

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

R.S.W.

PETITIONER

AND:

A.T.W.

RESPONDENT

REASONS FOR JUDGMENT  
OF THE  
HONOURABLE MADAM JUSTICE D. SMITH

Counsel for the Petitioner: G. Jack Harris, Q.C.

Counsel for the Respondent: F.G. Potts

Place and Dates of Hearing: New Westminster, B.C.  
September 22, 23, 24 and 25,  
and November 6, 1997

[1] Mr. and Mrs. W. separated on July 1, 1991 after 19 years of marriage. They were divorced on December 6, 1995. They have two children: S. born June 29, 1976 (age 21), and L. born December 18, 1982 (age 14). At the time of trial they were both 50 years of age.

[2] The parties acquired a number of assets during their marriage which they have successfully identified and valued for the purposes of making a division of property. Following their separation, Mr. W. voluntarily contributed to the support and maintenance of his wife and children in the amount of 50% of his net pay cheque, or \$1,517 per month and 50% of any extraordinary costs such as property taxes, house insurance, and extra-curricular activities for the children. Since October 1, 1995, he has contributed to their support and maintenance pursuant to an interim order of this Court, made on September 27, 1995 which requires him to pay \$4,000 per month. The payments under the Court order are taxable to Mrs. W. and deductible to Mr. W.

[3] The most difficult issue arising from the breakdown of Mr. and Mrs. W.'s marriage, is how to adequately address Mrs. W.'s compensatory claim for having left her teaching career when the parties decided to have children, and devoting the next 15 years of her marriage to meeting her family's needs at home. In addition to regular spousal and child support, Mrs. W. seeks compensation for those lost years of employment by an unequal division of the family assets or, alternatively, increased spousal maintenance.

BACKGROUND

[4] Mr. and Mrs. W. first met on Vancouver Island in 1970. At

that time, Mrs. W. had her teaching certificate which she had obtained in 1969. Mr. W. had been a member of the R.C.M.P. since January 1967. In June of 1972 they moved to the Lower Mainland where Mrs. W. obtained a teaching position in Abbotsford and Mr. W. worked as a police officer at the Burnaby R.C.M.P. Detachment. They purchased a home in Langley which is still the family home. They married on November 18, 1972.

[5] On June 29, 1976, their son S. was born. By mutual agreement, Mrs. W. gave up her teaching job to remain at home with S. and future children they hoped to have. The parties had difficulty conceiving another child, however they were fortunate to adopt L. who was born on December 18, 1982. When Mrs. W. left her teaching position before S.'s birth, she cashed in her teacher's pension of some 5 years.

[6] There is no issue that following S.'s birth, until the date of separation, Mrs. W. was the primary caregiver to the children and was primarily responsible for domestic work in the home. Mr. W. assisted in caring for the children. In particular, he facilitated their involvement in extra-curricular activities when he had time. He was also responsible for most of the repairs and renovations to the home. This arrangement for the division of responsibilities between the parties benefited the children and also provided Mr. W. with the opportunity to advance his career. Unfortunately, however, it left Mrs. W. financially vulnerable if the marriage broke down.

[7] In 1976, Mr. W. was promoted to Corporal. In anticipation of this promotion, he spent two years working in the radio room supervising the dispatchers for all road personnel. In order to enhance his career, he took courses at B.C.I.T. in business administration and computer sciences at night and during his holidays. He eventually obtained a certificate in business administration and a posting in the Financial Services Department at the Surrey Detachment. He remained in that position for five years.

[8] Shortly after obtaining his certificate in business administration, Mr. W. started a proprietorship called "Unique Distributors". The business purchased and resold computers for specific clientele. It made little money in the early years but by 1991 generated about \$35,000 per year in extra income for the family. Income from the business was split between Mr. and Mrs. W. by Mrs. W. notionally receiving a salary of \$1,000 a month. She paid little, if any, income tax on that salary as she had no other employment income. The additional income allowed the family to acquire some extras, make additions to their home, and go on some holidays.

