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COURT OF KING'S BENCH OF MANITOBA

IN THE MATTER OF: THE LAST WILL AND TESTAMENT OF BURNADINE AGNES SCHROF

B E T W E E N:

WALTER GLEN SCHROF,	)	Janet I. Jardine
applicant,	)	for the applicant
	)	
-and-	)	
	)	
MERVIN FRED SCHROF and CALVIN PAUL SCHROF,	)	Patricia L. West
	)	Brent Tichon
respondents.	)	for the respondents
	)	
	)	Report Issued:
	)	July 10, 2026
	)	
	)	Deemed Confirmation Date:
	)	August 14, 2026

SENIOR ASSOCIATE JUDGE'S REPORT

SENIOR ASSOCIATE JUDGE CLEARWATER

[1] This is my report on a reference order from the Honourable Justice Toews, concerning the valuation or division of property at issue in these proceedings. Specifically the provisions of the judgment relating to the reference are as follows:

. . .

3. THIS COURT HEREBY ORDERS that the items identified in the Notice of Application as the "farm chattels: and any other disputed personal property (which, for the sake of clarity, does not include the disputed investment accounts) in respect of which ownership was contested in this case is jointly owned by all three brothers and each brother is entitled to a one-third share of that property or its equivalent value;

4. THIS COURT HEREBY ORDERS that there shall be a reference to the Associate Judges with respect to the valuation and/or division of the property referred to at paragraph 3 herein and that the Respondents shall have carriage of the reference;

BACKGROUND AND POSITIONS OF PARTIES

[2] There is a very unfortunate history to this matter which involves a contentious and lengthy trial and judgment, appeals, and other interim steps taken along the way, both in the trial and in the reference hearing itself. All of this has added to the acrimony between these parties, who are brothers and former partners in a family farming business.

[3] It is clear the rift between these brothers that commenced prior to the death of their mother, has increased over the years through this, and related litigation. I do not intend to rehash that history, except as required to make determinations in this reference, as the factual background and analysis can be found in the previous decisions of the learned justice, and the voluminous materials filed.

[4] That trial primarily focused on issues surrounding a land dispute, investment accounts and a determination of the nature of ownership of listed farm chattels and other property. The learned justice determined that the farming operation was jointly owned, each brother entitled to one third of its value, and the value of the farming

chattels listed as at issue in the Application. The reference was to determine that value as of 2011, to sell, divide or to order equalization payment for the identified chattel.

[5] At the first hearing for directions, and frankly up until very late in the process, the parties had confirmed the chattels to be valued and/or divided in the reference were listed at paragraph 1 (c) subparagraph (d) of the Application. The identified property is as follows:

> 1. . . .
>
> (c) . . .
>
> (d) The following equipment and materials currently located on the land described as S. ½ of N.W ¼ of Section 12-9-2 WPM:
>
> (i) 4 steel hopper bins, including aeration, each with a 3,500 bushel capacity, 5 ring high;
> (ii) 1 hopper cone, located under the Westeel bin, 14 foot diameter;
> iii) Steel concrete forms and pegs for 2 – 14 foot hopper bins stored in wooden bin;
> (iv) Any and all wire feed welders that are stored in the same wooden bin located on the property;
> (v) 1,072 lbs. of aluminum sheets stored in the same wooden bin as the concrete forms;
> (vi) 1 centre unload tube stored in the same wooden bin as the concrete forms;
> (vii) 1 hopper bin, including aeration, with a 2,100 bushel capacity;
> (viii) 1 Lode King drill fill caddy, 20 feet – 2 compartments, 12 feet and 8 feet;
> (ix) 1 – 46 foot electric grain auger;
> (x) 4 aeration tubes stored in a steel flat bottom bin (the "farm chattels")

[6] The parties attended at two hearings for direction prior to setting this matter down for a contested hearing. After both of those hearings for direction, memorandums from this court issued and were sent to the parties, one of which was

amended at the request of the applicant's counsel for clarity. These memorandums are found at King's Bench Documents 86 and 97 of the court file.

[7] In addition to the two hearings for direction, this matter proceeded to a contested expunge motion with respect to parts of an affidavit filed by the respondents. After permitting the motion to proceed in advance of the trial on the merits, I issued oral reasons expunging parts, but not all of the contested material, and adjourned the issue of costs to the cause. The disposition sheet can be found at King's Bench Document 91 on the court file.

