NOVA SCOTIA COURT OF APPEAL
Citation: *MacQuarrie v. MacQuarrie*, 2019 NSCA 37

Date: 20190515
Docket: CA 478406
Registry: Halifax

Between:

John Roderick MacQuarrie

Appellant

v.

Susan MacQuarrie

Respondent

Docket: CA 478463
Registry: Halifax

Between:

Susan MacQuarrie

Appellant

v.

John Roderick MacQuarrie

Respondent

Judge: The Honourable Justice Anne S. Derrick

Appeal Heard: April 2, 2019, in Halifax, Nova Scotia

Subject: **The *Matrimonial Property Act,* R.S.N.S. 1989, c. 275, as amended 1995 – 96, c. 13, s.83, ss. 4(1). Valuation and division of assets. Treatment of inheritance. Spousal support. Costs.**

Summary: At the time of the divorce trial, Mr. MacQuarrie was an

undischarged bankrupt. An inheritance he received was paid directly to his Trustee in Bankruptcy. The money was then applied to pay off creditors, wiping out most of the matrimonial debt. Although the trial judge recognized Mr. MacQuarrie's inheritance to be an exempt asset, in his division of the matrimonial property and debts, he provided Mr. MacQuarrie with no credit for the relief the inheritance afforded Ms. MacQuarrie from responsibility for the joint matrimonial debts. The status and value of a camp property was also not adequately addressed in the matrimonial property division.

The trial judge ordered Ms. MacQuarrie to pay for a son's educational expenses under section 7 of the *Child Support Guidelines*. He did not order Mr. MacQuarrie to pay section 7 *Guideline* payments for the daughter's educational expenses.

The trial judge ordered Mr. MacQuarrie to pay spousal support to Ms. MacQuarrie in the amount of $1338 per month on an indefinite basis. He took into account the history of the marriage and the contributions made by each party to it and the raising of their two children. He noted the financial obligations of Mr. MacQuarrie for the children, the "considerable amount" of spousal support paid by Mr. MacQuarrie since the breakdown of the marriage, and Ms. MacQuarrie's ability to support herself, while recognizing that she had not yet achieved self-sufficiency.

Despite saying he would do so, the trial judge did not afford the parties an opportunity to address him on the issue of costs. He ordered the parties to bear their own costs.

Issues: Did the trial judge err:

(1) in failing to adjust the division of property to reflect the application of Mr. MacQuarrie's inheritance to the matrimonial debts through the bankruptcy?

(2) in his evaluation of the camp property and how he dealt with it in his division of property?

(3) in his assessment of the child support obligations of the

parties?
(4) in his determination of spousal support?
(5) in how he dealt with costs?

Result:

Mr. MacQuarrie's appeal of the division of matrimonial property and costs allowed. The trial judge's division of the MacQuarrie matrimonial property was in error. He failed to make any provision for the application of Mr. MacQuarrie's inheritance to the jointly owned matrimonial debts. The division of property to be remitted back to the Nova Scotia Supreme Court for determination by a different judge. The status of the property and its value may need to be re-visited before the new trial judge, on the basis of appropriate evidence. The issue of section 7 Guidelines expenses for the MacQuarrie son to be addressed with the new trial judge, if still relevant. Trial costs to be dealt with before the new trial judge.

Ms. MacQuarrie's appeal against the spousal support order dismissed. The trial judge applied the correct law and considered the relevant facts in exercising his discretion to award Ms. MacQuarrie $1338 per month on an indefinite basis. No palpable and overriding error was committed and the award does not constitute a patent injustice.

Ms. MacQuarrie ordered to pay global costs on appeal in the amount of $5000.

NOVA SCOTIA COURT OF APPEAL
Citation: *MacQuarrie v. MacQuarrie*, 2019 NSCA 37

Date: 20190515
Docket: CA 478406
Registry: Halifax

Between:

John Roderick MacQuarrie

Appellant

v.

