

Date: 19980723  
Docket: F970190  
Registry: Vancouver

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

L [REDACTED] M [REDACTED]

PLAINTIFF

AND:

R [REDACTED] M [REDACTED]

DEFENDANT

REASONS FOR JUDGMENT

OF THE

HONOURABLE MR. JUSTICE J.T. EDWARDS

Counsel for the Plaintiff: Angela E. Thiele

Counsel for the Defendant: Thomas A. Davies

Place and Date of Hearing: Vancouver, B.C.  
July 13 - 17, 1998

---

[1] This is an action brought by L [REDACTED] M [REDACTED] as plaintiff against R [REDACTED] M [REDACTED] as defendant.

[2] Mrs. M [REDACTED] seeks to have the following:

- (a) A determination of family assets;
- (b) A determination of ownership, possession and division of family assets;
- (c) Spousal and child support orders;
- (d) Order for exclusive occupancy of the matrimonial home; and
- (e) Compensation and judicial re-apportionment.

[3] A statement of agreed facts is annexed to these reasons. The statement was amended at trial by decreasing the amount received from the motor vehicle accident shown at paragraph 36 of the agreed statement of facts from \$15,000 to \$7,000 - \$10,000.

[4] During the course of the marriage Mrs. M [REDACTED] assumed the traditional role as a homemaker. This was done at the request of Mr. M [REDACTED]. Before the marriage Mrs. M [REDACTED] was a teacher in the Burnaby School District.

[5] Mr. M [REDACTED] wanted her to move to Langley where he worked and had a home. Mrs. M [REDACTED] reluctantly agreed to such a move even though it meant giving up her built-up seniority in

---

the Burnaby School District and would be a move away from the home of her mother and father.

[6] I intend to deal with the claims of Mrs. M[REDACTED] in the following order:

- (a) Determination of family assets and values;
- (b) Child maintenance;
- (c) Question of re-apportionment of family assets;
- (d) Spousal maintenance.

#### FAMILY ASSETS AND VALUES

##### **Point Roberts Property**

[7] This is a family asset because it was used for family purposes during the course of the marriage. In the beginning of the marriage the parties and all their children spent some part of their summers at this cabin. Later on, when it became too onerous to keep up the cabin, the cabin was rented over the winter season and for some part of the summer season. Mr. M[REDACTED] contributed to the maintenance and upkeep of the Point Roberts property. With some assistance he replaced the roof, replaced and painted the fence, replaced the toilet at the request of one of the tenants, replaced the steps to the house, front and back, did some repairs on the gyproc ceiling and painted the ceiling. The income from Point Roberts was generally collected by Mr. M[REDACTED], put into a U.S. dollar

---

account and was subsequently used for payment for family holidays and for other family purposes.

[8] This property was bought by Mrs. M [REDACTED] from her father prior to the marriage with Mr. M [REDACTED].

[9] The value of the Point Roberts home is \$126,000 (Canadian).

#### **Vancouver Property**

[10] This was used as an investment and source of funds to finance the acquisition of the land and buildings of the matrimonial home in Langley. It is a family asset. Both parties are on title and it was used as a family investment. The one-half interest in the name of Mr. M [REDACTED] was acquired for no consideration as a facility to satisfy the bank/mortgagee put into place in conjunction with a refinancing of the mortgage on the property.

[11] This property was brought into the marriage by Mrs. M [REDACTED] who had purchased the property from her father. Mr. M [REDACTED] became a co-owner at the suggestion of his bank at the time when Mr. and Mrs. M [REDACTED] were refinancing the property in order to obtain moneys to finance the acquisition of the land and the building of the house on the Langley property.

---

[12] The value of the Vancouver Property is \$432,000 subject to a mortgage to Scotia Mortgage Corporation for approximately \$191,000 and a debt owing to Mrs. M [REDACTED]'s father of approximately \$30,000 leaving an equity of \$211,000.

