez contributed to the couple's business and household income on a roughly equal basis.
15. In 2009, the parties sponsored four family members from the Philippines to come to Canada to work for the business, which was then known as Ben & Vangie's Janitorial Services. In 2010, the parties sponsored another five employees under the business nominee program of the Yukon Government.
16. Although Mr. Toquero's tax returns for 2007, 2008, and 2009 show that he earned various amounts of "net business income", most significantly \$31,231 in 2009, he did not actually receive that income. Rather, I find that Ms. Ramirez decided to treat herself and Mr. Toquero as 50/50 partners sometime during or before 2007 for the purpose of income splitting, so as to minimize their respective tax liabilities. I specifically reject Ms. Ramirez' testimony that she paid Mr. Toquero his income from the business in cash and/or cheques. Rather, I find that, for the sixteen year period in which Mr. Toquero worked for the janitorial business, including during his salaried employment with the Yukon Government, Canadian Tire and Walmart, he did not actually receive or enjoy the benefits of the business income. I find that he had periodic allowances given to him by Ms. Ramirez of approximately \$20-\$40 once every two weeks and that he also had access

to and use of a joint Visa credit card, on which he was able to make purchases from time to time.

17. Ms. Ramirez obtained Mr. Toquero's passport in order to arrange for a security clearance check for Mr. Toquero in connection with the janitorial work that the business was about to do at the Whitehorse airport. I find that Ms. Ramirez has failed to return Mr. Toquero's passport to him.
18. Mr. Toquero was hoping to become a Canadian citizen on July 1, 2010, but was unable to complete the necessary paperwork without his immigration papers and his passport. On June 17<sup>th</sup>, he asked Ms. Ramirez about those documents and an argument ensued. On June 18, 2010, Mr. Toquero was looking for these documents in the couple's home at 68 Keweenaw. A further argument ensued between him and Ms. Ramirez. Ms. Ramirez was subsequently admitted to the Whitehorse General Hospital. Shortly thereafter, Mr. Toquero was informed that he was no longer welcome to reside in the couple's home at 68 Keweenaw. Thus, since the couples' separation, Mr. Toquero has resided at 12 Peel Road.
19. Since the separation, Mr. Toquero has repeatedly asked Ms. Ramirez for the opportunity to take over a few of the commercial janitorial contracts which the business has, in order to supplement his relatively modest income at Walmart. Ms. Ramirez has consistently refused all such requests.
20. On September 8, 2010, this court ordered that Ms. Ramirez "shall be restrained from disposing of any...business assets until a property settlement has been reached or there is an order from the court" allowing

her to do so. That order was amended on March 15, 2011, to read that Ms. Ramirez “shall be restrained from mortgaging, hypothecating or otherwise encumbering, selling, transferring or disposing of any...business assets until a property settlement has been reached or there is an order from the court...” allowing her to do so. Notwithstanding the order of September 2010, Ms. Ramirez started a new business on July 22, 2010, under the name of Vangie's Janitorial Services. She has since continued to use the equipment of Ben & Vangie's Janitorial Services in operating her new business. More importantly, Ms. Ramirez has either transferred or simply taken over a number of the commercial contracts, which were assets of Ben & Vangie's Janitorial Services, to her new business without Mr. Toquero's knowledge or consent. Accordingly, Ms. Ramirez continues to receive income from those transferred contracts. Her actions in this regard constitute a breach of both of the court orders.

21. At sometime during the 2010 taxation year, Ms. Ramirez deducted certain remittances from the wages of the business' employees, for Canada Pension Plan contributions and EI premiums. However, she failed to forward those remittances to the Canada Revenue Agency. Accordingly, as of May 12, 2011, Ms. Ramirez incurred a debt in the name of the couple's business in the amount of \$7,906.84.
22. Also, on July 22, 2010, Ms. Ramirez purported to unilaterally dissolve the business partnership between her and Mr. Toquero, which had existed since February 12, 2002, by filing a form with the Department of Community



Services, Corporate Affairs, Government of Yukon. She did so without the knowledge or consent of Mr. Toquero.