[8] The matter then proceeded to a multi-day reference at which the parties both testified. Unfortunately, the matter was not able to be completed on the dates scheduled, and was required to be adjourned for final submissions.

[9] Although the Application, and the memorandums issued after the hearings for direction in this matter list the above noted 10 farm chattels as being at issue, it was agreed that by the time of the trial before the learned justice, the respondents had given five of those listed items to the applicant. The parties confirmed that this return had been completed, and included the following items given to the applicant:

a. Any and all wire feed welders and/or parts in wooden bin;

b. 1072 pounds of aluminum sheets left in wooden bin;

c. Hopper bin with aeration (2100 bushel);

d. One Lode Drill Fill Caddy; and

e. I-46 ft Electric Auger

[10] As this matter proceeded to the reference hearing, and after the memorandums for direction had been released, the applicant articulated the position that those five returned items were owned entirely by him. He argued that the only issue before this court concerning those five items was the determination of the difference in the value of the assets he received versus what he says he was entitled to receive. This position was never clarified before this time.

[11] The applicant argued at the reference hearing that the respondents were not entitled to any value for those five returned items. The applicant says the respondents had essentially conceded by returning the items to the applicant during the trial, and by not raising a separate and clear request for compensation at the time of return, that the ownership of same was not disputed and the applicant was entitled to the entire value of those chattels, not just one third.

[12] Needless to say, the respondents disagreed vehemently with this interpretation. They pointed to their position at trial, that all the listed items in the Application were part of a joint farm operation and therefore jointly owned. While the respondents did confirm they were prepared to physically provide the five agreed chattels to the applicant, their argument never faltered from the position that the value of same was still to be split equally between all.

[13] The above position of the applicant surrounding those five chattels did come somewhat as a surprise at the reference hearing. The question of ownership of the assets was a foundational issue at the trial. Without a finding of ownership by the learned justice, the issue would be outside the jurisdiction of the Associate Judge on a

reference hearing. I raised this concern with counsel. I also asked counsel why this position had not been advanced or clarified earlier, particularly given the memorandums that had issued.

[14] Counsel for the applicant clarified her position on the ownership issue. She confirmed she would be arguing that this was the determination of the learned justice at trial. In support, she referenced language in the decision, the positions advanced at trial and the parties own evidence. Ultimately, I allowed the issue to proceed as she suggested, and evidence surrounding same was led by both parties. My analysis and determinations are set out below.

[15] At the beginning of the reference hearing, given certain additional evidence was made available to the court and parties by that time, it became clear that the two sides were very close on the actual valuation issues. The respondents had produced, albeit late and not in accordance with court rules, some expert evidence upon which they intended to rely. While issues were raised by the applicant concerning the admissibility and appropriateness of that evidence, and a motion was filed to address same, that evidence was what clarified to me how close the two sides were on valuation.

[16] While I did acknowledge to the parties that I had concerns with the lateness and admissibility of that evidence, I suggested that we take some time to discuss whether, given the closeness of the values now being proposed, the parties might be able to reach an agreement. If those discussions failed, I confirmed I would hear the motion of the applicant on the report's admissibility and we would proceed to the reference

hearing. The parties agreed to this approach and those discussions occurred off the record.

[17] The parties did reach an agreement on most issues of valuation and the motion concerning the expert report did not proceed, although the question of costs for same was reserved to be addressed at the end of the proceedings. The below chart contains the agreements reached, including additional facts noted by me from the available evidence that will be further addressed below:

ITEMS and POSITIONS	**AGREED VALUES (or as noted) at 2011**	**VALUE of ITEMS RETURNED TO APPLICANT**
4 steel hooper bins, including aeration	$6,500 each = $26,000 total	
1 hopper cone	$1,250	
Steel concrete forms and pegs	$275	
Any and all wire feed welders stored in the wooden bin (applicant says 5 full welders; respondents say no full welders, existed, only parts, and all available parts and full value were returned)	$300 for a full wire feed welder = $1,500 maximum value (respondents value is $500)	$500
1072 lbs. of Aluminum in wooden bin (applicant says prior to return he had taken 30 of 1072 lbs. and later only received 375 lbs. when returned to him; respondents say all parties had used more of that aluminum in the farm operation, at least approximately 55 lbs.)	$1 per lb. of aluminum – (while the issue of precisely how much aluminum remained from the original 1072 lbs. is not agreed, the evidence supports that the remaining aluminum would have been a maximum of 1042 lbs. or a minimum of 987 lbs. in 2011)	$375 (375 lbs. noted as received per best available evidence)
Unload tube	$225	
Hopper bin without aeration 2,100 bushel capacity (applicant says he received bin without aeration and was	$5,550 (with aeration)	$4,150 (without aeration)

entitled to aeration; respondents say the bin never had aeration but acknowledged the description includes aeration)		
Lode King drill fill caddy (hereinafter Lode King) (applicant alleges although he received it, it was damaged and without all parts; respondents say it was delivered with all of its parts)	$1,394	$175-350 (estimated value of scrap received by applicant per his evidence – not agreed)
I-46 foot electric grain auger Parties agree the returned auger did not have electric capacity	$1,000 (with motor)	$450 (without motor)
4 aeration tubes	$220 each = $880	
TOTAL	**$38,061 - $39,116**	**$5,650 - $5,825**

RELEVANT EVIDENCE AND ANALYSIS

[18] Prior to delving into the evidence and analysis, despite that it is clear and was accepted that I have the jurisdiction under the reference order and ***The Court of King's Bench Rules***, M.R. 553/88 (the "***Rules***"), to direct the assets at issue be exchanged or sold rather than requiring an equalization payment be made, I decline to do so in this case. There are a number of reasons for this, the most important of which is to bring some simplicity and finality to these issues.

[19] There is a very lengthy history of litigation in this case and many years have passed since the joint farm operation of these brothers dissolved and their mother passing away. The disputed chattels now in the hands of each party have been with each party for some time, including those that were agreed to be provided to the applicant. In my view, ordering the equalization payment for the value for these disputed chattels should be made, rather than finessing some alternative order that sees some or all of the assets be moved is the most efficient and fair way to address

the outstanding issues. There must be a hard end to this part of the family saga. Directing further exchange of assets will not accomplish that as easily.

[20] As such, I find all assets at issue will remain in their current locations. There will be no further exchange of assets, sale of assets or moving of bins or material from one party to the other. Rather, there will simply be a final direction of equalization payment made as set out below. This is consistent with the position taken by the respondents throughout, and even with the comments of the applicant heard for the first time by me during his direct examination, i.e., that while he wishes for the return of all or some of the items, he would accept at least their value.

[21] As it relates to valuation, despite the parties being able to agree on most of those issues, including values of assets provided to the applicant, certain issues remained unresolved. Unfortunately this was the case despite that, as a result of the agreements, the outstanding matters between the parties do not represent much in the way of actual monetary value.

[22] For example, the maximum possible value of all assets is $39,116. This value assumes inclusion of the maximum amount of leftover aluminum, and that there were five full wire feed welders available for exchange as discussed further below. Given this, and assuming I was to accept the position of the respondents that each party should then be entitled to one third of that full amount, the applicant would be owed approximately $13,039 (rounding up) less the amount he has received already. The math leaves the applicant with entitlement to an additional dollar amount between

$7,389 on the high end and $7,214 on the low end, depending on the amount I attribute to his receipt of the Lode King.

[23] Alternatively, even if I accept the position of the applicant that he is entitled to the full value of the five returned items, less what he has received, plus one third of the remaining items, his entitlement will jump to approximately $14,380 (rounding down). This number again assumes the maximum value of five full wire feed welders, the minimum estimated value of the Lode King, and that the full 1042 lbs. of aluminum remained as of the date of valuation. This is the applicant's best outcome, and the worst case for the respondents.

[24] I acknowledge those numbers are slightly different than those provided to me during submissions, but they are based on my calculations, utilizing the agreements reached, the evidence led and giving the maximum benefit to the applicant's position about the existence of certain items. In the end, it is clear those values will represent a pittance of the amount the parties have spent on legal fees for this reference alone.