Susan MacQuarrie

Respondent

Docket: CA 478463
Registry: Halifax

Between:

Susan MacQuarrie

Appellant

v.

John Roderick MacQuarrie

Respondent

Judges:	Bryson, Bourgeois and Derrick, JJ.A.
Appeal Heard:	April 2, 2019, in Halifax, Nova Scotia
Held:	Appeal by Mr. MacQuarrie allowed with costs, and appeal by Ms. MacQuarrie dismissed per reasons for judgment of Derrick, J.A.; Bryson and Bourgeois, JJA. concurring.
Counsel:	Terrance G. Sheppard and Alexandria Barnes for John Roderick MacQuarrie Patrick J. Eagan, for Susan MacQuarrie

Reasons for judgment:

Introduction

[1] This appeal focuses on how the trial judge dealt with the division of property, child and spousal support, and costs.

[2] As the reasons that follow explain, I am satisfied errors were made and would allow Mr. MacQuarrie's appeal from the trial judge's order for division of matrimonial property and costs. Those issues will have to go back to the Supreme Court for determination with the benefit of additional evidence about matrimonial debts and Mr. MacQuarrie's bankruptcy. This will also allow the parties to present evidence about the current circumstances of the two children in the event either of them still qualify as "children of the marriage". And the parties will need to be provided with the opportunity to address the issue of costs, an opportunity not afforded them by the trial judge.

[3] I would dismiss Ms. MacQuarrie's appeal from the order for spousal support.

Background to the Appeals

[4] The MacQuarries were married in July 1993. They had two children, Connor born in 1995 and Chloe born in 1998. The marriage broke down irrevocably in March 2015.

[5] The MacQuarries' divorce trial was heard by Justice Glen G. McDougall over three days in February and March 2017. He released his reasons on May 8, 2018, addressing contested issues relating to child and spousal support and the division of matrimonial property. He ordered each party to bear their own costs. The divorce order was issued on June 20, 2018.

[6] Neither of the MacQuarries were satisfied with the outcome and both appealed.

[7] Mr. MacQuarrie appeals the trial judge's matrimonial property division and costs. Ms. MacQuarrie appeals spousal support, the trial judge's valuation of a camp property, and prospective child support she was ordered to pay Mr. MacQuarrie for Connor.

[8] I am satisfied the trial judge's division of property was in error. Unfortunately, this issue will have to be revisited by a judge of the Nova Scotia Supreme Court. Statements made by the parties in their factums, and at the appeal, point to the potential for additional relevant evidence for a new trial judge to consider, evidence McDougall, J. either did not take into account or did not have.

[9] The judge also failed to fully assess child support obligations as they existed at the time of trial. By the time he rendered his reasons in May 2018, trial evidence about the circumstances of the children was stale. We do not have in the record before us the information required to dispose of either the child support or the matrimonial property issues.

[10] However, the issue of spousal support raised in Ms. MacQuarrie's appeal can be dealt with. As I will explain, I would dismiss that appeal. The matter of her child support obligations, if any by this time, will have to be dealt with in the Supreme Court on evidence about the current circumstances of Connor and Chloe.

Matrimonial Property and Debts of the Parties

[11] The MacQuarries lived well beyond their means throughout the marriage and accumulated considerable debt. They lost their expensive home to foreclosure and at the time of trial were subject to a significant deficiency judgment. Just short of a year after the separation, Mr. MacQuarrie filed for personal bankruptcy in February 2016.

[12] In January 2016, Mr. MacQuarrie's aunt died and left him a sizeable bequest. The $312,487.90 he received from her estate was paid directly to his Trustee in Bankruptcy. The money was then applied to pay off creditors, wiping out most of the matrimonial debt.

