

1998

Prothonotary's No. 1205-001641

IN THE SUPREME COURT OF NOVA SCOTIA

Cite as: Lamb v. Hoffman, 2000 NSSC 66

BETWEEN:

CAROLYN JANE LAMB (HOFFMAN)

PETITIONER

- and -

BENJAMIN RALPH HOFFMAN

RESPONDENT

DECISION

Heard Before: The Honourable Justice J. E. Scanlan

Place Heard: Pictou, Nova Scotia

Dates Heard: February 28th & 29th, March 1st, 2000

Decision Date: March 2nd, 2000 (Orally)

**Written Release of
Decision:**

April 6, 2000

Counsel:

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Mr. Benjamin Hoffman,
Respondent, not represented,
not appearing

(Note: On March 2nd , 2000, a summary of this decision was delivered orally in open Court) I advised that I felt it was important the parties be aware of the essence of my decision so the petitioner could take immediate steps to protect or secure her share of matrimonial assets. I advised that a more detailed decision would be provided at a subsequent date.

SCANLAN, J.

Preliminary Comments:

I start out by noting that this is a very unique case in many ways. The acrimony between the parties, and Mr. Hoffman's approach to this litigation has meant the proceedings have not unfolded in the normal course. Mr. Hoffman has had a limited participation in the proceedings. He has failed, or refused to disclose assets. He has not disclosed to the Court the manner in which he has dealt with assets throughout the entire proceedings. As a result of Mr. Hoffman's behavior much of what the Court has before it is pieced together with bits of evidence. It is clear from the evidence that Mr. Hoffman has not retained the assets in the form

which the Court had earlier ordered so the Court is now in the position of deciding this case based on what the assets should be if Mr. Hoffman had retained them as ordered. By way of example I note that the Court can only assume that as of this date Mr. Hoffman has the assets as noted in his statement of property. I point out that in addition to the Court order freezing assets Mr. Hoffman had signed an agreement with Ms. Lamb stating that he would retain the assets. Based on the evidence, if Mr. Hoffman did hold the investment shares which he was ordered to hold then the family unit has gone from near bankruptcy to owning well in excess of \$17,000,000.00 in shares. Having said this, I am aware of the fact Mr. Hoffman gave evidence at different stages, either in the form of discovery or at interim applications, indicating that he did dispose of various assets.

I note as well that Ms. Lamb has not behaved in a typical way throughout the period prior to this hearing. As an example, I point out that many documents before the Court as proof of assets were documents she obtained by pilfering them from Mr. Hoffman's briefcase or his office. To a certain extent these actions may have contributed to Mr. Hoffman's rage. On the facts of this case, as

the events unfolded, it became clear that it was in Ms. Lamb's interest to obtain the documents in this clandestine way. There were substantial assets which she really did not know much about because of the fact that Mr. Hoffman controlled most of the finances and investments. The only way she was able to get that information on these assets was to piece it together from the few documents she could get from his office. I do not want to, in any way, condone that as the type of behavior which should occur in the future. It is clear however that Mr. Hoffman has embarked on a plan to remove the family assets from this country and take whatever steps he can to ensure that Ms. Lamb and his daughter do not receive any portion of the family assets. In addition it is clear that he has taken steps to attempt to hide whatever assets that he can.

Mr. Hoffman was a successful radiologist working in Pictou county earning almost \$400,000.00 per year when the divorce proceedings began. He has chosen to remove himself from the jurisdiction and live on the run, living in any one city no more than seven consecutive days in the last year. As I will discuss later, in that year, he has not directly paid child or spousal maintenance even though the evidence clearly shows that he had several million dollars at his disposal. In addition to not

paying the maintenance, he has consented to foreclosure on the matrimonial home in what is clearly an effort to force he wife and daughter into a position of absolute poverty. He has taken the family vehicle which Ms. Lamb used, stranding her and the child of the marriage in a remote rural location.

I would say to both parties, especially Mr. Hoffman; for Emma's sake, he should attempt to get this thing back on track.

Mr. Hoffman has had very little contact with Emma in the last few months, largely because of choices he has made. I do not, in any way, fault Ms. Lamb as regards the limited access that Mr. Hoffman has enjoyed. It would be a tragedy for Emma not to have her father available to her, to get to know him, for him to get to know her. I understand that she has had a somewhat limited relationship with him over the years, but he has played a part in her life. There was evidence from Ms. Lamb that Emma dearly loves her father. I hope Mr. Hoffman reads this and I would emphasize **that it is up to him to take steps to renew that relationship**. Any access will have to be facilitated gradually. I will deal with the access provisions later in my decision.

