

IN THE SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: Gao v. Chen, 2005 NSSC 131

Date: 20050527

Docket: SFH MCA 017649

Registry: Halifax

Between:

Limin Gao

Applicant

v.

Qiyu Chen

Respondent

Judge: The Honourable Justice Beryl MacDonald

Heard: April 25, 2005 and May 3, 2005, in Halifax, Nova Scotia

Written Decision: May 27, 2005

Counsel: Shauna Hoyte, for the Limin Gao
Qiyu Chen, self represented

By the Court:

[1] This is a proceeding commenced by the wife seeking a division of matrimonial property pursuant to the *Matrimonial Property Act*, S.N.S., 1980 c. 9.

BACKGROUND

[2] The husband and the wife were first married in 1983 when both resided in and were citizens of the Peoples Republic of China. Their son was born in China on September 19, 1985. They were divorced in China in 1990.

[3] The husband immigrated to Canada in 1993 to attend University on a scholarship. At some point he returned to China and he and the wife remarried in China in 1997. In 1999 the husband sponsored the wife and their son as immigrants to Canada. He was required, as part of the immigration application, to accept financial responsibility for the wife and their son for a period of ten years.

[4] When the wife and her son immigrated to Canada, the husband was residing in Halifax, Nova Scotia and this became their residence as well.

[5] The wife had obtained a degree in mechanical engineering in China. When living in China she was employed with the Chinese government and taught engineering at a university. Because she was an employee of the Chinese government she was permitted to reside in a government apartment for which a security deposit was required. This security deposit was returned to her upon her immigration to Canada and the money she received was used to purchase her transportation to Canada. The husband disputed the wife's evidence on this point suggesting that she owned the apartment in which she resided and that she had sold this apartment prior to immigrating to Canada. He suggested that the wife had kept the money for herself, and that it remained invested in China. He suggested that some or all of this money had been transferred to a family member for investment in a business owned by that relative. The wife denied these suggestions and I accept her evidence on this point. I also accept the wife's evidence that she has no pension benefit in China to which she is entitled. The wife lost all right to any pension benefits when she quit her job at the university and immigrated to Canada.

[6] I accept the wife's evidence that she has no money, stocks, bonds, investments, or property of any kind in China.

[7] When the wife came to Canada she had in her possession \$9,950.00 Canadian dollars \$5,000.00 of which had previously been sent to her by the husband. The wife also had in her possession 3000 Chinese Yuan worth approximately \$500.00 Canadian dollars.

[8] I accept the wife's evidence that she gave the Canadian dollars and Chinese Yuan to the husband when she arrived in Canada.

[9] The wife was not able to work in Canada either in the field of mechanical engineering or as an instructor at a university. She required English language instruction. She enrolled in an English instruction program but her progress was complicated by her need to earn an income. The wife did work for a period of time at minimum wage in a restaurant but eventually decided to make application for Canada student loans and Nova Scotia student loans in order to return to university. Her first term began in September, 2001.

[10] The wife received a Canada Student loan in the amount of \$5,600.00 in approximately September 2001 and she received the same amount from the same source in the years 2002, 2003 and 2004.

[11] The wife received a Nova Scotia Student loan in the amount of \$5,100.00 in approximately November 2001 and she received the same amount from the same source in the years 2002, 2003 and 2004.

[12] The wife used the money she received from her student loans to pay her university tuition fees, to purchase required books and other instructional material and to pay rent and other cost of living expenses for she and the parties son.

[13] There was a period of time in 2003 when the wife applied for and received social assistance because she had no money from which to support herself and her son. The wife also has borrowed money from friends to financially support herself and her son.

[14] The husband is a computer software programmer. His notices of assessment filed in these proceedings show the following gross annual incomes:

	1999	\$ 48,435.00
2000	\$110,584.00	
2001	\$ 82,332.00	
2002	\$ 40,057.00	
2003	\$ 32,838.00	

[15] The husband's 2003 gross annual income figure included \$25,000.00 representing the partial liquidation of a Scotiabank RRSP.