[9] In 1986, Mr. W. was promoted to Sergeant. He was transferred to "E" Division, being the computer services division of the R.C.M.P. Planning and Research Department located in Vancouver. In 1990 he was promoted to Staff Sergeant and became the manager of computer services within the R.C.M.P. As a result of this promotion, he was required to cease operating his business "Unique Distributors" as his employer felt that it placed him in a position of conflict. In 1991, Mr. W. sold the business' equipment to a friend for about \$2,000.

[10] Mr. and Mrs. W. had experienced difficulties in their marriage for about three years before their final separation. They separated on July 1, 1991. By agreement Mrs. W. and the two children remained in the home where they continue to reside to this date.

[11] A number of additions, renovations and repairs were made to the home over the years. Many of these were done by Mr. W. The home is presently valued at \$213,000 and was mortgage-free at the date of separation. On February 17, 1996, Mr. W. remarried. His wife is a detective with the Vancouver Police Department and earns approximately \$60,000 per annum. They purchased a home for \$275,000 with \$45,000 down. The down payment was a gift from his wife's mother. Mr. W. severed the joint tenancy ownership of the family home and registered an inter alia mortgage of \$230,000 against his half interest so that he could purchase his new home.

[12] In the last few years the family home has decreased in

value from an estimated \$250,000. Since 1991, Mrs. W. has had limited funds to invest in repairs and maintenance to the home. In July 1997 she discovered a problem of water leakage in the basement subfloor which is now damaged from wet rot. Insurance coverage has been declined. The estimated cost of repairs is between \$7,000 and \$10,000. Mrs. W. has already spent \$1,438.41 toward these repairs.

[13] On October 1, 1991, at age 44, Mr. W. changed careers. He had been advised that he would receive no further promotions in the R.C.M.P. He also understood that he qualified for his R.C.M.P. pension. He therefore retired from the R.C.M.P. and accepted a senior civilian position with the Co-Ordinated Law Enforcement Unit ("C.L.E.U.") at a starting salary of \$55,000 per annum. That salary has now increased to \$72,000 per annum. In his new employment, Mr. W. contributes to a public service pension which was vested after two years contributory service. Mr. W.'s contribution account as at March 31, 1997, was \$25,648.41.

[14] Upon his retirement from the R.C.M.P., Mr. W. received a severance package of \$29,928.83. He transferred these monies directly into an R.R.S.P. to avoid paying any tax. Since their separation, he has continued to contribute to his R.R.S.P. which has now grown to approximately \$69,000.

[15] In addition to his employment income from C.L.E.U., Mr. W. has received his matured R.C.M.P. pension of \$2,105.54 gross per month since November 1, 1991. Mrs. W.'s one-half interest in this pension was valued for the period from November 18, 1972, being the date of marriage, to June 1, 1991, being the approximate date of separation, at \$137,982.11. Upon application, these monies will be transferred into a locked-in R.R.S.P. of her choice which she may access only upon her retirement.

[16] An order for divorce was granted on December 6, 1995. On April 26, 1996, Mr. W. received information from the R.C.M.P. Pension Services Section ("Pension Services") that a division of his pension based on a term ending June 1, 1991, would result in a decrease of his monthly payment by \$823.83. On October 16, 1996, Mrs. W. applied under the Pension Benefits Division Act, S.C. 1992, c. 46, Sch. II, for a division of Mr. W.'s R.C.M.P. pension.

[17] On November 29, 1996, following her application for a division of Mr. W.'s pension, Mrs. W. obtained an order awarding her a share of Mr. W.'s R.C.M.P. pension for a term ending January 6, 1996. That order also varied the earlier order of September 27, 1995. It made a declaration that Mr. W.'s monthly pension income would decrease by \$832.83 (sic) upon Mrs. W. receiving her share of his pension based on the term ending January 6, 1996. It also ordered that upon the division occurring, Mr. W.'s obligation to pay spousal maintenance would decrease from \$1,500 to \$1,250 per month and the maintenance payable for the two children would decrease from \$1,250 each to \$1,000 each per month, for a total decrease of \$750. Again, because this order was made before the Federal Child Support Guidelines ("the Guidelines") were introduced, these payments were taxable to Mrs. W. and deductible to Mr. W.