Remaining Issues

[25] Having addressed the question of whether I should order the exchange or sale of any of the listed chattels versus ordering an appropriate equalization amount for the assets, the following issues remain for my consideration and will be addressed in this order:

a. Is the applicant, by virtue of the learned justice's decision and the available evidence, entitled to the entire value of the five chattels returned to his possession (i.e., am I satisfied he is the sole owner of those assets);

b. What is the total value of the assets that existed as of the date of valuation (which will require findings about the existence of certain assets); and

c. What is the total value of all items returned.

[26] As it relates to issue one, the applicant urged me to pay close attention to the language in the judgment, the position of the respondents in their evidence during trial (entered through transcripts) and statements made by counsel for the respondents in their written submissions and during the trial. This information together says the applicant makes it clear those five assets were no longer in dispute and that the respondents have accepted the applicant's sole ownership of these assets and must compensate him for any deficiencies in the values on return.

[27] This is the same argument that was advanced by the applicant at trial, as was outlined by the learned justice in his Endorsement (August 17, 2023), Manitoba (MBKB), at King's Bench Document 71, page 3, paragraph 11(f)and (g):

> [11] In summary, Glen states that the evidence at trial, and through discovery and cross-examination on affidavits establishes: . . .
>
> f) Glen has produced receipts for all of the farm chattels in dispute establishing his ownership in those chattels while Mervin and Calvin have failed to produce any of their own receipts in order to establish any ownership they might have in that property;
> g) The agreement on the part of Mervin and Calvin to return some of the to Glen, established that the farm chattels are not part of the cooperative farm operation.

[28] The applicant submits, that it is clear in the decision of the learned justice that by returning those chattels, the respondents have acknowledged they were no longer at issue and were owned by the applicant. The only remaining issue says the applicant is whether the applicant has received the full value of same back. The applicant suggests

that the language in the Endorsement, particularly at paragraphs 30 and 31, bears this out.

[29] I was also pointed by the applicant to language used at times by counsel for the respondents during the trial, also in the transcripts, and in their written submissions. It is suggested that this language is clear the items were no longer contested. Similarly, having confirmed through cross-examination of the respondents that there was no separate compensation request for the returned items, I am urged to accept that this shows the respondents had accepted the applicant as sole owner.

[30] For their part, the respondents take the opposite position. They say that while they agreed to return some of the items, and not others, they always took the position that all items were part of the joint farming arrangement. The respondents argue this position is noted by the learned justice, was maintained by them throughout, and in fact is consistent with the ultimate finding that the farm operation was jointly run and that each brother is entitled to one third of the value of the listed chattels.

[31] In terms of evidence heard on the issue, most of that came through cross-examination of the respondent Mervin Fred Schrof ("MS"). The applicant put to him a number of lines of the trial transcript in which MS acknowledged or discussed the return of the items and pointed out at no time did he indicate he was awaiting compensation or value for that agreed return.

[32] However, the respondents' position remained, as MS continuously stated during his cross-examination, and in his direct evidence, that while the respondents were prepared to part with some of the farm assets by agreement, and did in fact do so, they

never conceded ownership to the applicant. To the contrary, say the respondents, as highlighted by the learned justice in his findings, maintained that all assets were owned by and were part of the joint farming operation wherever they happened to now be located, and should be accounted for equally.

[33] For the applicant to be successful in this argument, there would need to be a foundational decision or findings made by the learned justice that he was the sole owner of these five chattels. This is what the applicant argued, relying on the available trial transcripts, affidavits and wording of the Endorsement of the learned justice. However, I am unable to agree with that conclusion.

[34] Based on all of the evidence produced at the reference hearing along with the available transcript and most importantly the decision of the learned justice, on balance, I confirm the finding these chattels remained joint property despite the return of same during the trial process. While it is not, in my view, perfectly clear on the face of the decision, particularly with respect to paragraphs 30 and 31 of the Endorsement issued in this case, whether or not the disputed property includes those chattels transferred, it is clear to me the learned justice agreed with the position of the respondents overall in his findings. In this respect he says:

> 31. In respect of the remaining disputed property, the evidence leads me to find the notwithstanding how or by whom it was paid for or where it was stored or affixed, this chattel and other equipment is owned jointly by the three brothers as a result of the common farming enterprise which they at one time carried out. I agree with the submissions of the respondents that his property needs to be valued and divided equitably between the three brothers if they can reach no agreement in that regard. Accordingly, I am prepared to refer to the Master for a valuation and distribution or sale with the proceeds to be divided equally between the three brothers.
>
> . . .