The parties certainly have enough resources between them so they can make some very unique arrangements in terms of transfers and arranging for supervision of access. Something can be done and it is going to be in Emma's best interest that something be done to accommodate access. I say to Mr. Hoffman, he only has one daughter at this point in time. He will never replace Emma even if he has a hundred more children. If he does not fix the problems surrounding access he will lose the joys and the benefits that can be obtained in knowing his child. That loss can never be replaced. That loss certainly cannot be replaced by money. To think that he may be avoiding seeing Emma so as to protect what money or wealth he has accumulated, or to punish the petitioner, would be a tragedy. The pay-off is small compared to what he might lose. I hope that message is conveyed to Mr. Hoffman.

I want to note in this part of the judgment that this is an unusual case from the perspective that Mr. Hoffman was not present nor formally represented. I had ruled on a motion at the beginning of the trial that Mr. MacLean was not entitled to represent Mr. Hoffman in his absence. I want to re-state to Mr. Hoffman that I was satisfied that it would be contrary to the administration of justice to allow him representation and participation at these proceedings. Mr. Hoffman has not filed an

Answer and he has failed to make full or complete disclosure of income or assets. Mr. MacLean says he does not know where Mr. Hoffman is and Mr. Hoffman refuses to disclose his whereabouts. There have been a number of Court Orders which Mr. Hoffman has not complied with. The evidence would indicate that Mr. Hoffman has been traveling throughout the world, his brother says, never staying in any one city more than seven days. The Court is not aware of his current employment status although some evidence suggests he is employed as a radiologist doing locums in different countries around the world. Throughout the last year or so he has not directly paid any support for his wife or child even though there are substantial assets available to him. He has transferred huge portions of family assets to offshore trusts, with the probable objective of trying to ensure that Ms. Lamb and his daughter never gain access to any of the family assets. A potential consequence is that Ms. Lamb may not be able to collect on any judgment from this Court.

In general, Court operations depend on the co-operation of the parties including full and frank disclosures as between the parties. This allows the Court to determine what there is to be divided and then to apply the law, be it statutory or common law, so as to determine an appropriate disposition in terms of division of

property and maintenance issues. It would be unjust to allow Mr. Hoffman to enjoy the benefit of cross-examination by his counsel when he is not prepared to come before the Court and allow the Court to properly inquire as to all of the assets which he has and while he continues to remove assets from the jurisdiction of this Court.

The Divorce:

I refer to the Petition for Divorce. I note that the parties were married on October 9th, 1982. They separated August 18th, 1998, although the parties did live in the same house up until December of 1998. There was one child of the marriage, that was, Emma Alexandra Hoffman, born December 21st, 1989.

I am satisfied as to service and all jurisdictional matters. Clearly there is no possibility of reconciliation. The grounds for the divorce have been proven. Subject only to the filing of the marriage certificate, I am prepared to grant the divorce. I will hold off in signing the order until a marriage certificate is filed.

Corollary Issues/General Comments:

The main issues in terms of the proceedings now before the Court include the division of property, child custody, access, maintenance and spousal maintenance.

Counsel for the petitioner has presented portions of the discovery transcripts and portions of transcripts from interim hearings as part of the evidence in these proceedings. I have allowed that evidence to be entered because Mr. Hoffman has refused to return to the jurisdiction. I sense in reading the discovery transcripts and in hearing the tapes, or at least parts of the discovery and the tapes from the earlier proceedings, that Mr. Hoffman is very much frustrated with the legal system. Mr. Hoffman appears to be a very unique individual. He does not have much time for people like accountants, he does not have much time for lawyers, he does not have much time for the Courts. I am satisfied that in the early stages of these proceedings, Mr. Hoffman was trying to come clean in terms of disclosing what assets he had. He had no time, as I understand it, for keeping track of assets using paper. He indicated in evidence that he did not even keep canceled cheques. He could not tell you on a day-to-day basis what he traded, what he sold, what he bought in the past month. He could simply tell you what he started with, generally

where the money came from and what he was left with at the end of the day. From an accountant's perspective that would be a nightmare. I did not see or hear Mr. Hoffman, but I was not left with the impression that he was trying to hide something in terms of assets during the early stage of these proceedings. That does not speak to the issue of what he has done to protect or hide those assets since then. It appears he has gone far beyond what should be reasonably expected in terms of protecting those assets. He has attempted to make himself judgment proof and prevent Ms. Lamb from ever getting at those assets.