[18] The declaration in the order of November 29, 1996, that Mr. W.'s pension would decrease by \$832.83 upon a division occurring based on a term ending January 6, 1996, does not appear to be correct. That number seems to have been taken from Pension Services information provided to Mr. W. which was based on a representation that the term would end on June 1, 1991.

[19] Lastly, the order of November 29, 1996 ordered the family home to be listed for sale on June 30, 1998.

[20] Mr. W. immediately filed an objection when he was notified by Pension Services of their intention to divide his pension based on a term ending January 6, 1996, rather than a term ending June 1, 1991. He believed that this longer term would decrease his monthly annuity by a further \$130. Mr. W.'s objection has suspended the division of his pension until final disposition by this Court. He continues to receive the full amount of his monthly pension. In spite of the suspension, in February of 1997 Mr. W. decreased his monthly support payments

by \$750 as contemplated by the order of November 29, 1996. Arrears of maintenance have been agreed at \$6,750 up to and including November 1997.

[21] Mrs. W. seeks compensation for her share of Mr. W.'s matured pension from November 1, 1991, when Mr. W. commenced receiving it, until October 1, 1995, when the order of September 27, 1995 awarded her interim maintenance of \$4,000 per month. The interim order took into account Mr. W.'s employment income from C.L.E.U. of approximately \$67,000 at that time, and his annual pension income of \$25,306.

[22] Both parties have consented to any variation of the order of November 29, 1996 that is required to give effect to this Court's final order for a division of the family assets, and in particular, as it relates to the division of Mr. W.'s R.C.M.P. pension and the disposition of the family home.

[23] Before their separation, Mrs. W., who is of Japanese ancestry, received \$21,000 in reparation monies from the Canadian Government for the internment of her parents during World War II. Mrs. W. was born in Lillooet where her mother had been relocated during the war. Mrs. W. deposited these monies into an account in her name alone. She gave Mr. W. \$5,000 to purchase his 1989 Dodge Caravan which he used in his business. The balance of the monies remained intact in her account. She added to this account a further \$15,000 which was given to her by her parents as an advance on her inheritance. At the date of separation, this account was at approximately \$31,900. Mrs. W. claims that at all times she intended to keep these monies separate and that they were never used by her for a family purpose.

[24] Her parents are now deceased. Within the next year, she anticipates receiving the balance of her inheritance, which at present consists of approximately \$42,000 in cash and an interest in land worth an estimated \$50,000, less probate fees, taxes and legal fees.

[25] Before their death, Mrs. W. received additional financial gifts from her parents which allowed her to acquire a \$3,000 term deposit. Since her separation, Mrs. W. has also acquired additional R.R.S.P.'s of approximately \$23,000. These R.R.S.P.'s have been purchased in part from her savings of \$31,900 in an attempt to decrease her tax liability on the maintenance payments which she is receiving from Mr. W.

[26] At the date of separation, the parties also owned the following additional assets ("the other assets"):

Mr. W.'s savings:	\$3,000
Mrs. W.'s savings:	\$8,000
Mrs. W.'s spousal R.R.S.P.:	\$6,000
Mrs. W.'s Canada Savings Bond:	\$2,000
Mrs. W.'s 1987 Plymouth:	\$1,000
Mr. W.'s sale proceeds of 1989 Dodge Caravan (sold in 1992):	\$5,000
Mr. W.'s sale proceeds of business equipment:	\$2,000

[27] The parties have agreed that the savings accounts in trust for the children, and in particular S.'s savings of approximately \$9,400 and L.'s savings of approximately \$7,500, are the children's assets and are to be excluded from any division of family assets.

[28] In the summer immediately following their separation, Mrs. W. completed her course requirements for a Bachelor of Education degree. She has continued to take numerous courses, workshops and seminars to upgrade her skills. She was also required to complete 75 days of teaching for a school district in order to complete the practicum requirement.