#### **Langley Property**

[13] This is clearly the matrimonial home of the parties and therefore conceded to be a family asset. The parties have clear title and it is now listed for sale at \$549,000. The estimated value after net property taxes and real estate commissions would be approximately \$526,000.

#### **Personal Properties**

[14] Chattels to be divided between the parties are set out in a schedule to these reasons and the agreed values, which are shown on the schedule in aggregate, are roughly equivalent. Excluded from this asset list are the wife's jewelry in the amount of \$17,618 which, by agreement, is not considered a family asset and two Honda dirt bikes belonging to the children which are not family assets.

[15] The parties have indicated that they can together reach agreement with respect to the distribution of the assets on the asset schedule. If they are unable to reach agreement by September 30, 1998, then the assets will be sold and the net proceeds divided 60% to Mrs. M [REDACTED] and 40% to Mr. M [REDACTED].

---

**Consideration of Re-Apportionment**

[16] This is a classic case where the wife having seniority and security in her work as a teacher gives up that status to move to Langley and become a traditional spouse at the request of the husband. Mrs. M██████ acted in that capacity for several years during which there were five children to look after during their formative years. She is only now able to teach and to regain her pension and seniority status.

[17] The marriage is not a short marriage nor a long marriage as those terms are used in the law.

[18] Mrs. M██████ came into the marriage with cash and property of \$295,000. The husband came into the marriage with approximately \$78,000, being the proceeds of the sale of his house in Langley.

[19] The law with respect to re-apportionment is set out in s. 65(1) of the *Family Relations Act* as follows:

65.1 If the provisions for division of property between spouses under s. 56, Part 6 or their marriage agreement, as the case may be, would be unfair having regard to:

- (a) the duration of the marriage;
- (b) the duration of the period during which the spouses have lived separate and apart;
- (c) the date when property was acquired or disposed of;
- (d) the extent to which the property was acquired by one spouse through inheritance or gift;

- 
- (e) the needs of each spouse to become or remain economically independent and self sufficient; or
  - (f) any other circumstances relating to the acquisition, preservation, maintenance, improvement or use of property or the capacity or liabilities of a spouse

the Supreme Court, on application, may order that the property covered by s. 56, Part 6, or the marriage agreement, as the case may be, be divided into shares fixed by the court.

[20] An equal division of property between the parties would be unfair under s. 65(1)(d). It is clear that Mrs. M [REDACTED] came into the marriage with the Vancouver property, the Point Roberts property and approximately \$49,000 in cash. Mr. M [REDACTED], on the other hand, contributed to the acquisition and construction of the family home in Langley of a total amount of \$78,000 together with moneys he used from a line of credit at the Scotiabank.

[21] I think it is reasonable to say that following the marriage any excess moneys that were available to either party were used for construction of the new home in Langley.

[22] Mrs. M [REDACTED] stayed at home with the children contributing 100% of her time towards the family. Mr. M [REDACTED] had put her on a strict budget which left little room for there to be any excess cash in her hands.

---

[23] I find that the division of property between the parties under s. 56, and Part 6 of the *Family Relations Act* would be unfair specifically with reference to the duration of the marriage and the extent to which the property was acquired by one spouse through inheritance or gift.

[24] The amount of the re-apportionment with respect to the real property assets should be 60% in favour of Mrs. M██████ and 40% in favour of Mr. M██████. The marriage was seven years, the financial contributions were unequal and clearly Mrs. M██████ suffered an economic disadvantage by assuming the traditional role of homemaker at the request of Mr. M██████.

[25] The schedule of assets which is annexed to these reasons for judgment is a listing containing family assets. Counsel have assured me that they will be able to divide up those assets in a fair and just manner and in accordance with the *Family Relations Act*. Accordingly I have made no determination with respect to those assets. However should the parties be unable to agree then they, or either of them, will have liberty to apply. The division of those assets should be on a near equal basis.