As I have stated, I am satisfied based on the very limited evidence I have, that there was initially quite a reasonable disclosure of assets in the statements of property as filed by Mr. Hoffman. During the discovery process Mr. Hoffman was trying to give Ms. VandenEyden, Petitioner's counsel, an understanding as to what assets he had and where they came from. It would appear Ms. VandenEyden did not have an appreciation for what he was trying to say. He was having difficulty, perhaps due to his lack of communication skills or patience, trying to explain in detail what he did and what he had. I again go back to my position that, to a large extent, he appears to have properly disclosed the matrimonial assets in the Statement

of Property as filed with this Court. I have no evidence before me to convince me he did otherwise.

This is a unique case as well from another perspective. Much of this case, in terms of division of property, depends on the valuation date that the Court chooses as being an appropriate valuation date. If we look at the date of separation one could argue that the value of the assets was uncertain and possibly there was little left to divide after payment of matrimonial debts. Mr. Hoffman talked of potential bankruptcy and the fact there were substantial deferred tax liabilities. All the family assets were at the time of separation at risk, largely due to the tax deferrals and heavy investment in stocks which were limited in terms of marketability. In addition, as a result of the marriage breakdown, the Respondent was emotionally unable to work. The parties faced the risk of losing everything to the creditors. As luck would have it however, we are now in a situation where the evidence indicates that at the beginning of the trial the assets, if retained as the Court had ordered, were worth about 17 million dollars. Two days later counsel tell me we are perhaps talking as much as 26 million dollars in assets. The evidence clearly shows that there are now millions of dollars still owned directly or indirectly by this family.

Custody:

I want to deal first with the matter of custody. Ms. Lamb has been the primary care giver for Emma, throughout Emma's life. Emma has basically only ever lived in the matrimonial home in Waterside. Although Mr. Hoffman did have a relationship with Emma, I am not satisfied it was a care giver type of relationship. He was a friend and companion for Emma but on a rather limited basis. Mr. Hoffman was a very busy medical practitioner.

Emma is thriving in her present location. She seems to be doing better than she was during the volatile relationship that existed as between her parents when they were still living together. She is happier now than she has been in a long time. Emma was living through and witnessing the turmoil as between her parents. The things that Emma witnessed, no child should ever have to see. I am convinced it is in her best interest that she now is not exposed to that type of conflict. Even when children do not see the actual physical or verbal confrontations, they know what is going on.

It is fortunate that Emma is now thriving. It would not be appropriate to interfere with the present care giving arrangements. I am satisfied that there should be a custody order which gives sole custody to Ms. Lamb.

Access:

I am convinced on the evidence that Mr. Hoffman presents a flight risk. He has very clearly shown by his behavior that he is not prepared to submit to the jurisdiction of this Court. He is prepared to live a life which sees him travel the world on a whim. As was mentioned earlier, the respondent's brother is in regular contact with the respondent and to his knowledge the respondent has not stayed in any one city for more than seven days in the last year. He has the financial wherewithal to afford that life style, never disclosing to Ms. Lamb or even to his own counsel where he is living. He does not disclose his whereabouts even to his brother. Ms. Lamb also referred to the fact that both Mr. Hoffman and Emma would be able to go to Israel and enjoy the benefits of Israeli citizenship and the protections afforded by that state. She fears that she may never be able to get Emma back if Mr. Hoffman removes her from this country. As I stated, the respondent presents a real flight risk.

I am satisfied there should be no present access afforded to Mr. Hoffman. In saying that, I refer to my earlier comments wherein I said that it would be in Emma's interest and Mr. Hoffman's interest that they do have a relationship. It is appropriate however, that before there is any access, Mr. Hoffman would first have to come to the Court and explain or satisfy the Court as to the type of access that would be appropriate. He would have to satisfy the Court he would not be fleeing with Emma. Until that occurs there will be no access.

I would also note that if Mr. Hoffman does wish to return to Court to seek access he should consider getting some counseling to understand what is appropriate behavior in physical or telephone access. He must appreciate the damage that he might be doing in terms of the confrontations in front of Emma. He must appreciate what may not be an appropriate reaction to things that Ms. Lamb might do. He must understand the damage he could cause to Emma with inappropriate comments, even over the telephone. Counseling might also help him understand the big hole that must be in Emma's heart as a result of having lost her father. Emma is not just going without money and the life style she used to enjoy when Mr. Hoffman was here. She must have an empty space in her heart now as a result of no longer

seeing Mr. Hoffman. I expect Mr. Hoffman has a heart as well.