[29] She obtained part-time work as a teacher on-call ("T.O.C.") with Langley School District in December 1991 through 1992. She obtained her Bachelor of Education degree in November of 1992. Since May of 1993, she has tried to obtain full-time employment but her lack of seniority in any given school district has been an impediment to her achieving that

goal. She would like to obtain full-time employment in the Langley School District where she resides and where she has had some part-time employment. However, she is not adverse to working in another school district. The difficulty she faces is that by spreading her employment between different school districts, she does not build up seniority with any one, and may thereby defeat her main objective of obtaining full-time employment.

[30] Mr. Thomasson, the principal of North Otter Elementary School in Langley where Mrs. W. has worked as a T.O.C. and in a .5 employment position, described her as having "a strong work ethic" and being "regarded in the community as a quality teacher with a quality programme". He would like to hire her in a full-time position if one becomes available. He recommended that she continue working part-time as a T.O.C. in the Langley School District in order to build up her seniority.

[31] From 1992 to present, Mrs. W. has, through her part-time employment, built up pension contributions in her Teachers Pension Plan ("the Plan"). Total contributions to December 31, 1996, are \$5,055.38. The Plan requires her to have two years contributory service before she acquires a vested pension. As of December 31, 1996, her pensionable service was 22.99 months.

[32] It was suggested that Mrs. W. might be able to buy back the 5 years pensionable service she cashed in when she left teaching in about 1975. A buy-back would enhance her eventual pension and Mr. W.'s share of her pension. The Plan member booklet states that reinstatement must be sought before January 1, 2001, or within 5 years of the member's return to work, whichever is later. It was unclear from the evidence whether that employment must be full-time or part-time to qualify for reinstatement of a collapsed pension. In my opinion, it would be unwise to make any order requiring a reinstatement of Mrs. W.'s collapsed pension in the absence of evidence clarifying the prerequisites for such a reinstatement.

[33] Since Mrs. W. returned to part-time employment in 1992, her employment income has averaged approximately \$14,000 per annum. I expect that level of income to continue in the foreseeable future until she builds up some seniority and is able to obtain a full-time teaching position.

#### THE CHILDREN

[34] The children have coped with their parents' separation and divorce in different ways. S.'s school marks went down after Grade 9. In November 1994, he contracted meningitis and was home for three months. He did not complete Grade 12 until 1996. He completed first year at Kwantlen College in June 1997. He obtained full-time employment as a concert promoter in August of 1997 at \$2,000 per month, and decided not to return to school. He intends to return to school eventually, but does not know when that might be. He continues to live at home but would like to move into his own place.

[35] Mr. W. continued to pay maintenance for S. until September of 1997 when he learned from S. that he would not be returning to school. Mr. W. seeks a credit against the maintenance arrears he admits to owing, for what he considers an overpayment of S.'s maintenance for the months of June, July and August of 1997.

[36] L. has not fared as well as S. Three years after the parties' separation, when L. was 12 years old and in Grade 7, she started acting out. She skipped school, sneaked out at night and on occasion would run away from home overnight or for a few days. She was caught shoplifting twice. She was diverted after the first incident and placed on probation after the second. Mrs. W. enrolled L. in a different school in an attempt to break her association with a group of students who were having a negative influence on her. She also enrolled L. in a winter and summer church camp at some extra cost. L. appears to have enjoyed that experience. While at camp, L. disclosed to a friend that she had been sexually assaulted by an 18 year old a few years earlier. As a result of this disclosure, L. went through a period of great insecurity and low self-esteem. For the first six months of 1996, she took her schooling at home by correspondence. She returned to school in September of 1996 and is presently in Grade 10. In the past six months her self-esteem has increased and her

behaviour has improved.

[37] Mrs. W. was critical of Mr. W.'s lack of availability to help out with L. during these difficult times. On occasion when she asked for his help, she said he told her he was "busy" or "too stressed out" from work. Mrs. W. eventually stopped communicating with him about L.