[26] With respect to the Canada Pension Plan credits, earnings on that plan during the course of marriage shall be divided pursuant to the Federal legislation and Mrs. M██████'s B.C.

---

Teacher's pension credits will be divided equally pursuant to the terms of the provisions of Part 6 of the *Family Relations Act*.

**SPOUSAL SUPPORT**

[27] Counsel are content with an order that there be awarded spousal support by Mr. [REDACTED] for the benefit of Mrs. [REDACTED] in the amount of \$1.00.

**CHILD SUPPORT**

[28] On the basis of the guidelines, Mr. [REDACTED] will pay \$343 a month support for B [REDACTED] based on a guideline amount of \$41,000.

[29] As the Langley property will have to be sold and as there is little incentive for Mrs. [REDACTED] to sell I order that Mr. [REDACTED] and Mrs. [REDACTED] will be jointly responsible for the conduct of the sale of the Langley property.

[30] With respect to the Vancouver property, Mr. [REDACTED] will convey to Mrs. [REDACTED] all of his interest in that property.

[31] Should there be any discrepancy between the value of the assets other than the real property that difference will be paid by a compensation order pursuant to s. 66(2)(c) of the *Family Relations Act*.

---

SUMMARY AND ORDERS

[32] A summary of the orders is as follows:

- (1) If Mrs. M [REDACTED] wishes to retain the Vancouver and Point Roberts properties, then from the net proceeds of the sale of the Langley property she will pay to Mr. M [REDACTED] the sum of \$50,400 for the Vancouver property and for Point Roberts the sum of \$84,400.
- (2) Mrs. M [REDACTED] is occupying the Langley residence without payment of rent. This is of benefit to both parties. The free rent of Mrs. M [REDACTED], however, should be set off against the equivalent value of having someone occupy and maintain the home during the sale process.
- (3) The chattel assets listed in the schedule will be divided by agreement of the parties. If they are unable to reach agreement by September 30, 1998 the assets will be sold and the net proceeds divided 60% to the wife and 40% to the husband.
- (4) The Canada Pension Plan credits and Mrs. M [REDACTED]'s teachers pension credits will be divided equally pursuant to the terms of paragraph 6 of the *Family Relations Act* and the Canada Pension Plan.
- (4) There will be a spousal support order in the amount of \$1.00.
- (5) There will be an order that Mr. M [REDACTED] pay to Mrs. M [REDACTED] the sum of \$343 a month for support for

---

B [REDACTED] based on a guideline amount of \$41,000.  
These payments will commence on August 1, 1998 and  
will continue so long as B [REDACTED] is a child of the  
marriage as that term is used in the *Divorce Act*.

[33] As there has been mixed success each of the parties will  
bear their own costs.

"J.T. Edwards, J."

AGREED STATEMENT OF FACTS

STATUS:

1. The Plaintiff, L [REDACTED] M [REDACTED], was born [REDACTED] was 39 years of age at marriage to the Defendant and is currently age 50.
2. The Defendant, R [REDACTED] M [REDACTED], was born [REDACTED] 41 years of age at marriage to the Plaintiff and is currently age 52.
3. Both parties were widowed.
4. The parties were married 18 July 1987 at Vancouver, B.C.
5. Mrs M [REDACTED] brought two children into this marriage which children were ages [REDACTED] and [REDACTED] at the date of Marriage.
6. Mr M [REDACTED] brought three children into this marriage which children were ages [REDACTED] [REDACTED] and [REDACTED] at the date of marriage.
7. The parties adopted each other's children in 1988.
8. E [REDACTED] M [REDACTED] is currently [REDACTED] years of age, resides with her father in his rental premises and is attending high school.
9. The parties separated 6 December 1996.
10. The parties were divorced 13 June 1998.