Child Maintenance:

I note that Mr. Hoffman had worked for a number of years as a radiologist. The Court does not have all of his financial information in terms of income and expenses. Mr. Hoffman, even though ordered, did not provide the normal guideline information that would be required so the Court could make a proper determination as to income. There was conflicting evidence in earlier proceedings as to his income. It appears that Mr. Hoffman would have had the petitioner believe his annual gross income would have been as little as \$225,000.00. I am satisfied that in reality his income was much higher than he would have lead the petitioner to believe. The best evidence that I have at this point in time is the evidence of Dr. Daniel Hoffman, the respondent's brother. Dr. Daniel Hoffman was a partner in the medical partnership with Benjamin Hoffman and one other practitioner. Each partner earned the same income through the Aberdeen Hospital.

Daniel Hoffman indicated that in recent years he has earned about

\$400,000.00 per year, less expenses. He referred to expenses in the range of \$20,000.00 to \$40,000.00. The expenses of the individual partners may vary somewhat depending on things such as what courses they might take from time to time or what business travel they might enjoy. It is not at all unreasonable in the circumstances of this case, based on the evidence that I have before me, to accept the position as urged by the petitioner that the respondent was earning at least \$300,000.00 in the practice of radiology. This is income net of expenses. In saying that I note this is a rather large allotment for expenses when compared to the evidence of Dr. Daniel Hoffman. I would have considered a net income of more than \$300,000 but having regard to the submissions of counsel that is the amount I accept as being reasonable.

Mr. Hoffman is emotionally unstable. He has been described by Ms. Lamb as being something of a child. His reacted to the marriage breakdown differently than many people would. He was very dependent on Ms. Lamb. He was devastated by the marriage breakdown. Shortly after he was told by Ms. Lamb that she was going to divorce him he took the leave of absence from his employment. He said he was not able to continue in his profession. There is a letter in the file which

would indicate that he had medical advice to that effect. I am satisfied that at that time he was not able to continue to work in the medical profession.

I am satisfied, however, that the situation has now changed. The evidence from Dr. Daniel Hoffman is to the effect that Mr. Hoffman has been doing locums throughout the world, in different countries at different times. It would appear that he has been able to do enough work to maintain his medical credentials. In this regard there was reference in the file to the fact that he had to do so many procedures annually to retain his credentials. Based on this evidence, I am satisfied he does now have the ability to earn his income. I take into account the income Mr. Hoffman was able to earn while in Nova Scotia. There is no evidence which would show that he cannot earn that much again if he so chooses.

I hope that in the very near future Mr. Hoffman will come to realize that the marriage breakdown was not the end of the world and the division of assets is not the end of the world. Maybe then he will be able to earn a reasonable income from his profession if he so chooses. I again refer to the amounts of money that this family is now coming into in terms of their investments, assuming Mr. Hoffman retained

them as ordered by the Courts. It may well be that Mr. Hoffman chooses not to re-enter the profession. That will be a choice he has to make. This Court cannot make that choice for him. If that occurs the issue of maintenance can be revisited at a future date based on the circumstances of the parties.

Based on what I said above, I deem Mr. Hoffman's income to be \$300,000.00 per annum. I refer to the Supreme Court of Canada case *Frances v. Baker* (1997), 28 R.F.L. (4th) 437. On an income over \$150,000.00 per year there is a presumption that the table amount shall apply. The table amount on \$300,000.00 is \$2,391.00 per month using Nova Scotia tables. The fact that the respondent moves from place to place makes it impossible to determine whether something other than the Nova Scotia tables should be applied. I refer as well to a case from the Ontario Court General Division; *Simon v. Simon* (1997), 33 R.F.L. 4th 310. Applying that case I am satisfied the onus is on the payor to show that the table amount is not an appropriate starting point. In the absence of any evidence on that point I order child maintenance in the amount of \$2,391.00 per month.

There has been a contribution to child support to date as a result of an

earlier order of the Court allowing Ms. Lamb to liquidate some matrimonial assets. I consider that contribution and order child maintenance to be effective March 1, 2000. It is payable on the first of each month thereafter.

Spousal Support:

I am going to deal with the issue of spousal support in three stages chronologically. I begin the first part by saying there is no retroactive spousal support for the same reason I said there is no retroactive child support. The earlier Court order allowing for the liquidation of assets has afforded reasonable spousal support up to this time. The second part will be spousal support between now and the time Ms. Lamb receives her share under the division of matrimonial property. The third part will be post-receipt of matrimonial assets.