23. Ms. Ramirez was employed by the Yukon Government from February 1995 until June 26, 2010, just a few days after the separation. Therefore, effectively all of her pension benefits were earned during her relationship with Mr. Toquero.

24. All of the motor vehicles are jointly registered in the names of both parties. I find that this was done by Ms. Ramirez because she was aware that the vehicles were paid for from income earned by both parties in their wage employment and through the janitorial business. Therefore, I find that all the vehicles are jointly owned by the parties.

**C. VALIDITY OF THE MARRIAGE?**

[85] Given that Mr. Toquero and Ms. Ramirez went through a ceremony of marriage on November 5, 1994, when both knew that Mr. Toquero was previously married, the marriage is void *ab initio*. To the extent that it is required to assist parties in arranging their future affairs, there will be a declaration to that effect: see *G.C.H. v. H.E.H.*, 2008 BCSC 1127, at paras. 2 and 21.

**D. (a) SHOULD THE JOINT PROPERTY BE DIVIDED?**

[86] As a result of my finding that the marriage between the parties was void, the *Family Property and Support Act* has no application, with the possible exception of s. 37 on the issue of “spousal” support, which I will come to below.

[87] It is conceded by Ms. Ramirez’ counsel that, notwithstanding that the marriage between the parties was void, the parties should nevertheless be treated as having lived

in a common-law relationship for 16 years for the purposes of property division. I agree with this concession: see also *Wepruk (Guardian ad litem of) v. McMillan (Estate)* (1993) 77 B.C.L.R. (2d) 273 (CA).

[88] The two family homes were held as joint tenancies by the parties and the mortgages were paid for with proceeds from the business which the parties jointly owned and worked in, as well as from the proceeds of the parties' respective wage employment with the Yukon Government, as well as Mr. Toquero's employment with Canadian Tire and Walmart. The mortgages on homes were similarly in both parties' names, such that each party is jointly liable for the debts.

[89] Ben & Vangie's Janitorial Services is also owned by the parties on a 50/50 basis.

[90] All the motor vehicles are jointly registered and co-owned by the parties, with the exception of one ATV trailer which is solely registered in Mr. Toquero's name.

[91] It is trite law that joint tenancy and joint ownership of property by two or more co-owners is premised on each of the owners having an identical or equal interest in that property. Thus, the property should be divided equally, unless one party applies for an unequal division, in which case that party bears the onus of persuading the court why the division should not be equal: see *Rolston v. Rolston*, 2009 BCSC 1367, at para. 27.

Accordingly, it is Ms. Ramirez who has the onus of persuading me why it would be unfair to award Mr. Toquero 50% of the net value of the parties' jointly owned assets. Putting it another way, it is up to Ms. Ramirez to persuade me that it would be fair and just to allow her to continue to retain 100% of the couple's jointly owned assets, as well as 100% of the debts, as she submits. That result would effectively deprive Mr. Toquero of any share in the net equity of the couple's assets. In the alternative, Ms. Ramirez must persuade

me that would be fair and just to allow her to retain 75% of the couple's joint assets and debts.

***(b) ADVERSE INFERENCE AGAINST MS. RAMIREZ?***

[92] In determining whether Ms. Ramirez has met her onus, I can draw an adverse inference against her from her failure to provide complete financial disclosure, as well as from her breaches of two previous orders of this Court. This has caused significant prejudice to Mr. Toquero by negatively affecting his ability to prepare his case. Most importantly, there is little or no evidence about what the couple's business earned in 2010. Consequently, there is no evidence of what Mr. Toquero's 50% share of the net revenue of the business might be for 2010. Because of the absence of this information, Mr. Toquero finds himself in the regrettable position of having to simply forfeit whatever he might be justly entitled to as his share of the business income for that year, and seek a more global order that the net value of the assets of the parties be divided equally. In addition, Mr. Toquero has been prejudiced by having to pay his counsel to come to court on a number of occasions to compel Ms. Ramirez to make proper financial disclosure.