[16] The relationship between the husband and the wife was not a happy one after the wife and their son immigrated to Canada. The wife testified that the husband did not provide adequate financial support for she and their son. The husband denied this treatment and pointed to the fact that the wife had access to their Scotiabank joint account. The wife stated that she knew she was not to use this joint account. When she did, on February 18, 2002, to transfer \$7000.00 to pay her university tuition, rent and food costs, this resulted in domestic violence between them when the husband discovered she had withdrawn this money. The wife testified that the husband often would not allow her to sleep when he was in the home. He did not permit her to share food purchased for the family. He did not actively participate in the raising of their son. I accept the wife's evidence in respect to the nature of her relationship with the husband. She was not to spend any money earned by the husband without his consent.

[17] On February 24, 2002, shortly after the episode of domestic violence had occurred between them, the couple separated.

[18] Although they were separated, the husband asked the wife to permit him to claim her tuition credit in the amount of \$2,247.00 on his 2001 income tax return. The wife agreed provided the husband pay her the sum of \$ 2,300.00. On April 29, 2002 the husband wrote a cheque to the wife for that amount. Because this cheque was written on the parties joint account, the wife knew there was not enough money in this account for her to cash it in April. The wife was never able to cash this cheque because the husband closed this account on May 6, 2002. The husband testified that he closed this account because he discovered the wife had, on April

23, 2003 withdrawn \$1,500.00 from this account instead of the \$1,000.00 he had agreed she could withdraw. He does acknowledge that he owes her \$2,300.00.

[19] By application dated July 5, 2002 the wife sought custody, child support and spousal support. An interim order was granted in respect to this application dated April 25, 2003 requiring the husband to pay the wife the sum of \$300.00 per month for the maintenance and support of their son. The first support payment was to be made May 1, 2003. Issues relating to ongoing child support and spousal support were adjourned to be heard September 29, 2003.

[20] By application dated June 13, 2003 the wife sought injunctive relief to prevent the husband from transferring or using assets located at Scotiabank and the Bank of America. Prior to the application the husband had used money from these assets to purchase 50 shares in New Concept Management Ltd. on March 6, 2003 and 50 shares in Phoenix Garden Food Limited in May, 2003. New Concept Management Ltd. was incorporated March 5, 2003 and Phoenix Garden Food Limited on May 14, 2003. On July 31, 2003 the husband was ordered not to transfer, dispose of or alter what remained of the assets at Scotiabank and the Bank of America.

[21] When the husband purchased the shares in New Concept Management Limited he became the president of this company. His female friend Ping Chen is the majority shareholder and she was the secretary of the company. The husband is no longer the president of this company. Ping Chen is now the president. This company owns an apartment building but the husband testified he receives no benefits or dividends from this company.

[22] When the husband purchased shares in Phoenix Gardens Food Limited he became the secretary of the company a position that he continues to occupy. This company operates a restaurant in which the husband is employed at a salary of \$1000.00 per month. Ping Chen is the president of this company and the majority shareholder. Other than his employment by this company, the husband testified he has received no benefit or dividend from this company.

[23] By order dated December 2, 2003, the husband was determined to have a gross annual income of \$40,057.00 He was ordered to pay \$334.00 per month for the table guideline support of his son. He was to pay an additional sum of \$87.50

per month in respect to his sons' dental and eye care expenses. He was further ordered to pay the sum of \$750.00 per month for spousal support to the wife. Each of these payments was to begin December 1, 2003. There are arrears in respect to these payments. The husband admitted that he used matrimonial assets to make some of these support payments.

[24] By application dated March 3, 2004 the wife requested a division of matrimonial property pursuant to the provisions of the *Matrimonial Property Act*. It is in response to this application that this hearing was held.

[25] By interlocutory notice dated March 16, 2004 the wife requested an order to preserve matrimonial property. In response to this application an order was granted dated March 22, 2004 requiring the husband not to transfer, dispose of or alter in any way certain specific assets and "any other property, real or personal, that was obtained during the marriage".