I refer to Ms. Lamb's Statement of Financial Information (Exhibit 8). She has put before the Court a budget which shows expenditures of \$10,620.00 per month. That does not include the mortgage of \$2,117.97 per month. Counsel for Ms. Lamb suggests that the Court should order spousal maintenance in the amount of

\$10,000.00 per month based on the statement of income and expenses. This would be in addition to the \$2,391.00 in child maintenance. I again refer to the evidence as regards what Mr. Hoffman's income is, or what it could be; \$300,000.00 per year. I refer to the fact that during the marriage Mr. Hoffman was the main breadwinner in the family. He was employed as a radiologist and earned most of the income the parties had during the marriage.

Ms. Lamb did work for about two years at the beginning of the marriage. During the first year she worked part-time in Montreal. During the second year she had a full-time position. Ms. Lamb had great career potential prior to the decision to move to Nova Scotia. She trained as a clothing designer but because of the circumstances of the marriage both parties made the decision that she would forsake her very promising career. This was so Mr. Hoffman could move to Pictou County and take up employment at the Aberdeen Hospital. Mr. Hoffman worked there right up until he took his leave of absence.

I want to say as an aside, that I am of the opinion that Ms. Lamb still has great career potential. She impresses me as a person who has the intelligence, presence

and the ambition to do just about anything she wants to do. If she can arrange a career in conjunction with child care responsibilities she has a bright future. I encourage Ms. Lamb not to sell herself short because of what has happened in the marriage. Ms. Lamb has expressed a desire to resume a career and I expect that she will succeed given a reasonable amount of time and adequate resources.

At this time Ms. Lamb is completely financially dependent on Mr. Hoffman. That dependency existed throughout the marriage. The extent of this dependency was evidenced by incidents surrounding the sudden death of Ms. Lamb's mother in an auto accident in the United Kingdom. Ms. Lamb arranged to go to England and intended to stay for a number of weeks. Mr. Hoffman did not provide any money, saying he had none, but he gave her his credit card. **After three days Ms. Lamb received a phone call saying in effect that Mr. Hoffman's needs were more important than the grief surrounding the sudden death of Ms. Lamb's mother.** Ms. Lamb said she had to stay longer than the three days. When she next went to use the credit card she found out it had been canceled. It was Ms. Lamb's understanding that it was canceled because Mr. Hoffman reported it stolen. She understood that was his way to force her early return. This is not just an example of

the dependency but it is also indicative of the complete control that Mr. Hoffman exerted over Ms. Lamb during the marriage. That control was all encompassing and it has had the effect of leaving Ms. Lamb in the position of now needing time to regroup and put her life back in order.

The absolute control has continued to this time. When Ms. Lamb told Mr. Hoffman that she was going to leave him, he threatened her with “Armageddon” . Mr. Hoffman has been engaged in a deliberate and complicated scheme that involves transfer of funds to international trust accounts in an effort to punish Ms. Lamb for her decision to leave the relationship. I have no doubt that one of the objectives of Mr. Hoffman is to heap humiliation and poverty on Ms. Lamb even if that means that he will also be punishing his daughter.

Mr. Hoffman did not want the relationship to end. During the marriage he blamed Ms. Lamb for many of his problems. This included the sexual behavior he engaged in. Ms. Lamb indicated she cannot explain in words how she came to be trapped in the situation she found herself in. She testified that she did not want to continue sexual relationships with Mr. Hoffman, but she soon found herself in a cycle

where the respondent would relentlessly pursue her in this regard. It became a pattern where she felt compelled to submit to his persistent and sometimes violent demands. Even when she did comply, Mr. Hoffman began a pattern of dressing in Ms. Lamb's lingerie and somehow blaming Ms. Lamb for these types of activities and the cycle of violent behavior related to sexual activity. This cycle is one of the things that has scarred Ms. Lamb and results in her needing some time to again put her life back together. As Ms. Lamb stated, standing back now it is hard for her to see how she could allow herself to fall into that situation. I understand her to be saying that one would have to be there and live through it to see how it could happen.

During the marriage Mr. Hoffman, Ms. Lamb and Emma enjoyed an opulent life style which many people only dream of. They enjoyed that life style for many years. Mr. Hoffman benefitted from the fact that he was able to further his career while Ms. Lamb looked after the home and their daughter. He was not asked to forsake his career so that Ms. Lamb could undertake what could only be described as a very promising career she could have had. The benefits were mutual.

I refer to all of those things that I must refer to in accordance with the *Divorce*

Act when determining an appropriate amount for spousal maintenance. I also refer to *Moge v. Moge*, (1992) 3 S.C.R. 813 S.C.C. and *Bracklow v. Bracklow* (1999), 169 D.L.R. (4th) 577. I am satisfied that it is appropriate that there be maintenance in the amount of \$10,000.00 per month until such time as Ms. Lamb receives her share of the division of matrimonial property. The division of property I intend to order will provide substantial capital to Ms. Lamb once she receives it. She will be able to make career choices and afford to embark on a career of her choosing. In that sense, she will be enjoying the substantial benefits the marriage has afforded to this family in terms of the life style which she enjoyed during the marriage. Her future prospects will be secured by her share of the matrimonial assets.