[93] Ms. Ramirez' counsel responds by saying that any prejudice suffered by Mr. Toquero in regard to counsel fees was remedied by the two orders for costs in his favour totalling \$2,250. As those costs remain unpaid by Ms. Ramirez, I fail to understand counsel's submission in that regard. In any event, the orders for \$2,250 in costs do not compensate Mr. Toquero for the prejudice he suffers in being rendered practically incapable of going after his share of the business' net income in 2010.

[94] Accordingly, Ms. Ramirez has failed to satisfy me on a balance of probabilities that an equal division of parties' net assets would be unfair.

**(c) IS CONSTRUCTIVE TRUST APPLICABLE?**

[95] There is no need to consider the remedy of constructive trust in determining that the parties jointly owned assets should be divided equally, because these assets are legally in the names of both parties and the presumption that each holds equal interests prevails. However, Ms. Ramirez' Yukon Government pension is presumably in her name alone. Therefore, it must be dealt with differently than the parties' jointly owned assets.

[96] Because the parties were unmarried for the 16 years they lived and worked together, during which period the entire pension was earned, I must consider the potential applicability of the doctrine of unjust enrichment and the equitable remedy of constructive trust.

[97] The law of unjust enrichment permits a plaintiff to recover when three elements can be established:

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

If an unjust enrichment is established, then 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: see *Peter v. Beblow*, [1993] 1 S.C.R. 980.

[98] In the case at bar, if Ms. Ramirez is allowed to retain 100% of her Yukon Government pension, notwithstanding Mr. Toquero's roughly equal contribution to the couple's business and household income, then Ms. Ramirez will enjoy an enrichment at

Mr. Toquero's expense. Conversely, Mr. Toquero would be deprived by not having received his fair share of the couple's jointly acquired wealth during the course of their 16 year common-law relationship. As noted in *Kerr v. Baranow*, 2011 SCC 10, at para. 60, one basis for a claim of unjust enrichment is identified as follows:

“...It consists of cases in which the contributions of both parties over time have resulted in an accumulation of wealth. The unjust enrichment occurs following the breakdown of their relationship when one party retains a disproportionate share of the assets which are the product of their joint efforts...[W]here there is a relationship that can be described as ‘joint family venture’, and the joint efforts of the parties are linked to the accumulation of wealth, the unjust enrichment should be thought of as leaving one party with a disproportionate share of the jointly earned assets.”

Thus, I am satisfied that there has been enrichment to Ms. Ramirez and a deprivation to Mr. Toquero.

[99] The final question is whether there is a juristic reason for the enrichment. Ms. Ramirez' counsel has not argued that there is any legal rule or principle in play which would justify her client retaining 100% of the Yukon Government pension. In the absence of such an operative legal principle, the next step in this analysis is to consider the reasonable expectations of the parties. Here, as was noted by Cory J. in *Peter v. Beblow*, cited above, at para. 84 of the minority judgment, which was not disagreed with by the majority, the parties entering into a common-law relationship will rarely have considered the question of compensation for benefits:

“...If asked, they might say that because they love their partner, each worked to achieve the common goal of creating home in 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)

In the case at bar, there is no evidence to the contrary.

[100] In my view, allowing Ms. Ramirez to retain 100% of the Yukon Government pension, on these facts, would constitute an unjust retention of a disproportionate share of assets accumulated during the course of a “joint family venture”, to which both partners have contributed. In finding that the couple worked together as part of such a joint family venture, I have taken into account factors such as their mutual and roughly equal effort, the economic integration between the parties’ janitorial business and their personal family expenses, their teamwork in performing their janitorial services and the length of their relationship: see *Kerr v. Baranow*, cited above.

[101] In the result, I am satisfied that there should be an equal sharing of Ms. Ramirez’ Yukon Government pension benefits between the parties. Although it is open for me to consider a lump sum payment of under the *Pension Benefits Division Act*, S.C. 1992, c. 46, Sch. II, section 8(4), that is not possible in this case because Ms. Ramirez has failed to provide evidence on the total value of her pension. However, counsel for Mr. Toquero advises me that if I make a general order that the pension benefits be divided, that will be sufficient for the federal authorities administering the pension to take the necessary steps to have the funds transferred to Mr. Toquero in due course.

