

NOVA SCOTIA COURT OF APPEAL
Citation: Young v. Young, 2003 NSCA 63

Date: 20030611
Docket: CA 180904
Registry: Halifax

Between:

Joan M. Young

Appellant

v.

David H. Young

Respondent

JUDGE: BATEMAN, J.A.

APPEAL HEARD: May 23, 2003

JUDGMENT DELIVERED: June 11, 2003

SUBJECT: **Matrimonial Property Act, R.S.N.S. 1989, c. 275, as amended**
- division of assets

SUMMARY: Second marriage of 25 years duration. Husband brought a farm into the marriage. Farm long sold with the proceeds used over 16 year period prior to separation as the parties' retirement fund. Husband sought to have fund classified as a business asset. Judge found fund to be a matrimonial asset but awarded the husband 2/3 of the fund on account of his pre-marital ownership of the farm. Wife appealed seeking equal division.

ISSUES: Did the judge err in dividing the matrimonial assets unequally?

RESULT: Appeal allowed. While a division of assets is a discretionary decision entitled to deference, if in the exercise of that discretion the judge errs in principle, an appellate court may intervene. In dividing the assets unequally, the trial judge appears to have applied the test for the division of business assets under s. 18 of the **Matrimonial Property Act**, R.S.N.S. 1989, c. 275 as amended, rather than that dictated by s. 13 of the **Act**. An unequal division of matrimonial assets requires strong evidence that an equal division would be unfair or unconscionable. The judge failed to conduct a contextual assessment of the significance of the husband's prior ownership of the farm. Unequal division was not unfair or unconscionable on the evidence here.

This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 16 pages.