Even though Mr. Hoffman is not here, I point out to him that one result of his hard work was the life style the family could afford. I do not in any way discount his contribution. The contribution afforded a good standard of living and allowed them to accumulate substantial assets. When considering the investment decisions Mr. Hoffman made, one could say he was a man of vision. He was a brilliant radiologist, and had either good foresight *or good luck* in investments. The fact that we are talking tens of millions of dollars today is indicative of the vision,

foresight *or luck* he had. **The vision Mr. Hoffman had risked the financial fortunes of this family. In that sense Ms. Lamb was along for the ride all the way, as was Emma.**

Mr. Hoffman could well have been before the Court today saying ‘I’ve lost everything because none of the stock investments that I made panned out’. I point out that in the early stages of these proceedings he was saying the family is broke. His position was that the family enjoyed a lifestyle that was only supported by deferral of tax liability and that the liability could not be forestalled any longer. That is not what we are faced with today. The spousal maintenance recognizes the income Mr. Hoffman has or at least has the potential to make. It also takes into account the substantial assets he now has at his disposal. The sooner the division of property is effected the sooner he will be relieved of his obligations to pay spousal maintenance.

Property Division

I now want to turn to the division of matrimonial property and assets. I had indicated earlier that Mr. Hoffman is not here, but that I have reviewed and considered portions of the discovery transcripts and portions of the evidence from the

earlier proceedings. I am satisfied the Statement of Property filed at Tab 4 of Exhibit 1, dated the 16th of December, 1998 was an attempt by Mr. Hoffman to give a true picture of the assets at that time. It may turn out at a future date that evidence becomes available showing that the statement was not complete but it is a good starting point for the purpose of division of property.

In saying that the statement is perhaps a true picture of the assets. I again note Mr. Hoffman's attitude to these proceedings is best summed up by reference to page 103 of the discovery transcript, January 20th, 1998. He said of the issue of keeping good records, "it's accounting crap". That attitude may be an accountant's nightmare. His accounting practices may give rise to questions by Revenue Canada. His attitude does not convince me he was lying about what he owned and what the family owned.

Mr. Hoffman's primary concern, insofar as I can tell, was the quality

of investments. His main concern was how he could get the money to invest in the things he believed in. He had the vision to look down the road and say “yes, these have great potential”. Mr. Hoffman, in his evidence at earlier proceedings referred to the fact that the majority of investments made were in the nature of venture capital investment. He said he knew the people and believed in them. He referred to the investment ‘J’ curve that he thought was appropriate for him to make. He felt he could make high risk investments based on his earnings potential. He said he did not want to see Ms. Lamb invest money received from her father’s estate in the same risky types of investments, I assume because he felt that was her nest egg. What Mr. Hoffman failed to understand or consider was that every time he made choices to invest and take those kinds of risks, he risked not just his fortunes, but those of the family. It turns out that the investments have paid off. They were high risk investments and he risked the family assets. According to counsel, he may today be holding investments worth approximately 26 million dollars. What counsel say as to present value is not evidence, but hope for this families sake it is true.

I am convinced that all of the shares whether they were held in Mr. Hoffman’s name or companies controlled and owned by him were matrimonial assets.

Generally assets acquired by parties before or during marriage are matrimonial unless the party claiming otherwise shows on a balance of probabilities that the assets fall under one of the exceptions contained in s.4(1) of the **Matrimonial Property Act**. To be a business asset, the purpose of the asset must be to generate income in an entrepreneurial sense. In this case the evidence before the Court suggests all investments in Mr. Hoffman's name of his companies were funded through income earned during the marriage. This includes the investments held in the numbered company set up to receive Mr. Hoffman's professional income. He used that as a vehicle to minimize or defer taxes but the assets of the company were obtained using and risking the family income. The assets in those vehicles were used to defer tax on income or for investment of family assets.

There was a Court order dated May 31, 1999 ordering Mr. Hoffman not to transfer shares out of his name. In addition there was an agreement as between the parties whereby Mr. Hoffman had agreed to freeze assets and maintain them as they were. I have indicated earlier, it is obvious from the evidence that he did not maintain all of those assets. In view of that earlier agreement and Court order, I am satisfied it is appropriate at this point in time to proceed as though the assets were

maintained in the form as they existed at the time of the agreement..