[26] The husband made an application to reduce his spousal and child support payments. He alleged that his only income was from Phoenix Garden Foods Limited at \$1,000.00 per month. He alleged he could not retain legal counsel because his assets were frozen. By order dated December 1, 2004 spousal and child support payments were suspended for a period of sixty days. The husband was ordered to release the full amount of funds held in the Bank of America Retirement Savings account and in the Scotiabank RRSP account. The order required these funds to be divided equally, after taxes and applicable administration fees had been deducted, between the husband and the wife. The wife's right to call evidence with respect to both of these accounts was reserved when this matter returned to court for division pursuant to the provisions of the *Matrimonial Property Act*. Both the husband and the wife were ordered to fully disclose all information relevant to his and her financial information and assets.

[27] The husband did not liquidate the Bank of America Retirement Savings account as he was required nor did he do anything to liquidate the Scotiabank RRSP. This investment was cashed out as a result of the action of Scotiabank responding to the wife's request that it comply with the terms of the Order. The Bank of America refused to comply with the Order in response to the wife's request because it was issued by a Canadian court.

[28] As a result of the wife's request Scotiabank delivered the sum of \$16,218.01 net of tax. From this each party received \$8,109.00.

[29] The husband did not disclose any financial information relating to New Concept Management Limited, Phoenix Garden Food Limited, NC Soft Technologies, or VR Interactive although he had been ordered to do so.

CLASSIFICATION

[30] Sec. 4 (1) of the *Matrimonial Property Act* defines all real and personal property acquired by either or both spouses before or during their marriage as matrimonial assets with the exception of certain enumerated exemptions. In this case the relevant exemptions are those for "business assets" and for "real and personal property acquired after separation".

[31] Bank accounts, RRSP's, furniture and household effects, vehicles, and investment portfolios are classified as matrimonial assets unless there is sufficient evidence provided by the proponent to justify a determination that the particular asset falls within an exemption contained in Sec. 4 (1) of the *Matrimonial Property Act*.

[32] At the time of separation the husband was the registered owner of the following assets:

- Scotiabank RRSP with a balance to March 31, 2002 of \$35,346.24.
- Bank of America chequing account with a balance to March 12, 2002 of \$6560.00.
- Bank of America savings account with a balance to March 12, 2002 of \$32,861.00.
- Retirement Savings Account with Bank of America account with a balance to March 12, 2002 of \$24,524.00.
- Investments in U.S. Technical Stocks with various companies valued to August 6, 2002 at \$9800.00.

[33] At the time of separation the wife was the registered owner of a Scotiabank chequing account with a balance of \$12,815.04 to March 1, 2002.

[34] At the time of separation the parties were the joint registered owners of a Scotiabank chequing account with a balance of \$ 6728.16 to February 23, 2002.

[35] The values recorded for the chequing and savings account with the Bank of America, the retirement savings account with the Bank of America, and the U.S. Investments are expressed in Canadian dollars using an exchange rate equivalent to the rate charged on the date of the statement balance. These calculations were prepared by Lyle Tilley Davidson, chartered accountants whose report was prepared on behalf of the wife and filed in this proceeding. The husband argued that the exchange rate to be applied should be the rate as it existed to the date of this hearing. Based on all of the evidence given during this hearing I have determined that the exchange rate used by Lyle Tilley Davidson was appropriate and I accept the valuation they placed upon the assets as a result.

[36] The parties had very few household items of significant value at the time of their separation. In her first statement of property filed in this proceeding the wife lists the following:

- television	\$ 120.00
- vcr	\$ 20.00
- bed	\$ 70.00
- sofa	\$ 60.00
- computer	\$ 500.00

[37] In the first statement of property filed by the husband dated August 22, 2002 he lists the following:

- car	\$ 1000.00
- computer	\$ 500.00
- tv and dvd	\$ 100.00

He also lists in this statement of property:

“Nature of Firm or Company	Interests	Estimated Value
Small Business (NC Soft Technology start this March, now no business, ready to close)	software contractor company, now difficult to find business because of HI tech market crashed	\$7192.43 (small business account list savings in the company account)”

[38] It appeared from the evidence that the vehicle listed by the husband was a 1994 Dodge Shadow. The wife did file a subsequent statement of property on January 7, 2005 in which this vehicle was also listed with a suggested value of \$3000.00.