HISTORICAL:

11. By Contract of sale 31 December 1972 A [REDACTED] and D [REDACTED] P [REDACTED], parents of L [REDACTED] M [REDACTED] then L [REDACTED] K [REDACTED] sold a property at Pt Roberts to L [REDACTED].
12. Contract price was \$16,000.00.
13. On 17 April 1974 this Pt Roberts property was transferred to [REDACTED] in fullfilment of the contract.
14. On 1 May 1975 Mr P [REDACTED] sold property in Vancouver at 2984 - W33rd St. to L [REDACTED] and P [REDACTED] K [REDACTED] for \$32,500.00.

1998-04-11 11:58:04 AM (S.C.)

15. On 1 May 1975, L [REDACTED] and P [REDACTED] K [REDACTED] granted to Mr P [REDACTED] a mortgage in the sum of \$27,500.00.
16. The property transfer and mortgage were registered 18 June 1975.
17. On 19 June 1979 the mortgage granted on 1 May 1975 was cancelled and replaced with a mortgage of \$32,694.82.
18. P [REDACTED] K [REDACTED] died 30 October 1980.
19. On 8 January 1981 P [REDACTED] K [REDACTED]'s half interest as joint tenant was transmitted to I [REDACTED] K [REDACTED] at a declared value of \$75,000.00.
20. On 30 April 1987 L [REDACTED] P [REDACTED] placed a mortgage to Scotia Mortgage Corp on her Vancouver property in the sum of \$135,080.00. R [REDACTED] M [REDACTED] signed the mortgage as Guarantor.
21. Concurrently with the placement of the mortgage referred to in paragraph 20, the P [REDACTED] mortgage was discharged at the request of the parties.
22. The tax assessed value of that property for 1987/88 based on a 1986 assessment was \$154,950.00.
23. On 30 April 1987, I [REDACTED] M [REDACTED] held an account with CIBC Mortgage Corporation with \$ [REDACTED] on deposit and to which a further \$ [REDACTED] was deposited 1 December 1988. These funds were disbursed between December 1987 and December 1990 for family purposes.
24. 1 May 1987 the parties jointly purchased bare land in Langley for \$72,400 intending to construct a home on this land.
25. The mortgage proceeds from the Vancouver property were used to complete the purchase with the sum of \$62,900.00 remaining.
26. These funds were applied to construction costs.
27. 18 July 1987 the parties married.
28. 1 August 1987 L [REDACTED] M [REDACTED] rented out the Vancouver property and moved to R [REDACTED] M [REDACTED]'s Langley residence.
29. Rental account set up for deposit of Vancouver rental cheques and payment of expenses of Vancouver property.

1998 CanLII 5804 (BC S.C.)

30. 31 August 1987 R [REDACTED] M [REDACTED]'s Langley residence sold for \$94,338.13.
31. After payment of costs to clear title, R [REDACTED] M [REDACTED] received \$78,143.72
32. These funds were applied to construction costs.
33. The construction contract with extras was approximately \$151,000.00.
34. The parties moved into the new family residence upon sale of R [REDACTED] M [REDACTED]'s residence.
35. On 1 June 1989 Mr and Mrs P [REDACTED] executed and registered a Statutory Warranty Deed to L [REDACTED] M [REDACTED] respecting the Pt Roberts property.
36. In 1988 L [REDACTED] M [REDACTED] received a motor vehicle settlement payment of approximately \$15,000.00.
37. 15 August 1991 L [REDACTED] M [REDACTED], still showing on title on the Vancouver property as I [REDACTED] P [REDACTED] transferred a one half interest in that property to R [REDACTED] M [REDACTED].
38. 15 August 1991 the Parties jointly re mortgaged the Vancouver property increasing the mortgage to \$150,000.00.
39. The parties received approximately \$13,000.00 net which was applied to reduce the Scotiabank Line of Credit.
40. The Scotiabank Line of Credit debt was in the sole name of R [REDACTED] M [REDACTED] and was used for family expenses.
41. In May 1993 the parties commenced renting the Pt. Roberts property.
42. The rental income was deposited from then until October 1996 into a US Dollar account in the name of R [REDACTED] M [REDACTED].
43. Money from this rental was used for upkeep of the property and partially funded annual family holidays.
44. The Pt Roberts property was not rented during the latter part of July and through August of each year when it was used for family purposes.
45. On 26 May 1993 the parties renewed the Vancouver property mortgage and increased it to \$174,000.00.