[13] Mr. MacQuarrie's inheritance became part of the mix in the trial judge's division of property. The trial judge referenced it in his discussion on the division of assets:

> [48] There are few matrimonial assets left to be divided. The couple's main asset was their matrimonial home which has already been disposed of through foreclosure. All that remains of that former asset is a deficiency judgment that exceeds $162,000.00
>
> [49] As previously indicated, Mr. MacQuarrie was forced to declare personal bankruptcy. As part of the assignment, he has been required to make monthly payments to the Trustee in the amount of $681.75. These payments have to be

> made for a minimum period of 21 months and depending on the calculation of surplus income, he will likely have to continue making those payments for as long as 42 months in total.
>
> [50] During the time that Mr. MacQuarrie was in bankruptcy he became entitled to share in the residue of a deceased aunt's estate…Mr. MacQuarrie stood to receive an amount that was likely to exceed $300,000.00. A significant portion of this would likely have to be paid to the Trustee in Bankruptcy to pay off creditors. Since most of Mr. MacQuarrie's debts are joint debts owed by him and his wife, she will benefit from their payment. Otherwise she would have no claim to his inheritance. But, due to this rather unique confluence of events, she will likely avoid any repayment obligations that would normally be hers to pay. But for this, she, too, might have had to declare bankruptcy. ((2018) NSSC 112)

[14] The trial judge made no further reference to Mr. MacQuarrie's inheritance and provided him with no credit for the relief it afforded Ms. MacQuarrie from responsibility for the joint matrimonial debt.

[15] Mr. MacQuarrie's assets included shares in a limited company, Rodco Investments. When he filed for bankruptcy, he listed the shares under "Assets" in his Statement of Affairs (Non-Business Bankruptcy), and noted, "Matrimonial dispute". He gave the "Estimated Dollar Value" of this asset as $28,000.

[16] Rodco Investments Ltd. owned only one asset, acreage in East Hants on which Mr. MacQuarrie had built a small rustic cabin. It had no running water or electricity and was heated by a 30 year old wood stove. The property was accessible seasonally. The assessed value for taxes was $13,500. The trial judge found that Mr. MacQuarrie had used it primarily as "a bit of a get-away" with occasional use by the family for the same purpose.

[17] At trial there was a dispute about the classification and value of the camp property. Mr. MacQuarrie's argument that its use for silviculture activities made it a business asset, and therefore exempt from division as matrimonial property, failed. He estimated its value at $39,000 in his Statement of Property; Ms. MacQuarrie said it was worth $150,000. No formal appraisal evidence was led by either party.

[18] The trial judge characterized Ms. MacQuarrie's valuation as "inflated" and rejected it. He classified the property as a matrimonial asset and, taking into account the assets Ms. MacQuarrie had retained -- the value of two BMW automobiles and the bulk of the household furnishings -- concluded that Mr.

MacQuarrie was entitled, in the matrimonial property division, to keep his Rodco shares and consequently, ownership of the East Hants property.

[19] I will come back to the Rodco shares later in these reasons.

Child Support

[20] At the time of the divorce trial, Connor was 22 years old and living with Mr. MacQuarrie in Truro while attending agricultural college. Chloe was nearly 19 and living in residence at university in Halifax. She spent the weekends with her mother in Truro. The trial judge found that Chloe planned to live with Ms. MacQuarrie during the summer from approximately late April until early September when she would return to university in Halifax.

[21] The trial judge found Connor and Chloe each met the definition of "child of the marriage" as defined in s. 2(1) of the *Divorce Act*. He used the Federal *Child Support Guidelines* to determine the table amounts of child support payable by Mr. MacQuarrie for Chloe and Ms. MacQuarrie for Connor. By off-setting the amount to be paid by Ms. MacQuarrie for Connor against the amount she would receive from Mr. MacQuarrie for Chloe, the trial judge calculated a net amount to be paid by Mr. MacQuarrie to Ms. MacQuarrie for Chloe commencing on May 1, 2018, "PROVIDED Chloe has returned home to live full-time with her mother."

[22] The trial judge also considered the issue of extraordinary expenses under section 7 of the *Guidelines* and determined that Ms. MacQuarrie should contribute toward Connor's university education costs. He found her to be capable of assisting her son notwithstanding her income being "considerably less" than Mr. MacQuarrie's. He ordered her to pay $250.00 per month directly to Connor commencing on September 1, 2018, provided that Connor returned to university that fall. No payments were to be made for the period of May to August 2018 as Connor was expected to earn enough through summer employment to support himself.