[38] Mr. W. was critical of Mrs. W.'s failure to accommodate his access requests to see L. and requested that she tell him about the positive things in L.'s life as well as the negative. He expressed a desire to be better informed about L.'s activities, schooling and problems. He was very disturbed to learn for the first time during the trial that L. had reported an incident where she had been sexually assaulted. Mr. W. requests an order for joint guardianship of L. to allow him access to information about what is happening in L.'s life. He also requests specified access on December 24, 1997 so that he and his family, including his mother who is still alive, may spend some time with L. at Christmas. He has not had access to the children over Christmas since the parties' separation.

#### DIVISION OF PROPERTY

##### (a) Pensions/R.R.S.P.

[39] There is no issue that Mr. W.'s R.C.M.P. pension is a family asset. Furthermore, as the triggering event did not occur until the divorce order of December 6, 1995, much of both Mr. and Mrs. W.'s post-separation pensions (Mrs. W.'s teacher's pension and Mr. W.'s C.L.E.U. pension) and R.R.S.P.'s (Mrs. W.'s \$23,000 and Mr. W.'s additional \$40,000) are also family assets by definition pursuant to s. 58(3)(d) of the Family Relations Act, R.S.B.C. 1996, c. 128. I have concluded that save and except for Mr. W.'s R.C.M.P. pension, the R.R.S.P. he acquired from his severance package of \$29,928.83 and Mrs. W.'s spousal R.R.S.P. at separation of \$6,000, each of the parties shall retain their remaining R.R.S.P.'s and pensions acquired after separation. Pursuant to s. 65(1)(b) of the Family Relations Act, because of the length of time the parties have lived separate and apart before the occurrence of the triggering event on December 6, 1995, I order 100% re-apportionment of those post separation pensions and R.R.S.P.'s to the owner of the asset.

[40] The net difference between Mr. W.'s R.R.S.P. from his severance package, and Mrs. W.'s spousal R.R.S.P. is \$23,928.83. I order that Mr. W.'s roll over 50% of that difference, or \$11,964.41, into an R.R.S.P. in Mrs. W.'s name.

[41] Mr. W.'s R.C.M.P. pension continued to accrue value to the date of its maturity on November 1, 1991. Thereafter, it had no further accruing benefit. I have concluded that the order of November 29, 1996 must be varied to give effect to an equal division of Mr. W.'s pension for the term November 18, 1972 to November 1, 1991, when it matured. This term will nominally increase the lump sum to be transferred to a locked-in R.R.S.P. for Mrs. W.

[42] Mrs. W. is entitled to compensation for her interest in the matured pension that Mr. W. received from November 1, 1991 to October 1, 1995, when the interim maintenance order was made. Assuming Mrs. W.'s share of the monthly pension received by Mr. W. is around \$823.83 gross, over 47 months she is entitled to be compensated \$38,720, less the tax paid on that sum. Mr. W. paid tax on that sum at a rate of 54% or an estimated \$20,908.80. Mrs. W., therefore, is entitled to a compensation order of \$17,811.20. These numbers will not be precisely accurate as the monthly reduction of Mr. W.'s matured pension may be slightly more than \$823.83, given the extended term to November 1, 1991. I invite counsel to make the necessary calculations when they have the exact numbers.

##### (b) Reparation monies, advance on inheritance, and term deposit

[43] The balance of Mrs. W.'s reparation monies of \$16,000, the \$15,000 advance on her inheritance, and the \$3,000 term deposit she acquired by financial gifts from her parents after separation, I find are not family assets. These monies were never used for a family purpose and were kept separate by Mrs. W. from the family savings. I find they are Mrs. W.'s separate property and are not subject to any claim by Mr. W.

(c) The other assets

[44] The remaining assets listed in paragraph 26 above, except for Mrs. W.'s spousal R.R.S.P. which I have already dealt with, I find are family assets. From the list, Mrs. W. retains approximately \$11,000 worth of assets and Mr. W. retains approximately \$10,000 worth of assets. While such a division is slightly unequal, I have concluded it is a fair one, and I order that each of the parties retain those other assets registered in their respective names.