> 33. In conclusion, I find and order that: . . .
>
> c. The items identified in the Notice of Application as the "farm chattels" and any other disputed personal property (which, for the sake of clarity, does not include the disputed investment accounts) in respect of which ownership was contested in this case is jointly owned by all three brothers and each brother is entitled to a one-third share of that property or its equivalent value;
>
> [Emphasis added]

[35] When specifically reviewing all the evidence and context of the decision, I find the fact the respondents' offered, and did give some of the chattels to the applicant, was not an acknowledgment that he was in fact the sole owner of same. The respondents' position remained that ownership of the listed chattels, whether or not they were in possession of the applicant, were part of the joint farming operation and were to be shared equally. The learned justice's reliance on the description of all the items identified in the Application supports this outcome.

[36] In further support that these returned assets were nevertheless utilized jointly and were part of the joint farm operation, despite that foundational determination is not in my jurisdiction, one only need to look to the evidence presented concerning the aluminum at issue. The aluminum is one of the items agreed to be returned. Both the respondent MS in his testimony, and the applicant himself support that this aluminum, which had been stored on the property of the respondents, was utilized by the parties together to build lights for other farm equipment and auger covers, and for work in the various shops including the applicant's. This evidence, accepted by the applicant at the reference hearing, supports the aluminum, despite agreeing to give to the applicant, was an asset utilized by all parties in the operation of the farming operation. Again,

this is in keeping with the finding of the learned justice regarding the jointly owned farming business, and that those assets should be shared equally by the three brothers.

[37] As a result of the above, and on a balance of probabilities, I find the returned assets are contested assets in the context of this reference, must be valued, and will be split equally amongst the parties. To do otherwise would be contrary to the primary finding of the learned justice that the farm assets are all owned jointly, regardless of where they are stored or who paid for them, and are to be shared equally.

[38] Concerning the second issue, that being the value of all assets, as noted in this decision, many of the values have been agreed. Left to be determined is the value for the wire feed welders alleged to have existed, if any, and the amount of available aluminum remaining in 2011, the valuation point.

[39] Starting firstly with the suggestion by the applicant that there were five wire feed welders that he should have received, or be entitled to compensation for. The parties agree the maximum value that could be attributed to that item is $1,500, $300 each and that the value of the returned asset was $500. The question really surrounds whether there were any actual welders to return or whether that category of assets involved just spare parts which the respondents said they have returned.

[40] The evidence on this issue is less than ideal. The applicant relied on a number of references in previous documentation, including the Application itself, some of the transcripts from the trial concerning the return of items, and the fact that two people were sent by the applicant to pick up these items, suggesting he expected many, and

large items to be returned as proof there were five welders. Unfortunately, there is absolutely no corroborating evidence the welders existed.

[41] In this regard, the applicant at trial, and in this reference hearing, was able to show that he had many available receipts pointing to expenses for purchases of these various assets over the relevant time. He even kept receipts for relatively small purchases it seemed. Despite that, he had no evidence five welders were purchased.

[42] For the respondents, the transcript evidence when addressing this category of chattel, did not clearly state "no welders existed", nor were they always clear about what they had or did not have in terms of wire feed welder parts. However, in the respondents' original affidavit evidence, sworn September 24, 2013 (King's Bench Document 6, para. 23), they clearly took the position from the outset that there were no welders, only parts. This is the position they continued to advance at the reference hearing, saying these parts were likely purchased at auctions over the relevant time period, and stored by them.

[43] Finally, in the Application itself, which was drafted by the applicant, he lists these contested items as "<u>any</u> and all wire feed welders" stored in a particular bin" (emphasis added). He did not list "five" welders, or give any specific number, and it is this description that has been referred for my consideration.