[102] Accordingly, I order that one half of the pension benefits available to Ms. Ramirez from her employment with the Yukon Government be paid to Mr. Toquero. Since Ms. Ramirez has apparently been receiving monthly pension benefits since retiring from Yukon Government in June 2010, and has retained 100% of those benefits, there will

also have to be an accounting to ensure that Mr. Toquero receives his 50% share of those benefits already paid.

**E. “SPOUSAL” SUPPORT**

[103] As this was effectively a common law relationship, the only way that Mr. Toquero would be entitled to “spousal” support would be if s. 37 of the *Family Property and Support Act* applies. That section states:

“37 Either of a man and a woman who, not being married to each other and not having gone through a form of marriage with each other, have cohabited in a relationship of some permanence, may, during cohabitation or not later than three months after the cohabitation has ceased, apply to a court for an order for support, and if the court is satisfied that an order for support is justified having regard to the need of the applicant for and the ability of the respondent to provide support, the court may determine and order support in accordance with this Act in the same manner and subject to the same considerations as apply in the case of an application under section 34.” (my emphasis)

[104] This section was not addressed when I made orders for the payment of spousal support on September 8, 2010 and March 15, 2011. I am advised that Ms. Ramirez made a payment of \$1,000 following the order of September 8, 2010, and another payment of \$1,000 following the order of March 15, 2011, but has failed to pay any further spousal support.

[105] Counsel for Ms. Ramirez submitted that the parties went through a form of marriage when they purported to marry in the Roman Catholic Church on November 5, 1994. Accordingly, she argues that since s. 37 explicitly excludes couples who have gone through “a form of marriage with each other”, Mr. Toquero is not entitled to spousal support under that provision.

[106] This seems a curious argument, given that the apparent intent of s. 37 is to allow persons who have lived together in relationships of some permanence to apply for support from the other partner, providing the other preconditions in the *Act* are taken into consideration. In other words, s. 37 seems designed for persons in common law relationships who were not legally married, but nevertheless have a justifiable claim for support from the other. I interpret the language “and not having gone through a form of marriage with each other” in s. 37 to refer to situations where parties may not be legally married according to Yukon law, but nevertheless had a reasonable expectation that they were legally married, as result of having gone through “a form of marriage with each other” in good faith, perhaps in another jurisdiction, which would be voidable under Yukon law, as opposed to being void *ab initio*. See also the definition of “spouse” in s. 1 of the *Act*.

[107] In the case at bar, given my finding that both parties were aware of Mr. Toquero’s previous marriage when they were married in the Catholic Church in 1994, neither could have reasonably expected that their marriage would be valid. Rather, it was a sham in order to satisfy the requirements of Ms. Ramirez’ sponsorship of Mr. Toquero’s immigration to Canada. Putting it another way, neither could have reasonably expected the marriage ceremony to constitute a truly binding “form of marriage”, as they did not go through the ceremony in good faith. Given this, there was no genuine “form of marriage” under s. 37 on these facts.

[108] Consequently, as Mr. Toquero made his application for support within three months of the date of separation, by filing his statement of claim, he is *prima facie* entitled to pursue support from Ms. Ramirez.



[109] Here, Ms. Ramirez' counsel argued, in the alternative, that Mr. Toquero should nevertheless be disentitled to such "spousal" support based on the factors set out in s. 34(4)(b),(c),(h), and (j) of the *Family Property and Support Act*. I will deal with each of those in turn.

[110] Section 34(4)(b) states:

"In determining the amount, if any, of support for a spouse or parent in relation to need, the courts shall consider all the circumstances of the parties, including...

(b) the capacity of the dependant to provide for their own support."