[23] The trial judge made no order directing any section 7 *Guideline* payments by Mr. MacQuarrie for Chloe's ongoing educational expenses. His reasons are silent on this issue.

Spousal Support

[24] The trial judge ordered spousal support for Ms. MacQuarrie in the amount of $1338.00 per month effective May 1, 2018. She had been receiving $2000 per month from Mr. MacQuarrie since September 1, 2015 when an earlier support order for $2600 per month from June 2, 2015 was varied.

[25] The trial judge noted that Ms. MacQuarrie was an elected School Board member until October 2016. Income from this position and support payments earned Ms. MacQuarrie in excess of $57,000 in the 23 month period between the separation and the trial.

[26] In February 2017, Ms. MacQuarrie began working full-time at Scotiabank as a Financial Advisor 5 Trainee. Her base salary was $49,000 per year. She had the opportunity to earn additional incentive pay based on performance. The trial judge observed that, although at the time of trial it was too early to know if Ms. MacQuarrie would be able to augment her salary, she had worked in the financial sector in the past and earned "well in excess of $100,000 per year".

[27] Mr. MacQuarrie was earning an annual income of $126,687 working as a pharmacist in his family's pharmacy business. The trial judge took into account that Ms. MacQuarrie had helped support her husband while he obtained his pharmacy degree. He recognized this as a contribution to Mr. MacQuarrie's future income earning capacity.

[28] The trial judge described his award of $1338 per month spousal support as "the mid-point of the range recommended by the Federal Spousal Support Advisory Guidelines." He determined that it was not appropriate to set "a termination date for these payments", concluding that Mr. MacQuarrie's ongoing obligations for spousal support would depend on Ms. MacQuarrie's efforts to achieve financial self-sufficiency. If there was a "sufficient change in circumstances then either party is at liberty to seek a variation." He ordered the parties to exchange "full particulars of the prior year's income no later than June 1st" for the purposes of determining both spousal and child support obligations.

[29] I will note here that Ms. MacQuarrie is seeking to have the trial judge's spousal support order overturned on the basis of financial information that is not before us. In her factum she said Mr. MacQuarrie's income in 2018 was $135,000 and that the midpoint for spousal support on this basis is $3,099. The evidence we have of Mr. MacQuarrie's annual income is what is contained in the trial record – the amount of $126,687.

[30] Ms. MacQuarrie presented different proposals to the trial judge for spousal support. In her pre-trial brief of February 2017, Ms. MacQuarrie was looking for midpoint support in the amount of $1508 per month. In oral submissions at trial, her counsel, Mr. Eagan, said she was seeking high end support of $1900 per month, based on Mr. MacQuarrie's annual income.

Costs at Trial

[31] The trial judge concluded his reasons by stating, "I do not have to hear the parties as to costs." He ordered the parties to bear their own costs. This approach was not what the parties expected. During final submissions by counsel on March 24, 2017, the trial judge said he would not be "dealing with costs until such time as I give a decision and then I will invite counsel to come to an agreement on costs, or else to make further written or oral submissions".

Issues on Appeal

[32] Mr. MacQuarrie submits the trial judge erred in law:

- By failing in the division of property to credit him for the application of his inheritance to the payment of the joint matrimonial debts. He argues that Ms. MacQuarrie has, as a consequence, received an inequitable benefit.

- By ordering that each party bear responsibility for his or her own costs "despite the Appellant's settlement offers which exceeded the Respondent's award at trial."

[33] Ms. MacQuarrie says the trial judge erred in fact and law:

- In reducing her spousal support, and relying on "factors not relevant or appropriate to the determination of [her] claims for spousal support and a division of matrimonial property…"

- By stating that, as a result of Mr. MacQuarrie's inheritance being applied through his bankruptcy to the matrimonial debts, "she will likely avoid any repayment obligations that would normally be hers to pay".