(d) The family home

[45] Mrs. W. seeks to retain the family home, at least until L. graduates from high school. Mr. W. seeks an order for sale of the home and a division of its net sale proceeds. During submissions, I put to counsel for both parties, that a delayed sale of the family home which ties up the capital of the non-resident spouse, might amount to a de facto re-apportionment of the equity in favour of the resident spouse. (See: Muirhead v. Muirhead (1995), 14 R.F.L. (4th) 276 (B.C.C.A.); Izzard v. Izzard (1995), 14 R.F.L. (4th) 367 (B.C.C.A.)).

[46] Counsel for Mrs. W. submitted that if the Court finds his client needs to retain the home for the benefit of L., such a proposition places the financial burden of raising the child on the custodial parent at no cost to the non-custodial parent.

[47] While there was a considerable amount of evidence given by Mrs. W. concerning L.'s difficulties, particularly over the last three years, there was no evidence to suggest that L., at her age, was a child who could not adapt to change in her life. In fact, she changed schools during this period, and attended church camp away from home. In both instances she made new friends and seemed to be doing better. At the same time I heard evidence which suggested that Mrs. W. had a strong emotional attachment to the home.

[48] The parties have now lived separate and apart for over six years during which time Mrs. W. has continued to occupy the family home rent free. There is some evidence that the market value of residential housing in this area may be falling. In addition, the home has deteriorated over the last six years through no fault of Mrs. W., but probably due in part to a lack of funds required to maintain and repair the home.

[49] Having considered all of these factors, I have concluded that the term of the November 29, 1996 order requiring that the home be listed for sale by June 30, 1998, is an appropriate one. I decline to vary that term. The parties shall have joint conduct of sale. If they are unable to agree on a listing price, they have liberty to make application to the Court for such a determination. Upon sale of the home and payment of any real estate commission and the usual adjustments, there will be a division of the net proceeds of sale as follows:

- (a) Mrs. W. shall receive 60% of the net proceeds of sale and Mr. W. shall receive 40% of the net proceeds of sale.
- (b) From Mr. W.'s 40% share of the net proceeds, there shall be transferred to Mrs. W.'s share, the following sums:
  - i. 50% of any necessary costs for repairs to the home to the date of its sale, upon Mrs. W. producing receipts for any such expenditures.
  - ii. All arrears of maintenance owing by Mr. W. to the date of sale.
  - iii. Compensation for Mrs. W.'s interest in Mr. W.'s matured pension from November 1, 1991 to October 1, 1995.

[50] An unequal division of the net proceeds of sale on a 60/40 split is made to compensate Mrs. W. for the economic hardship she now experiences as a result of her role in the marriage.

Her loss of earning capacity due to her assumption of child rearing and housekeeping responsibilities during the marriage, clearly affects her present capacity to become self-sufficient. This "capital loss" as referred to in *Toth v. Toth* (1995), 13 B.C.L.R. (3d) 1 (C.A.); *Lodge v. Lodge* (1993), 79 B.C.L.R. (2d) 360 (C.A.), requires a re-apportionment of the net proceeds of sale in order to address Mrs. W.'s economic loss arising from the marriage, and Mr. W.'s disproportionate economic gain from the marriage. The skills acquired by Mr. W. during the marriage, particularly his computer skills, have allowed him to obtain a job at a good salary which has increased regularly since 1991.

[51] The disparity between the parties' income earning abilities, which has arisen primarily because Mrs. W. left her teaching position to care for the family, is highlighted after separation. Mr. W.'s salary increased from \$55,000 to \$72,000 per annum, he made contributions of \$25,000 to a new vested pension and his R.R.S.P.'s increased by approximately \$40,000. Meanwhile, Mrs. W.'s income level remained at about \$14,000 per annum because of her lack of seniority, she made contributions of only \$5,000 to a pension plan which is not vested, and her R.R.S.P. holdings increased primarily because she purchased them from her existing savings. If she can secure full-time employment, that disparity may decrease, but she will never achieve Mr. W.'s current financial success. The Langley School District Teacher Salary Grid for 1998, shows a \$10,000 per annum difference in salary between a teacher employed full-time with 4 years experience (\$40,000), and a teacher employed full-time with 11 years experience (\$50,000). If Mrs. W. is unable to secure full-time employment, that disparity will increase.