[39] During his testimony, and in documents filed in this proceeding, the husband also sought division of a stamp collection in the possession of the wife. The wife testified that she and other family members had been for some time collecting stamps for her son. The husband did not dispute this testimony and as a result I have not included this as an item of matrimonial property.

[40] There were no appraisals for any of the values given by the parties in respect to the possessions and vehicle. The husband complained that there were many personal items the wife had never released to him. However, he provided no identification of those items other than to state that the wife kept all of his “important papers and books”.

[41] Although ordered to do so the husband never provided any financial statements for NC Soft Technology. He testified that this business closed down due to the collapse of the tech industry sector. He used this business to deposit money received as payment pursuant to a private contract for services he had obtained. This business was started after his separation from the wife but it appears that the contract for services may have been entered into while the couple were together. Because of the circumstances this asset is not considered in the wife’s request for division of matrimonial and non matrimonial assets.

[42] In respect to the computer listed on the wife’s statement of property, the wife testified that this was in fact a gift to the parties’ son. There was some acknowledgement of this by the husband in his testimony. I do not consider it to be a matrimonial asset.

[43] By April, 2005 the assets owned by the wife and the husband had changed substantially from those that had existed at or close to the separation date. In the report prepared by Lyle Tilley Davidson the assets registered in the husband's name were listed as described below. I accept the values given to these assets by Lyle Tilley Davidson.

- Bank of America chequing account balance to January 11, 2005 - \$236.00
- Bank of America savings account balance to January 11, 2005 - \$1.00
 - Scotiabank chequing account (created by the husband after separation date), balance to November 23, 2004 - \$130.00
- Bank of America retirement savings account balance to January 11, 2005 - \$20,062.00
- Investments in U.S. technical stock, various companies valued to September 30, 2004 using exchange rate @ February 8, 2005 - \$ 5,805.00
- Investment in New Concept Management - purchased after separation cost of purchase - \$27,763.00
- Investment in Phoenix Garden Food Limited - purchased after separation- cost of purchase - \$15,000.00

[44] The wife continued to be the registered owner of a Scotiabank chequing account that had a balance to April 17, 2005 of \$3,798.

[45] The husband has requested the portfolio of investments in US corporations be classified as a business asset. Since the Court of Appeal decision in *Tibbets v. Tibbets* (1992), 119 N.S.R. (2d) 26, investment portfolios of this type are generally considered to be matrimonial assets. They often are not assets "used for the generation of income in an entrepreneurial sense." The ownership of such portfolios is not generally considered to be a "commercial undertaking". However the Court of Appeal, in *Roberts v. Shotton* (156 N.S.R. (2d) 47, stated that the *Tibbets* decision is not authority for the proposition that "even in appropriate factual circumstances an investment portfolio cannot be classified as a business asset".

[46] There was little evidence provided to me in respect to this asset other than its existence at the date of separation. I do not know when this portfolio was acquired. The burden is on the husband to convince me that this asset should be classified as a “business asset. He has not provided any factual circumstances from which I could determine that this asset should be declared a “business asset. As a result this investment must be classified as a matrimonial asset. Similar reasoning is applied to the husband’s request that his RRSP investments be classified as business assets.

[47] The husband testified that on February 25, 2002 he invested \$15,000.00 in the Scotiabank RRSP account. The statement of this account to March 31, 2002 confirms this information. The evidence of both parties is that they separated on February 24, 2002. As a result the additional \$15,000.00 is a post separation investment and is not a matrimonial asset. The husband also invested an additional \$10,000.00 in this RRSP in 2003. He borrowed the money to make this investment and approximately \$9,000.00 is still owing. This amount also should be excluded from categorisation as a matrimonial asset. However these post separation investments may still be divided, or taken into consideration, pursuant to the provisions of section 13 of the *Matrimonial Property Act*.