- By valuing the East Hants land at $39,000, an amount from Mr. MacQuarrie's Statement of Property that was in relation "to the land only, without buildings". Ms. MacQuarrie submits that the camp property should

be sold and the proceeds divided equally, a proposal she advanced at trial that was rejected by the trial judge.

- By ordering that she pay child support to Mr. MacQuarrie for Connor "on the assumption that [Connor] would be enrolled in full-time post-secondary studies for the 2017/2018 academic year and going forward, and thus continue to meet the definition of a child of the marriage pursuant to the *Divorce Act*".

[34] Put more simply, the issues are whether the trial judge erred:

- In failing to adjust the division of property to reflect the application of Mr. MacQuarrie's inheritance to the matrimonial debts through the bankruptcy;
- In his valuation of the East Hants camp property and how he dealt with it in the division of property;
- In his assessment of the child support obligations of the parties;
- In his determination of spousal support;
- In how he dealt with costs.

Standard of Review

[35] Determining a division of property and calculating support obligations "requires the exercise of judicial discretion in light of the specific facts of the case and a multitude of relevant considerations." (*Fisher v. Fisher*, 2001 NSCA 18, para. 34) The standard of appellate review of the trial judge's findings of fact and exercise of discretion is a deferential one:

> This Court is entitled to intervene only where it is demonstrated that the trial judge has erred at law; applied incorrect principles; made a palpable and overriding error of fact or the result is so clearly wrong as to amount to an injustice… (*Young v. Young*, 2003 NSCA 63, at para. 6)

[36] A trial judge's determination of the division of property and the assessment of support obligations must be made in accordance with the correct legal principles. An error of law is committed if the trial judge exercised his discretion

on "…wrong considerations or wrong grounds, or [by] ignoring the right considerations…" (*Young v. Young*, at para. 7).

Analysis

[37] The trial judge's division of the MacQuarrie's matrimonial property requires intervention by this Court. In determining the issue, he failed to make any provision for the application of Mr. MacQuarrie's inheritance to the jointly owned matrimonial debts. He took no account of the fact that the inheritance, an asset exempt under s. 4(1)(a) of the *Matrimonial Property Act* from division on divorce, was applied through the bankruptcy to pay off matrimonial debts which the trial judge recognized were equally Ms. MacQuarrie's obligation.

[38] The trial judge recognized the inheritance to be an exempt asset. This is reflected in his comments, which I am reproducing below for ease of reference:

> [50] During the time that Mr. MacQuarrie was in bankruptcy he became entitled to share in the residue of a deceased aunt's estate…Mr. MacQuarrie stood to receive an amount that was likely to exceed $300,000.00. A significant portion of this would likely have to be paid to the Trustee in Bankruptcy to pay off creditors. Since most of Mr. MacQuarrie's debts are joint debts owed by him and his wife, she will benefit from their payment**. Otherwise she would have no claim to his inheritance.** But, due to this rather unique confluence of events, she will likely avoid any repayment obligations that would normally be hers to pay. But for this, she, too, might have had to declare bankruptcy. (*emphasis added*)

[39] The trial judge did not take the necessary next step. His division of the matrimonial property and debts did not reflect the fact that Ms. MacQuarrie's matrimonial debt obligations had been reduced significantly by the application of the inheritance monies. This was a clear legal error and one that can only be corrected by returning the issue to another judge of the Supreme Court for a determination of the appropriate equalization payment, if any, by Ms. MacQuarrie.

[40] A further error by the trial judge that warrants intervention is the matter of costs at trial. The trial judge concluded that the parties should each bear their own costs after determining that he did not need to hear from them on the issue. This determination was made 13 months after the trial judge had told the parties he would afford the opportunity for agreement to be reached on costs or would invite written or oral submissions on the issue.