[111] It must be noted that Mr. Toquero does not seek ongoing spousal support following the division of the net joint assets. Implicit in that position is that, once he receives the benefit of his 50% share of those assets, he will have the capacity to provide for his own support. However, his application is targeted to that period between the date of separation and the date of receiving his equal share of the joint assets. The reason for this is that he has been limited to his income from Walmart and the rental income from 12 Peel Road, as well as small amounts from a few odd jobs, since the date of separation. He has repeatedly stated in his affidavits and at trial that this is inadequate income for him to make ends meet. For example, the furnace in 12 Peel Road requires replacement, but Mr. Toquero has been unable to afford to do so. Further, the spousal support which I ordered on March 15, 2011, with the exception of a single initial payment of \$1,000, has not been paid by Ms. Ramirez. Accordingly, Mr. Toquero has been particularly reliant upon the rental income from 12 Peel Road in the amount of \$1,200 per month. Finally, Mr. Toquero has asked Ms. Ramirez numerous times for an opportunity to take over two

or more of the commercial janitorial contracts in order that he may supplement his modest income from Walmart. As I said earlier, these requests have been consistently refused by Ms. Ramirez, without any explanation.

[112] In all the circumstances, I am satisfied that Mr. Toquero did not have the capacity to provide for his own support following the date of separation, in the sense of being unable to maintain the same standard of living which he enjoyed during the relationship.

[113] Section 34(4)(c) requires me to consider “the capacity of the respondent to provide support”. I have already referred to the total value of the commercial contracts providing income to the business at the time of separation exceeding \$18,000 a month, or almost \$217,000 annually. While I appreciate that those are gross amounts before expenses, I also take into account that Ms. Ramirez is currently enjoying the benefit of operating a relatively new 2010 Ford Flex vehicle, which was purchased for \$55,000. In addition, she is apparently able to afford to have her two daughters, one of whom has five children, as well as one nephew, reside with her at 68 Keweenaw without charging for room and board. In her sworn financial statement, Ms. Ramirez stated that her monthly food bill for the household is \$3,000.

[114] In all the circumstances, I am satisfied that Ms. Ramirez has the capacity to provide support to Mr. Toquero.

[115] Section 34(4)(h) requires me to consider “the legal obligation of the respondent to provide support for any other person”. There is simply no evidence of this, other than a vague reference by Ms. Ramirez to the fact that room and board was to be provided to those employees residing in her home pursuant to their contracts of employment.

However, those contracts were not produced by Ms. Ramirez and given the significant

problems which I have already referred to regarding her credibility, I am unable to accept that evidence at face value. I note parenthetically here that the adult daughter with five children is now a permanent resident. Accordingly, there would seem to be no reason why she could not obtain other employment in addition to or outside of the janitorial business and reside elsewhere. Rather, it seems that Ms. Ramirez has chosen to allow these employees to reside in her home, rather than having any form of “legal obligation” in that regard.

[116] Section 34(4)(j) requires me to consider “the conduct of the dependant and respondent”. Here, counsel for Ms. Ramirez invites me to consider her client’s evidence that she was abused and mistreated by Mr. Toquero over the course of their 16 year relationship. However, as I did not find Ms. Ramirez to be a credible witness, I am not satisfied that she has proven those allegations on a balance of probabilities. Indeed, the evidence of Mr. Toquero is directly opposite. Not only did he deny any physical violence towards Ms. Ramirez, he testified and deposed in an earlier affidavit that Ms. Ramirez was physically abusive towards him. Consequently, I give no weight to this factor.

[117] In the result, I find that Mr. Toquero is justly entitled to receive support from Ms. Ramirez pursuant to s.37 of the *Family Property and Support Act*, from the date it was ordered on March 15, 2011, until the division of property is complete. As I understand it, Ms. Ramirez is in arrears for that support for the months of April through and including October 2011, for a total amount of \$7,000. Therefore, I order that any arrears outstanding at the time of the completion of the division of property shall be paid out of Ms. Ramirez’ 50% share of the net value of the joint property.

**F. SHOULD THERE BE A GLOBAL ORDER?**

[118] Counsel for Ms. Ramirez argues against a global order. She submitted that, should I find that there should be a division of the joint property, such that the status quo would no longer continue, then no more than 25% of the joint assets and debts, as of the date of separation, should be awarded to Mr. Toquero. No particular rationale was put forward to justify that suggested percentage. Presumably, it reflects the maximum extent to which Ms. Ramirez feels Mr. Toquero contributed to the business and to the payment of joint household debts. However, I tend to agree with Mr. Toquero's counsel that the suggested percentage seems largely to come out of the air. In any event, I have determined above that Ms. Ramirez has failed to meet her onus in persuading me that an equal division of the parties' net assets would be unfair.