[44] On balance, while I would have preferred more clear evidence being advanced throughout to describe this alleged asset, I have no evidence that "any" wire feed welders existed, despite that clearly some parts and pieces did. Those parts and pieces were returned to the applicant at an agreed value of $500, and so, without any

satisfactory evidence any welders existed in 2011, I ascribe that value to this category of assets. The value of any and all wire feed welders on the date of valuation will be $500.

[45] Concerning the aluminum at issue, in this case there is some corroborating and consistent evidence about the amount of aluminum purchased, being approximately 1072 lbs. total. In addition, despite taking different positions on the amount of aluminum as at the valuation date, the parties provided very similar evidence about how much of that aluminum had already been shared or used, that being about 55 lbs. to build auger covers, light covers and other miscellaneous shop work, and the accepted evidence that the applicant had received an additional 30 lbs. already for other purposes, presumably also used by him on farming operations. This leaves the remaining aluminum yet unshared with an approximate weight of 987 lbs.

[46] Despite the lack of clarity in what happened or did not happen to the remaining aluminum, beyond the estimated 85 lbs. taken or used to build certain things, I have no reason to stray from those numbers as representative of what should have been left and available to the parties in 2011. To be clear, the 1072 lbs. originally purchased, less the approximate 85 lbs. already shared (55 + 30) is what is left. At an agreed value of $1 per pound, the value of the remaining aluminum to be shared between the three brothers will be set at $987, some of the value having already been received by the applicant as noted herein.

[47] Although there was some disagreement also relating to the value of the Lode King raised in the reference hearing, that disagreement, in my view, relates more

to the value of that asset when given to the applicant, and I intend to address it there. The parties did agree that the Lode King as described in the Application existed as of 2011, and have agreed to a value of $1,394 for this chattel on the date of valuation.

[48] As a result of these findings, and given the agreements otherwise reached by the parties the total value of the assets to be shared is set at $38,061, of which each party would be entitled to one third of the value. For clarity, this is based on the following agreements and determinations:

a. 4 Hopper Bins 3500 bushel - $26,000
b. 1 hopper Cone, 14 ft - $1,250
c. Steel concrete forms and pegs in wooden bin - $275
d. Any and all wire feed welders stored in same bin - $500
e. 987 lbs. aluminum - $987
f. 1 centre unload tube - $225
g. 1 hopper bin with aeration (2100 bushel) - $5,550
h. 1 Lode King drill fill caddy - $1394
i. 1 46 foot electric grain auger - $1,000
j. 4 aeration tubes - $880

[49] This leaves finally the question of the value already received by the applicant. In this case, having determined the issue of the values to be shared, the question really becomes whether the items returned meet that value. In this respect, the only remaining dispute is around the Lode King. The facts surrounding what was returned and how are problematic.

[50] I accept that the respondents dragged the Lode King to the applicant's property as described in the evidence. They say they did that with all proper attachments being placed inside. However, the facts surrounding how that was done, where and why the Lode King was left in the manner it was, and what impact that should have on the value received by the applicant is a more challenging issue.

[51] In this regard, I accept that the respondents did not exercise a high degree of care in their transport across the road of the Lode King. They acknowledged they simply dragged it on its skies across the road to a corner of the applicant's property, with pieces loose inside, and that they just left it there. They did not advise the applicant it had been returned, they did not photograph its state and/or accessories inside (despite the very contentious ongoing legal proceedings), and they did not secure it in any way. They simply say they dragged it over and left it for the applicant to find and address whenever he got around to it. It was left for at least a day.

[52] The applicant says he does not know exactly how long it sat there but when he did retrieve it, he says it had significant damage and did not contain the accessories the respondents say they left inside, thereby decreasing its usefulness and value. While the applicant acknowledged that dragging the Lode King on its skies was not an inappropriate way to move it, he maintained it had suffered damages as a result of the specific manner of dragging or, as a result of the missing accessories. There are pictures taken by the applicant of the Lode King and its state when it was retrieved by him sometime after delivery. This is attached as Exhibit E to his affidavit, sworn

December 26, 2024, at King's Bench Document 93. Given the evidence provided to me, I accept there likely was a decrease in its value by the time it was received.

[53] The respondents argue they should not bear responsibility for any decrease in value of same. I disagree with them on this point.