[41] The parties were never given the promised opportunity to be heard on costs. They should have been. Mr. MacQuarrie wants this Court to address costs with consideration being given to the settlement offers he says he made prior to trial. Those settlement offers may be relevant, but they are not in the record before us. If Mr. MacQuarrie wants the issue of costs at trial to be re-considered, it will have to be done on a proper record when this matter returns to the court below.

[42] Mr. MacQuarrie's appeal succeeds on both grounds that he has advanced: errors in the division of property, and costs. I would allow his appeal.

[43] Considerable time has passed since the MacQuarrie's divorce trial in 2017. The need to revisit certain issues means there is still no finality for the parties. Submissions by counsel before us indicate there may have been developments subsequent to the divorce trial relating to the deficiency judgment, the children, and Mr. MacQuarrie's bankruptcy, that the new trial judge may want to consider. It is necessary to provide some guidance as to what those issues may involve.

[44] One such issue is the Rodco shares and how they may factor into a division of property calculation, if at all. The trial judge found, without reference to any evidence, that Mr. MacQuarrie had "somehow managed to shield his Rodco shares from his creditors" (para. 51) and concluded he was entitled to keep them. He treated Mr. MacQuarrie's sole ownership of the East Hants property "as a trade-off for the assets retained by Mrs. MacQuarrie". (para. 55) However, the status of the Rodco shares at the time of the divorce trial is unclear: had Mr. MacQuarrie been able to retain them or had they been transferred to the bankruptcy trustee? The trial judge made no mention of the shares being listed by Mr. MacQuarrie on his Statement of Affairs that I mentioned earlier.

[45] A statement in the Appellant's factum about the Rodco shares being transferred to the trustee and subsequently re-acquired by the Appellant for approximately $20,000, was not evidence before us. The status of the shares in relation to the division of matrimonial property, and their value, were it to be determined that they should be factored into the division, will need to be sorted out on the basis of appropriate evidence.

[46] As for child support, specifically Ms. MacQuarrie's complaint about the trial judge ordering her to pay child support prospectively for Connor, this issue cannot be resolved here, given the amount of time that has elapsed since the trial. Well before the case came to this Court, the evidence about Connor's circumstances and whether he was enrolled in a university program was stale. Indeed it was stale by

the time the trial judge rendered his decision 13 months after he heard the trial. If the possibility exists that Connor or Chloe may still be "children of the marriage" by virtue of currently attending university, the court below will have to be provided the relevant evidence to address any ongoing child support obligations of their parents.

[47] As I noted earlier, Ms. MacQuarrie was ordered to contribute to Connor's university expenses pursuant to section 7 of the *Guidelines*. The trial judge made no mention of Mr. MacQuarrie having a comparable support obligation in relation to Chloe. Whether any such obligation might still exist is not something we can determine on the record before us.

[48] The final issue is the trial judge's determination of spousal support which I am satisfied should not be disturbed.

[49] As I noted earlier, at various points in these proceedings, different amounts were proposed by Ms. MacQuarrie as the appropriate level of spousal support. In her pre-trial brief she sought $1508 per month; at trial this rose to $1900 per month. On appeal, she sought $3099 based on an annual salary for Mr. MacQuarrie that is not in evidence before us. What I have considered is whether the trial judge erred in exercising his discretion to award Ms. MacQuarrie, on an indefinite basis, monthly support in the amount of $1338.

[50] The trial judge began his analysis by referencing section 15.3(1) of the *Divorce Act* which states that child support is to be given priority where, as here, a court is considering applications for both child support and spousal support. He went on to set out the objectives of a spousal support order as described in the *Divorce Act*, ss. 15.2(6):

> An order made under subsection (1) of an interim order under subsection (2) that provides for the support of a spouse should
>
> (a) recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown;
>
> (b) apportion between the spouses any financial consequences arising from the care of any child of the marriage over and above any obligation for the support of any child of the marriage;
>
> (c) relieve any economic hardship of the spouses arising from the breakdown of the marriage; and
>
> (d) in so far as practicable, promote the economic self-sufficiency of each spouse within a reasonable period of time.