[48] In March 2003 The husband purchased 50 shares in New Concept Management Ltd. The cost of this purchase was \$27,762.74. The husband obtained this money by withdrawing \$25,000.00 from the Scotiabank RRSP upon which he realized \$17,500.00 after tax. The balance of the money required to make this purchase came from the Bank of America savings account, an amount of \$10,262.74 in Canadian dollars. In May 2003 he paid \$15,000.00 to purchase shares in Phoenix Garden Food Limited. He used matrimonial assets to make this purchase. These are post separation investments and they are working in an “entrepreneurial sense” as business assets. However, they were entirely purchased from matrimonial assets. I have no authority before me that would suggest this fact requires a determination that these assets are now matrimonial. However, the use of matrimonial assets to purchase these shares is a relevant factor to consider pursuant to the provisions of section 13 of the *Matrimonial Property Act*. This factor may also be relevant in determining the appropriate valuation date for the division of matrimonial assets.

MATRIMONIAL PROPERTY ACT, SECTION 13

[49] The wife has requested that there be an unequal division of the matrimonial assets and a division of non matrimonial assets owned by the husband.

[50] Sec. 13 of the Matrimonial Property Act states:

“Factors considered on division

13 Upon an application pursuant to Section 12, the court may make a division of matrimonial assets that is not equal or may make a division of property that is not a matrimonial asset, where the court is satisfied that the division of matrimonial assets in equal shares would be unfair or unconscionable taking into account the following factors:

- (a) the unreasonable impoverishment by either spouse of the matrimonial assets;
- (b) the amount of the debts and liabilities of each spouse and the circumstances in which they were incurred;
- (c) a marriage contract or separation agreement between the spouses;
- (d) the length of time that the spouses have cohabited with each other during their marriage;
- (e) the date and manner of acquisition of the assets;
- (f) the effect of the assumption by one spouse of any housekeeping, child care or other domestic responsibilities for the family on the ability of the other spouse to acquire, manage, maintain, operate or improve a business asset;
- (g) the contribution by one spouse to the education or career potential of the other spouse;
- (h) the needs of a child who has not attained the age of majority;
- (i) the contribution made by each spouse to the marriage and to the welfare of the family, including any contribution made as a homemaker or parent;
- (j) whether the value of the assets substantially appreciated during the marriage;

(k) the proceeds of an insurance policy, or an award of damages in tort, intended to represent compensation for physical injuries or the cost of future maintenance of the injured spouse;

(l) the value to either spouse of any pension or other benefit which, by reason of the termination of the marriage relationship, that party will lose the chance of acquiring;

(m) all taxation consequences of the division of matrimonial assets. R.S., c. 275, s. 13; revision corrected.

[51] The relevant subsections in respect to this proceeding are (a),(b),(e) and (I).

[52] A relevant factor in respect to section 13(a) is the husband's post separation use of matrimonial assets. There are now fewer of those assets available to divide between the parties. Prior to separation the matrimonial assets, (excluding the wife's chequing account, the car and the household furnishings), were worth approximately \$115,819.00. Now the remaining matrimonial assets are worth approximately \$26,104.00.

[53] The wife did receive the \$8,500.00 she withdrew from the Scotiabank account and the sum of \$8,109.00 when the Scotiabank RRSP was ordered to be liquidated. However, if the matrimonial assets, (excluding the wife's chequing account, the car and the household furnishings), had been divided shortly after separation, she would have received approximately \$57,909.00, a sum greater than the value of the matrimonial assets now remaining.

[54] The *Matrimonial Property Act* does not provide for the division of debt. Debt is to be taken into consideration when valuing an asset for division. It may also be taken into consideration in respect to applications pursuant to section 13.

[55] A relevant factor in respect to section 13(b)and (e) is the wife's student loan debt. Some of the money received pursuant to these student loans was required to pay for the ordinary living expenses of the wife and son because the husband did not provide adequate, or during some time periods, any financial support.