Counsel, in terms of the final disposition of this matter, I will say to you that I am leaving that a little bit open-ended. I am going to allow this matter to be returned to Court. It is important that something be done in terms of the division at this point in time so as to at least allow Ms. Lamb to begin trying to protect her share of the assets. To that extent the order I make is interim in nature and subject to revision if Ben Hoffman comes before this Court within a time which I will set. He will have the right to argue that the order is inappropriate.

I am satisfied that I should use the closing value as of today's date on all the publicly traded companies and publicly traded stocks held by Mr. Hoffman and the companies or trusts which hold shares for him. If Mr. Hoffman did not maintain the assets as he was ordered to do so, then at least on an interim basis, the losses will fall to him. I will be referring to the Statement of Property at Tab 4 in terms of the actual division. When I say that we are going to value the assets as of today's date, I note that I will be ordering a transfer of many of these shares in species, understanding that some investments are not publicly traded. In the situations where

I order the transfer in species and Mr. Hoffman did not maintain the assets in species or in his name or control then I will be ordering a dollar amount based on today's value for the publicly traded companies.

I refer to the Nova Scotia Court of Appeal decision *Smith v. Smith* No. 155948, Nova Scotia Court of Appeal, Judgment delivered December 25th, 1999. The decision was delivered by Chief Justice Glube. At paragraph 37 the Court noted:

The case law in Nova Scotia does not set any specific valuation date. The Court decides what is fair and just (see **Stoodley v. Stoodley** (1997), 172 N.S.R. (2d) 101 (N.S.S.C.)). (For decisions on various valuation dates: **Mason v. Mason** (1981), 47 N.S.R. (2d) 435 (N.S.C.A.) says it is at the time of trial; **Lynk v. Lynk (1989)**, 92 N.S.R. (2d) 1 (N.S.C.A.) and **Tibbetts v. Tibbetts** (1992), 119 N.S.R. (2d) 26 (N.S.C.A.) say it is at the commencement of the proceedings subject to variation according to the evidence; and **Ray v. Ray** (1993), 121 N.S.R. (2d) 340 (N.S.S.C.) says it depends on the nature of the asset and it could be the date of the divorce.

Ms. Lamb has not had the luxury of accessing her share of the assets and making investment decisions on her own, deciding when, or if to “cash in her chips” and take profits in terms of her share of the assets. Even though she has lost that

opportunity to make her own investment decisions, she has shared an equal portion in terms of the risk. Those investments could well have gone bad at any time and the family may have been left holding worthless assets. I am satisfied that today is the date for valuation. The Respondent will be entitled to compensation for any tax consequences on transfer provided he is prepared to provide proper documentation in proof of tax. This is also subject to a requirement that the transfer or conveyance be done in a way that minimizes income tax.

I note there may be difficulty in terms of enforcement of any order this Court makes. This Court and the laws of this Court may be challenged to the limit in terms of accessing Ms. Lamb's share of the assets. Mr. Hoffman will not disclose his whereabouts. Many of the family assets have been transferred to limited companies or to offshore trust accounts. As an example of the above, I refer, for example, to the fact that Mr. Hoffman has placed many of the assets in an Off-shore trust. It is set up in Nevis. In this regard, I refer to Tab 27 of Exhibit 1 which is a copy of the trust document "Brimstone Trust". It was provided to Ms. VandenEynden counsel for Ms. Lamb pursuant to disclosure undertakings. Mr. Hoffman, at discovery, said this trust was established to protect his assets from

creditors. In the discovery he did not say specifically he was intending to protect those assets from Ms. Lamb. I am satisfied that was one of his objectives and it may in the end achieve just that. Ms. Lamb is entitled to an appropriate share of the family assets through a division of property. I am concerned with the behavior of Mr. Hoffman and the repeated reference he made to “Armageddon” if Ms. Lamb left him and proceeded with a divorce. It is possible that Mr. Hoffman did choose to give up his career, access to his daughter and live a life on the run so as to attempt to avoid paying any money to Ms. Lamb and his daughter. If that is his choice then he would clearly be in contempt of the Court Order which froze his assets.

There are other private corporations including the Medical Corporation that was set up by Mr. Hoffman. There were also substantial R.R.S.P. holdings in Mr. Hoffman’s name. Many of these assets are going to be somewhat difficult to get to, but they were all funded through the assets or the income earned during the marriage. They are also matrimonial assets. In relation to the medical company the evidence would indicate that many times Mr. Hoffman did not need the income he was earning as a radiologist because he had enough other income from the limited partnerships the family had acquired. He was able to leave the income earned in the numbered

company and invest it and allow it to grow within the company, gaining a tax advantage.