[119] The other submission from Ms. Ramirez' counsel is that, even though this Court does not have income and expense information for the business for 2010, "that doesn't mean we can't get them." She also suggested that Mr. Toquero could get assessments on the values of the two houses, as well as getting pay-out statements for the mortgages and that, subject to a time limit of 60 to 90 days for the provision of this additional information, some type of a determination on the division of the joint property could be made in the future. Ms. Ramirez' counsel seemed to suggest that this would be an alternative to an order requiring the sale of all of the assets, and that in the event the parties are unable to agree on the values and amounts to be attributed to each on the property division, they could return to court for further directions.

[120] With respect, all of these suggestions seem to be inappropriate in the circumstances. First of all, given Ms. Ramirez' history in failing to provide timely financial

disclosure, I am not at all optimistic that further information would be provided within a 60 to 90 day time frame. In any event, that information should have been provided prior to trial. It seems to me that it puts the cart before the horse to suggest that the information be obtained after the trial.

[121] For the following reasons, I also reject the suggestion that it should be up to Mr. Toquero to obtain valuations for the houses and pay out statements for the mortgages. Mr. Toquero has been completely shut out of the business since the date of separation, whereas Ms. Ramirez presumably continues to enjoy the benefits of the substantial income from the commercial cleaning contracts, which at one time approached \$217,000 gross annually. She has also enjoyed following additional benefits:

- a. Continuing to reside at the newer and more expensive of the two family homes;
- b. Continuing to operate the newest and most expensive of the family's vehicles, as well as having access to and the use of all of the family's vehicles, with the exception of the 1996 Plymouth, which Mr. Toquero drives; and
- c. She has been receiving a monthly pension of \$938.54.

Admittedly, Ms. Ramirez has also been carrying the burden of the vast majority of couple's joint debts. However, that is a circumstance of her own making. Early on in these proceedings, Mr. Toquero asked for an opportunity to take over a modest number of the commercial cleaning contracts in order to supplement his income from Walmart. My understanding, based on the submissions of counsel, is that he was also willing to

take over a proportionate amount of the joint family debt as a *quid pro quo*. However, all of these overtures were flatly refused by Ms. Ramirez.

[122] It is true that Mr. Toquero has been receiving the monthly rent from the tenants at 12 Peel Road in the approximate amount of \$1,200 per month. However, that seems a rather modest amount relative to the benefits being enjoyed by Ms. Ramirez. Mr. Toquero also testified that 12 Peel Road requires some fairly major improvements, such as a new furnace, which he does not have sufficient funds to replace. I infer that one of the reasons Mr. Toquero finds himself in this position is because of the financial toll which this litigation has taken upon him, and which in turn has been more protracted and expensive because of Ms. Ramirez' delays and breaches of court orders.

[123] In these circumstances, it seems inappropriate for Ms. Ramirez' counsel to suggest that, although her client has been found at fault in that regard, it should be up to Mr. Toquero to incur the additional costs of providing the information which Ms. Ramirez should have provided.

[124] A further alternative proposal by Ms. Ramirez' counsel was to sell some of the assets, but not all of them. Here, she suggested that Ms. Ramirez requires at least two vehicles, one for the janitorial business and one for her personal use. Similarly, she suggested that Mr. Toquero could retain one of the vehicles for his personal use. She then submitted that 12 Peel Road could be sold, but that Ms. Ramirez should be allowed to retain 68 Keewenaw Drive since, if that property is ordered to be sold, it will drive her and her family to find alternative accommodation. The implicit suggestion in these submissions is that there is sufficient equity in 12 Peel Road and the vehicles which can

be sold to adequately compensate Mr. Toquero for his share of the net joint assets of the parties. The problem with this submission is that we simply do not know:

- a. The market values of the two houses;
- b. The amounts of the outstanding mortgages;
- c. The amounts of the outstanding debts on the vehicles which have been financed; or
- d. The total amounts of any of the other joint debts for such things as Visa accounts and lines of credit.