46. Concurrently with the registration of this mortgage renewal, L [REDACTED] P [REDACTED] registered a change of name to M [REDACTED]. Net proceeds of the renewal were applied to reduced the Scotiabank Line of Credit.
47. In 1994 L [REDACTED] M [REDACTED] received a motor vehicle settlement payment of \$15,000.00 which she paid out \$5000.00 to R [REDACTED], \$5,000.00 to her own debts and \$5,000.00 to a computer purchase.
48. On 12 June 1996 the parties renewed the mortgage on the Vancouver property and again increased it is time to \$192,000.00 with the net proceeds being paid to reduce the Scotiabank line of credit.
49. 6 December 1996 the parties separated.
50. Since separation L [REDACTED] M [REDACTED] has occupied the former family residence and R [REDACTED] M [REDACTED] has rented alternate accommodations occupied by himself and his daughters.
51. On 7 February 1997 L [REDACTED] M [REDACTED] registered transfers severing the joint title ownership of the Vancouver and Langley properties.
52. The Parties are agreed that the current value of the Pt Roberts property is approximately \$86,000.00 (US) which converted Thursday, 9 July 1998 to \$126,000.00 (Can).
53. The parties are agreed that the current value of the Vancouver property is between \$424,000.00 and \$440,000.00 based on a market appraisal from Caldwell Banker.
54. The Langley property is jointly listed for sale at \$579,900.00. The listing agents advise that currently the appropriate list price would be \$549,99.00.

1998 CanLII 500 (BC S.C.)

**SCOTT SCHEDULE**

ASSET	TITLE	POSSESSION	VALUE	
			HUSBAND	WIFE
[REDACTED] Langley	Joint now Severed	Wife	\$549,900	\$549,900
[REDACTED] Vancouver	Joint now Severed	Wife - rented out	\$440,000	\$424,000
[REDACTED], Pt. Roberts property	Wife	Wife	\$126,000	\$126,000
1985 Chevrolet Caprice	Husband	Husband	\$1000.00	
1988 Chevrolet 3/4 ton	Husband	Husband	\$7,000	
1971 Winnebago Motor Home	Husband	Husband	\$4,000	
Recreational Equip. (Schedule A)	Joint	Husband	\$8,950.	
Shop and Yard Equip. (Schedule A)	Joint	Husband	\$4,965.	
Shop and Yard Equip. (Schedule A)	Joint	Wife	\$1,150	
Household contents (Schedule A)	Joint	Husband	\$2,025.	
Household contents (Schedule A)	Joint	Wife	\$11,050	
Jewelry	Wife	Wife	\$17,618	
Jewelry	Husband	Husband	nominal	
RRSP	Husband	Husband	\$46,000.	
RRSP	Wife	Wife	\$10,557	
Bank Accounts	Husband			
Bank Accounts	Wife			
Insurance	Husband	Husband	\$7,427	
Insurance	Wife	Wife		unknown