#### SPOUSAL MAINTENANCE

[52] Equitable sharing of the economic consequences of marriage breakdown may be achieved by the division of property, spousal and child support orders, or a combination of property and support orders: *Moge v. Moge* (1992), 43 R.F.L. (3d) 345 at 374 (S.C.C.). Given Mrs. W.'s present income earning capacity, I have concluded that she will require spousal maintenance to meet her on-going financial needs.

[53] On examining the parties' respective income and expenses, I have excluded Mr. W.'s pension income for purposes of determining an appropriate quantum of spousal maintenance for Mrs. W. The monthly annuity Mr. W. will continue to receive after Mrs. W.'s share of his pension has been transferred to her, is still an asset, albeit received by Mr. W. in the form of additional income. To include that income for the purposes of assessing his maintenance obligation would be, in my opinion, akin to "double dipping". Mrs. W. would not only have received her share of Mr. W.'s pension from the transfer, but would indirectly obtain an additional share of that asset by an award of maintenance based on an income that includes Mr. W.'s pension income.

[54] After reviewing each of the parties' financial statements, I have concluded that an award of \$1,500 per month commencing December 1, 1997, and payable on the first day of each and every month thereafter, is required to meet Mrs. W.'s present financial needs. Upon her receipt of the balance of her inheritance, and/or upon her obtaining full-time employment, this amount should be reviewed.

#### THE CHILDREN

[55] The parties have agreed permanent custody of L. shall be with Mrs. W. with reasonable and generous access to Mr. W. L. is of an age where her wishes concerning any access arrangement with her father should be respected. However, I am prepared to grant Mr. W. specified access to L. for December 24, 1997, as he has not spent Christmas with the children since separation. Both parties wish to maintain and enhance Mr. W.'s relationship with L. Also for those reasons, I am prepared to make an order for joint guardianship of L. which shall mean the following:

- (1) Mr. and Mrs. W. are to be the joint guardians of the estate of L.
- (2) In the event of the death of either Mr. or Mrs. W., the remaining parent will be the sole guardian of the person of L.



- (3) Mrs. W., who is responsible for the day-to-day care of L. will have the obligation to advise Mr. W. of any matters of a significant nature affecting the child.
- (4) Both Mr. and Mrs. W. will have the right to obtain information concerning the child directly from third parties, including teachers, counsellors, medical professionals and third party caregivers.

[56] Both Mr. and Mrs. W. agree that an order for maintenance for L. should be made pursuant to the Guidelines. At present, Mr. W. has employment income of \$72,000 per annum and pension income of \$25,306 per annum, totalling \$97,306 per annum. Pursuant to the Guidelines, he is obliged to pay maintenance for L. at a rate of \$741 per month which shall commence December 1, 1997. Upon the division of his pension, with the resulting decrease in income, his maintenance obligation for L. shall decrease to an amount in accordance with the Guidelines.

[57] I find that S. is not a child of the marriage at this time. I order that Mr. W.'s obligation for S.'s maintenance ended as of September 1, 1997. Following his graduation, Mrs. W. continued to contribute to S.'s support for the months of June, July and August 1997, when he obtained full-time employment. In my opinion, there is a necessary grace period between graduation and the obtaining of employment before the responsibility of maintenance for a child of a marriage is terminated. Accordingly, I do not accede to Mr. W.'s request for a set-off of three months maintenance payments for S. against arrears of maintenance that are owed by him.