[54] The respondents, in their evidence, were unable to provide any reasonable expectation for why they did not advise the applicant, even through counsel, given the ongoing and significant litigation issues between the parties, of when, where and how they had delivered the Lode King. They did not take pictures of the delivered Lode King and accessories to prove they moved it reasonably and stored it appropriately. The respondents also could not rule out that, given the way the Lode King was delivered and left without notice, that even if the respondents themselves did not damage it, other non-parties could have or could have stolen the accessories placed inside the Lode King before the item was retrieved.

[55] On this issue, the respondents acted irresponsibly, and carelessly by not providing the applicant, even through counsel, with reasonable notice of delivery, nor did they act with prudent care in securing the attachment. Therefore, given I find some loss to the value of the Lode King was the result, the applicant will not be required to account for the full agreed to the value of $1,394.

[56] Ultimately, I acknowledge that there was very little to no actual evidence of the value of the Lode King as received. The respondents fairly refused to guess, other than to say it would have scrap value, and the applicant provided his estimation as set out in the chart above. This is less than ideal for certain. However, what would be even less

ideal from a proportionality perspective, is if I refuse to address this matter with finality today.

[57] The only information I have on the value of scrap metal, although not linked to the Lode King itself, is the agreed upon value for aluminum of $1 per lb. I do not know if the Lode King is made of aluminum, steel or some other product, and I certainly do not know its weight, but at least I can conclude by the photos that it appears to be made of some metal. As such, I think it is more likely than not that it would have scrap value more on the high, versus the low side. As the only estimate I received is the estimate provided by the applicant who received the property, I will use this estimate in my calculations.

[58] I therefore attribute the value of $350 as the value received by the applicant for the Lode King. I acknowledge that this is not scientific, nor based on any specific expert evidence, but it is the best information I have as to the value of the property actually delivered. In my view, to get the parties to this point, and then suggest they should retain further evidence on this one remaining valuation issue would not be proportional or appropriate in the circumstances and so it is set.

[59] As a result of that, and of the other agreements reached on the value of property returned as set out in the chart above, I confirm the applicant has already received the amount of $5,825. This amount will be deducted from any equalization he is entitled to for his one third interest in all the listed farm chattels.

CONCLUSION

[60] As a result of all of the above, I have found that the entire 10 listed farm chattels have a total value of $38,061. I have further found that each of those items are to be shared equally and therefore each of the brothers is entitled to a one-third interest in that value. The respondents' two-third share is equivalent to $25,374 and the applicant is entitled to $12,687.

[61] Given my conclusion that the respondent has, by the receipt of some of the assets already received $5,825 value, he remains entitled to recover a further amount of $6,862 for the equalization of the value of the assets. That amount will be paid by the respondents in equal shares. All parties will maintain possession of the chattels currently held by them.

[62] I am aware that counsel have asked to address the question of costs, particularly as it relates to the two motions brought by the applicant to expunge certain evidence (affidavit and later expert evidence). One of those motions proceeded with primary, albeit mixed success to the applicant. The second did not proceed as a result of agreements reached at the reference hearing.

[63] To the extent it assists the parties, given the respondents in this case appear to be the more successful of the two overall in this reference, they would likely be entitled to tariff costs, at least in part. However, I do not disagree with the position of the applicant's brief submissions made that possible costs, albeit on a tariff basis, might be appropriate, particularly for the second of the two motions that did not have to proceed

given the agreements reached, but nevertheless was likely properly filed given the circumstances.

[64] I make these comments in hopes that it assists the parties in agreeing on the issue of costs, if any. However, should the issue remain, a brief one hour appointment may be made with me to address same, but only after the filing of briefs on the issue that do not exceed 5 pages in length.

[65] I thank counsel for their helpful submissions and materials to this point.

K. L. Clearwater
Senior Associate Judge

IMPORTANT NOTICE

THIS REPORT BECOMES AN ORDER OF THE COURT OF KING'S BENCH ON CONFIRMATION. A REPORT WILL BE AUTOMATICALLY CONFIRMED UNLESS CONFIRMATION IS OPPOSED. YOU ARE RESPONSIBLE FOR INFORMING YOURSELF ABOUT THE CONFIRMATION PROCESS WHICH IS GOVERNED BY KING'S BENCH RULE 54.06(2) AND RULES 54.08 THROUGH 54.10