1998 CanLII 5804 (BC S.C.)

SCHEDULE A

(L) L [REDACTED] has possession

(R) R [REDACTED] has possession

Approx. Value

(A) Automobile

1985 Chev Caprice S/W	(L)	\$1000.00
1988 Chev 3/4 Ton Truck	(R)	\$7000.00
1971 Winnebago Motorhome	(R)	\$4000.00

(B) Recreational Equipment

1976 18ft K&C Boat and Trailer	(R)	\$4000.00
Boat equipment (skis, ropes, lifejacks, etc.)	(R)	\$400.00
12ft alum boat & older gas mercury engine	(R)	\$800.00
1 electric motor	(R)	\$250.00
11981 Ultra Sonic Ski Doo	(R)	\$1000.00
11979 444 Ski Doo (needs motor work)	(R)	\$600.00
11977 440 Ski Doo	(R)	\$600.00
11977 Elan Ski Doo (needs track)	(R)	\$300.00
11979 Honda Dirt Bike (R500)	(R)	\$500.00
11981 Dirt Bike (R100)	(R)	\$400.00
11977 Dirt Bike (R50)	(R)	\$100.00

(C) Shop and Outside Equipment

11995 gas powered blower and vacuum	(R)	\$200.00
11991 gas weed eater	(R)	\$100.00
11994 pressure washer gas powered	(R)	\$250.00
1 older model table saw	(R)	\$175.00
1 1980's(?) chain saw	(R)	\$50.00
11993 self propelled Toro Lawnmower	(L)	\$400.00
11989 hedge trimmer (electric)	(R)	\$40.00
11995 gas barbecue	(R)	\$200.00
1 older mechanics roller cabinet	(R)	\$100.00
1 older mechanics toolbox	(R)	\$100.00
complete set of mechanics tools all (purchased pre 1970)	(R)	\$3000.00

<u>Shop and Outside Equipment cont.</u>	<u>Approx.Value</u>	
1 (4 ton) floor jack	(R)	\$200.00
1 acetylene torch set	(R)	\$100.00
1 old arch welder	(L)	\$75.00
misc., wood & garden handtools	(R)	\$400.00
1 electric skill saw	(R)	\$50.00
1 hydraulic bumper jack	(L)	\$40.00
1 trampoline	(L)	\$150.00
Lawn chairs		
Outdoor lights		
rototiller		
pressure washer		

(D) Furniture & Inside Possessions

1 chesterfield and love seat	(R)	\$300.00
2 rocker chairs	(L)	\$150.00
1 chesterfield and love seat	(L)	\$300.00
1 older chesterfield and chair	-L)	\$100.00
1 reclining chair	(R)	\$100.00
1 brass coffee table and end tables	(R)	\$250.00
11983 Hitachi TV.	(R)	\$100.00
11993 Panasonic T.V.	(L)	\$150.00
1 older (pre 1986) JVC VCR	(R)	\$75.00
11993 Panasonic VCR	(L)	\$300.00
1 (pre 1970) cabinet stereo & record play <del>(R)</del>		\$50.00
11994 Sony stereo & CD player & cabinet	(L)	\$400.00
1 oak coffee table	(L)	\$75.00
1 dining room suite, hutch, table & cabin <del>(R)</del>		\$1200.00
1 Macintosh computer and Printer	(L)	\$2000.00
1 older sewing machine	(L)	\$100.00
1 sewing serger	(L)	\$350.00
1 Minolta camers (2 lenses, flash and cas <del>(L)</del>		\$400.00
1 stand-up freezer	(L)	\$150.00
1 chest deep freezer	(L)	\$75.00
1 washer	(L)	\$150.00

1 dryer	(L)	\$150.00
1 stove	(L)	\$200.00
1 refrigerator	(L)	\$300.00
1 bedroom suite	(L)	\$300.00
1 bedroom suite	(R)	\$600.00
1 arborite table and 6 chairs	(R)	\$150.00
misc special plates and dishes in China cabinet & on walls	(L)	\$2500.00
1 stainless steel silver ware set with case		\$300.00
Plaintiffsjewellery (appraisal attached)	(L)	\$17,600.00
11996 Electrolux vacuum & attachments	(R)	\$400.00
1 older Electrolux vacuum & attachments	(L)	\$75.00
1 piano	(L)	\$500.00
Christmas decorations & lights (indoor and outdoor)	(L)	\$75.00