Without that information in hand, it is impossible to determine what amount Mr. Toquero should be paid in order to compensate him for his equal share of the parties net joint assets.

[125] All things considered, it seems the only way to achieve a practical and fair result for the parties is to proceed, as Mr. Toquero's counsel suggests, with a global order that virtually all of the couple's joint property be sold, that the joint debts be paid from those proceeds, and that the remaining equity be divided equally between the parties, with some accounting for the debts solely attributable to Ms. Ramirez. While I appreciate that this is a rather drastic remedy, once again, it has been necessitated largely because of Ms. Ramirez' own actions and her intractable position coming into this trial. Of course, if the order which I am about to make seems too unwieldy and difficult for the parties to implement, they can always attempt to negotiate an alternative settlement. However, in the meantime, Mr. Toquero is entitled to a remedy to reflect the findings and determinations I have made above.

## CONCLUSION

[126] The terms of the global order will be generally as follows, but may be amended by the written agreement of counsel to more adequately suit the circumstances and the respective needs of the parties:

- (1) The couples' jointly held homes at 12 Peel Road and 68 Keweenaw Drive will be put up for sale immediately, or as soon as reasonably practicable.
- (2) Mr. Toquero will retain the 1996 Plymouth Breeze automobile, in his name alone, and Ms. Ramirez shall execute all necessary documents to transfer the joint ownership of the vehicle to Mr. Toquero.
- (3) Ms. Ramirez will retain in her name alone the 2006 Chevrolet Sierra truck, and Mr. Toquero shall execute all necessary documents to transfer the joint ownership of that vehicle to Ms. Ramirez.
- (4) The 2009 Chevrolet Malibu vehicle shall be retained in Ms. Ramirez' name alone, upon her providing proof satisfactory to Mr. Toquero that he is not jointly liable for any outstanding loan associated with that vehicle.
- (5) All the remaining vehicles shall be put up for sale immediately, or as soon as reasonably practicable, including the ATV trailer.
- (6) Through his counsel, Mr. Toquero will have conduct of the sale of all of the parties' joint property.
- (7) The proceeds of sale from the houses and the vehicles shall be held in trust by the law firm of Mr. Toquero's counsel for the purpose of paying the parties' joint debts. If the parties are unable to agree on the total amount of the joint debts, or on any particular debts payable, either may return to this



Court for further directions on two days notice. (Note: Each party shall be responsible for their own income tax payable for 2009.)

(8) The net amount remaining after the payment of the couple's joint debts will be divided equally between the parties, subject to the following. From Ms. Ramirez' 50% share of the net sale proceeds, the following debts shall be paid:

- a. The amount owing to the Canada Revenue Agency for unpaid remittances, which as of May 12, 2011 was a sum of \$7,906.84, subject to any interim payments or additional interest charged;
- b. Total arrears of "spousal" support owing to Mr. Toquero, as of the time the net sale proceeds are divided; and
- c. The total of any outstanding court costs payable to Mr. Toquero, as of the time the net sale proceeds are divided.

(9) One-half of the pension benefits available to Ms. Ramirez from her employment with the Yukon Government shall be paid to Mr. Toquero, subject to an accounting to ensure that Mr. Toquero receives 50% of the benefits already paid to Ms. Ramirez since June 2010.

(10) Ms. Ramirez shall forthwith return to Mr. Toquero the following:

- a. Mr. Toquero's musical instruments, which she admitted to having in her possession, specifically:
  1. piano
  2. bass guitar

3. violin
4. banjo
5. mandolin
6. bandoria

b. Mr. Toquero's tools and toolboxes, which he testified are in the garage at 68 Keweenaw Drive.

### **COSTS**

[127] I did not hear submissions from parties on costs, so I am reluctant to make any order in that regard. If costs cannot be agreed upon, either party may return before me for a determination on the point.

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Gower J.