[56] The wife first established a chequing account at Scotiabank in September 2001 when she received her first Canada and Nova Scotia student loans. The wife's first Canada student loan was to be received in September 2001 in the amount of \$5,610.00. The earliest bank statement the wife could provide to the Court was a statement beginning December 18, 2001. I accept the wife's testimony that the opening balance shown on the statement of December 18, 2001 is money she received from her Canada student loan. The next deposit shown on the statement is a deposit in the amount of \$5,100.00. The wife provided her application and I accept her testimony, that this represents her Nova Scotia student loan for which she received approval on October 30, 2001.

[57] The wife in each of the years 2002, 2003 and 2004 applied for and received both a Canada student loan and a Nova Scotia student loan. All of the money received as a result of these loans was deposited to her Scotiabank chequing account. The only other deposits to this account is the sum of \$7,000.00 she transferred from the Scotiabank chequing account held jointly with the husband, the sum of \$1,500.00 also transferred from that account, and some small deposits, made some considerable time after separation, for work performed by the wife correcting papers for one of the professors at her university. I have determined that these funds, provided as a result of borrowing by the wife, should not be subject to equal or any division between she and the husband.

[58] In respect to section 13(e) there was no evidence before me to suggest that any of the assets acquired by the parties were acquired prior to their second marriage. The majority of the assets were acquired from the husband's earned income. The non matrimonial assets acquired by the husband, with the exception of his post separation investment in the Scotiabank RRSP, were acquired when he liquidated matrimonial assets.

[59] In respect to section 13(i), the wife had the sole responsibility for the care and nurturing of the parties son after their first marriage and prior to their immigration to Canada. After their immigration to Canada the husband spent considerable time working in the United States. During his absence the wife had the sole responsibility of raising their son and this was the situation after the parties separated. I accept the wife's evidence that the husband had little to do with the care of their son during their marriage. The wife has born the financial burden of raising their son with little assistance from the husband.

[60] In all the circumstances of this case, I find that an equal division of the matrimonial assets would be unfair and unconscionable. I find it appropriate to include the husband's \$15,000.00 contribution to the Scotiabank RRSP for division and to exclude the wife's Scotiabank chequing account from that division.

VALUATION

[61] The *Matrimonial Property Act* does not specify the date or time upon which an asset is to be valued for the purpose of division. This is to be determined in the discretion of the trial judge. (*Lynk v. Lynk* (1989), 92 N.S.R. (2d. 1); *Reardon v. Smith* (1999), 9 R.F.L. (5th 83)) I adopt the statement of Justice Daley of the Family Court in his capacity as a referee in *MacDonald v. MacDonald*, [1991] N.S.J. No. 639, August 23, 1991:

“The key in valuating the matrimonial property is an orderly and equitable settlement of the spousal affairs, and whatever the date has to be to accomplish this purpose, it is the proper date.”

[62] In general it is considered equitable to value RRSP accounts and investments in corporations to the date of the actual cash in, transfer, or rollover between the parties (division date) after taking tax consequences and disposition costs into consideration. Bank accounts, motor vehicles, furniture, household contents, recreational vehicles, boats and other types of assets which may be used by one party to the exclusion of the other, and thereby depreciate in value, are generally most equitably valued to the date of separation. . (*Simmons v. Simmons* [2001] N.S.J. No. 276)

[63] However, there are other factors that affect the decision about the appropriate valuation date for a particular asset. For example, an asset existing upon separation that may have been ordinarily valued at its division date, may no longer exist at the trial date and may have been consumed entirely to the advantage of one party to the proceeding. In such a case it would be impossible to use a transfer date valuation. The asset no longer exists to be transferred. Had the asset been divided at the date of separation the parties would have had equal access to its then existing value. The separation date value is thus the appropriate value to use for division purposes.

[64] According to documents filed in this proceeding the Scotiabank RRSP account had a value to December 31, 2001 of \$19,935.05 and to March 31, 2002 of \$35,346.24. The March 31, 2002 value is after the post separation investment of \$15,000.00 but before the investment of the \$10,000.00 of borrowed funds. I find that the appropriate value to use for this asset is the March 31, 2002 value less 25% deduction to take into account the income tax payable in respect to this asset. The income tax material filed by the husband would suggest a rate between 25% and 30%. I have determined that, given the limited income he has declared since the parties separation, the rate of 25% is appropriate.