[58] It is suggested that S. may return to school at some time in the future. At such a time, he may again be considered a child of the marriage. Mr. W. has indicated that he is prepared to contribute to S.'s support if and when S. returns to school. There are additional factors for the Court to consider in cases of an application for maintenance for an adult child. I note that S. may have been working for a period of time and therefore be in a position to contribute to some of his future educational costs. He also has savings of approximately \$9,400 which might be applied to his expenses. Factors such as these, and others, might be relevant to any future application for maintenance for S.

#### SUMMARY

[59] In conclusion, I make the following orders to give effect to this judgment:

- (a) Mrs. W. is awarded permanent custody of L., with reasonable and generous access to Mr. W., such access to include December 24, 1997.
- (b) Mr. and Mrs. W. shall have joint guardianship of L. as defined in paragraph 56.
- (c) Mr. W. shall pay maintenance for L. commencing December 1, 1997 and payable on the first day of each and every month thereafter, the sum of \$741, which sum shall decrease to the Guidelines amount, upon Mr. W.'s R.C.M.P. monthly pension income decreasing upon the division of his pension.
- (d) A declaration that S. is no longer a child of the marriage as of September 1, 1997.
- (e) Mr. W. shall pay spousal maintenance of \$1,500 per month commencing December 1, 1997, and payable on the first day of each and every month thereafter, which amount shall be reviewed upon Mrs. W. receiving the balance of her inheritance and/or obtaining full-time employment.
- (f) A determination that the following assets are family assets:
  - i. The family home at Langley, British Columbia;

- ii. Mr. W.'s R.C.M.P. pension, C.L.E.U. pension, R.R.S.P. from severance package, post separation R.R.S.P., savings at date of separation, sale proceeds from 1989 Dodge Caravan, and sale proceeds of business equipment;
  - iii. Mrs. W.'s spousal R.R.S.P. at date of separation, R.R.S.P.'s acquired after separation, post separation teacher's pension, savings at date of separation, Canada Savings Bond, and 1987 Plymouth motor vehicle.
- (g) An order that Mrs. W. shall retain the "other assets" registered in her name, namely: savings of \$3,000 at date of separation; spousal R.R.S.P. at date of separation; Canada Savings Bond; 1987 Plymouth motor vehicle.
  - (h) An order that Mr. W. shall retain the "other assets" registered in his name, namely: savings at date of separation; sale proceeds of 1989 Dodge Caravan; sale proceeds of business equipment; R.R.S.P. from severance package, subject to a roll over of \$11,964.11 into an R.R.S.P. in Mrs. W.'s name.
  - (i) A declaration that Mrs. W.'s term deposit of \$3,000 and savings of \$31,900 are not family assets and are her separate property.
  - (j) A declaration that the children's savings of \$9,400 for S. and \$7,500 for L. are not family assets and are the separate property of the children.
  - (k) An order re-apportioning Mr. W.'s post separation C.L.E.U. pension and R.R.S.P.'s 100% to Mr. W.
  - (l) An order re-apportioning Mrs. W.'s post separation teacher's pension and R.R.S.P.'s 100% to Mrs. W.
  - (m) An order for sale of the family home; the home shall be listed for sale on or before June 30, 1998; Mr. and Mrs. W. shall have joint conduct of sale.
  - (n) An order that the net proceeds of sale of the family home be divided, after the deduction of any real estate commission and the usual adjustments, as follows:
    - i. Mrs. W. shall receive 60% of the net proceeds of sale and Mr. W. shall receive 40% of the net proceeds of sale;
    - ii. From Mr. W.'s 40% share of the net proceeds of sale there shall be transferred to Mrs. W.'s share, the following sums:
      - (A) 50% of any necessary costs for repairs to the home to the date of its sale, upon Mrs. W. producing receipts for such expenditures;
      - (B) All arrears of maintenance owing by Mr. W. to the date of sale;
      - (C) Compensation for Mrs. W.'s interest in Mr. W.'s matured pension from November 1, 1991 to October 1, 1995.

[60] In view of the divided success to each of the parties, and in order to maintain the balance between the parties of this division of property award, I order that the parties shall bear their own costs.

"D. SMITH J."

D. SMITH J.