[51] The trial judge took these objectives into account in exercising his discretion to award Ms. MacQuarrie spousal support of $1338 per month. He considered:

- the fact that Ms. MacQuarrie's support of Mr. MacQuarrie while he obtained his pharmacy degree was a contribution to the earning capacity he now enjoys;

- the financial obligations of Mr. MacQuarrie for the couple's children;

- the "considerable amount" of spousal support Mr. MacQuarrie had paid since the marriage broke down three years earlier;

- Ms. MacQuarrie's "talents and proven abilities to provide for her own basic needs". Here the trial judge was in part referring to facts he had detailed earlier under the heading "Spousal Support" -- what Ms. MacQuarrie had done with many of the fixtures from the matrimonial home that was subject to a foreclosure order. She had sold some fixtures and likely retained others and had permitted a landlord to remove a number of appliances and fixtures from the home in lieu of rent she owed him, all of which contributed to there being a high deficiency judgment. The trial judge found, "None of the items removed or sold benefitted Mr. MacQuarrie" and observed that Mr. MacQuarrie had been forced to declare personal bankruptcy.

[52] Earlier in his reasons, the trial judge had noted Ms. MacQuarrie's "resourcefulness" in selling off household fixtures and appliances and commented on her past employment history where she had been able to achieve a high income.

[53] The "mid-range" award of $1508 per month that Ms. MacQuarrie had sought in her pre-trial brief was based on her submission that she had "sacrificed a great deal for the sake of the family and the marriage". The trial judge credited both parties with having "worked hard to raise a family and to establish a career". He considered the length of the marriage (22 years) and noted that both Mr. and Ms. MacQuarrie had left the workforce for "several years" to stay home with the children during which time, as the record indicates, they lived off the proceeds from Mr. MacQuarrie's sale of his interest in the family-owned pharmacy business.

[54] The record before the trial judge establishes that in the early 2000's the MacQuarries left their jobs to spend time with their children and did not return to work for approximately six years. They lived well during this time and travelled extensively. Ms. MacQuarrie testified that when she left work in 2001 as an

investment advisor at RBC Dominion Securities, she was making $150,000 per year.

[55] The trial judge awarded Ms. MacQuarrie $1338 per month with no termination date in recognition of Ms. MacQuarrie not having yet achieved self-sufficiency. I am satisfied he applied the correct law in exercising his discretion and considered the relevant facts, making no palpable and overriding error. The spousal support award does not constitute a patent injustice. Our intervention is not warranted.

Disposition

[56] I would allow Mr. MacQuarrie's appeal against the trial judge's division of matrimonial property and remit the matter back to the Nova Scotia Supreme Court to be determined by a different judge as promptly as possible. The issue of section 7 *Guidelines* expenses for Connor should, if still relevant, also be dealt with.

[57] I would allow Mr. MacQuarrie's appeal against the costs order. The trial costs issue is to be dealt with before the new trial judge.

[58] I would dismiss Ms. MacQuarrie's appeal of the trial judge's spousal support order.

[59] Mr. MacQuarrie's success on his appeal and the dismissal of Ms. MacQuarrie's appeal warrants a global costs order against Ms. MacQuarrie in the amount of $5000, inclusive of disbursements.

[60] I will make a final comment. The parties in this case waited 13 months for the trial judge's decision. Such a lengthy delay, even if it reflects the judge juggling other competing demands, is to be avoided, particularly where the issues arise out of a divorce, the trial is short, and the issues are not complex. The *Judicature Act*, R.S. 1989, c. 20 (as amended) emphasizes timeliness:

> ¶34 (d) upon the hearing of any proceeding, the presiding judge, may, of his own motion or by consent of the parties, reserve judgment until a future day, not later than six months from the day of reserving judgment…

[61] There is nothing in the record to suggest this legislative directive could not have been met in this case.

Derrick, J.A.

Concurred in:

Bryson, J.A.

Bourgeois, J.A.