[65] The Bank of America RRSP was valued in Canadian dollars at \$24,524.00 to March 12, 2002. This asset is still in existence and is valued at \$20,062.00 to April 8, 2005. The decrease in value occurred due to market conditions. The date of valuation appropriate for this asset is its date of disposition.

[66] The Scotiabank joint chequing account had a balance to February 18, 2002 of \$11,427.95. On February 18, 2002 the wife withdrew \$7,000.00 from this account for her own use. There is acknowledgement from the wife that this should be taken into account in the division of property because it occurred shortly before the separation date. This withdrawal was a contributing factor to the later domestic violence between the parties. The wife felt justified in removing the money from this joint account to pay her tuition and for necessities for herself and her son. The husband disagreed that she needed to withdraw this amount.

[67] The wife also withdrew the sum of \$1,500.00 from this account on April 23, 2002. The husband had agreed that she should withdraw \$1,000.00 but when he discovered she had withdrawn a greater amount he closed the account on May 6, 2002. The wife has also acknowledged that the withdrawal of \$1,500.00 should be taken into account in the division of matrimonial assets.

[68] I value this bank account as at the separation date prior to the withdrawals by the wife.

[69] On March 12, 2002 the Bank of America chequing account had a balance of \$6,560.00 and the savings account a balance of \$32,861.00. By January 11, 2005 the chequing account balance was \$236.00 and the savings account balance was \$1.00. The husband admitted using the money in these accounts. He invested

money in these accounts in New Concepts Management Limited. The husband also admitted he used money from these accounts to pay his child and spousal support. These accounts will be valued as at March 12, 2002, the separation date value.

[70] The husband has a portfolio of rather speculative stocks in US Corporations many of which are involved in or promote various technologies. These investments are still in existence and their value changes with the market. The proper valuation date for these is the date of disposition.

[71] The husband had the use of the family vehicle since the parties separation. It ceased working and he disposed of it. The wife agreed the value of this vehicle at the date of separation was likely less than the \$3,000.00 she had initially suggested. I value the vehicle at \$2,000.00, its separation date value for the purpose of division.

[72] I accept the value given by the wife for the household items with a deduction for the value of the son's computer.

DIVISION

[73] The value of the assets to be divided at separation date values is as follows:

Scotiabank RRSP	\$26,510.00
Bank of America chequing	\$ 6,560.00
Bank of America savings	\$32,861.00
Scotiabank joint chequing	\$11,428.00
car	\$ 2,000.00
furniture	<u>\$ 270.00</u>
Total	\$79,620.00

An equal division of these assets would provide the wife with the sum of \$39,815.00. The wife has received:

From Scotiabank joint chequing	Furniture
From Scotiabank RRSP	Total

\$ 8,500.00
\$ 8,109.00
\$ 270.00
\$17,379.00

This will leave a balance owing to the wife in the amount of \$22,436.00. In addition the husband has acknowledged that he owes the wife the sum of \$2,300.00. With this addition the total owed to the wife is \$24,736.00.

[74] The Bank of America Retirement Savings account is to be liquidated and the US Stock Portfolio is to be sold. The money received , after payment of applicable taxes and disposition costs, is to be divided equally between the parties but the husband's share, or such portion of that share as shall be required, shall be applied to pay or partially pay his debt of \$24,736.00 owed to the wife. The husband has control of these assets and he is to take action as directed. He is to provide an accounting with supporting evidence to the wife for the taxes and disposition costs deducted from proceeds obtained.

[75] The wife has requested a contribution from the husband in respect to her pre-separation debt. I have taken her debt into account in respect to the division of assets and expect her debt may be a factor in respect to her application for spousal support.

[76] There has been no request for costs to be awarded in this proceeding and therefore no order is made in respect to costs.

Beryl MacDonald, J.