I now wish to turn to the issue of the actual division of matrimonial property and assets. I refer to Tab 4 of Exhibit 1 in terms of the actual division. That was a sworn statement of property prepared by or for Mr. Hoffman. He represented in that statement what the assets were. Ms. Lamb suggests there were other assets but it is not clear as to where they went or if they were used to fund the assets as disclosed in the statement of property. The evidence from Mr. Hoffman at discovery and the earlier hearings was anything but conclusive in this regard. I am not prepared to find on the evidence before me that the assets were other than as disclosed in the statement of property as filed by Mr. Hoffman.

I am satisfied that it would be appropriate to order a transfer of the house and farm property at Waterside to Ms. Lamb. Initially, I am going to order that the transfer be free and clear from any encumbrances. The mortgage liability related to the house and farm will be accounted for upon the transfer of other assets. At the time of transfer of those other assets Mr. Hoffman will be entitled to deduct one-half

of the balance of the mortgages outstanding as of this date.

I would order that there be an appraisal done on the house at a later date. I take into account the fact that if this house is lost to foreclosure there is not going to be much need for an appraisal. The issue of whether the house is to be lost on foreclosure is to a large extent in Mr. Hoffman's hands. He has funds to pay the mortgage if he so chooses. If he does not then he will lose any equity he may have. If the house is lost to foreclosure Ms. Lamb will be entitled to one-half of the equity now existing. That equity will be based on the difference between an appraised fair market value and the balance of the 1st mortgage.

There is a second mortgage but it is not clear on the evidence that it is a debt for which Ms. Lamb is liable for on the division of the value of the matrimonial home. There is an issue as to whether she actually signed that mortgage or if she did whether she knew what she was signing. When Mr. Hoffman pays what he is required to pay her for the division of other assets he will be entitled to deduct one-half of the balance of the principle of that second mortgage as of this date. The reason he will be entitled to deduct one-half of that second mortgage is that even if

Ms. Lamb was not aware of or signed that second mortgage, the funds were, as far as the Court can ascertain, used to fund share purchases. She should not be entitled to a share of those assets without a proper deduction for funds used to acquire them.

I note that Ms. Lamb does not have the financial resources to obtain an appraisal because of the fact Mr. Hoffman has left her with no liquid assets. She cannot fund an appraisal out of her own income. The appraisal, if required, will be done at some future date so as to complete the reconciliation on the division of property at a later date.

Mr. Hoffman had a property interest in an apartment building in Toronto. There is no division made in terms of the apartment building in Toronto. I understand the value of that asset is approximately equal to the liability on that property. It is owned by Mr. Hoffman in partnership, or as a co-owner with a number of other people and it will remain in his name.

As regards the house contents, including art, jewelry, furniture, carpets, antiques, etc., I am satisfied that, with the exception of one painting which I

understand was given to Mr. Hoffman by his grandparents, those assets should remain in the possession of and be owned by Ms. Lamb. I would however state as I did in relation to the house they will be appraised at some future date. He will be entitled to a credit for half of the value of the contents in the house. The costs of both appraisals, the real property and the personal contents, will be borne equally by the parties once Mr. Hoffman has conveyed all the assets he is required to transfer to Ms. Lamb.

There were a couple of items taken by Mr. Hoffman. These include a bed and wardrobe. I expect that the bed was not of substantial value, but there was a wardrobe or a dresser, which should be included in the appraisal and resulting adjustments. I understand the wardrobe was a fairly substantial acquisition in terms of cost. That will be appraised and each party is entitled to one-half of the value of that asset.

As regards motor vehicles, the Statement of Property deals with two automobiles. One is a 1993 Range Rover valued at \$12,000.00. Each of the parties will be entitled to half of the value of that asset. I note that the asset was sold and Mr.

Hoffman has the proceeds of sale. He is going to have to pay \$6,000.00 back. There is a BMW showing on the statement. The property statement says "pending delivery". That asset does not appear to have existed at the time of separation. At the time of the separation however, there was a Porsche and the evidence would indicate Mr. Hoffman sold, or possibly traded it for \$65,000.00. There is no evidence before me to indicate there was any liability in relation to that Porsche. Ms. Lamb is entitled to half of that \$65,000.00.

Finally, in relation to the tractor and horse trailer, the statement of property indicates a value of \$10,000.00. I understand the trailer has been sold by Mr. Hoffman and the tractor is still at the property. The tractor will be appraised. Mr. Hoffman will get credit for half of the value of the appraised value. The trailer and tractor were stated to be worth \$10,000.00 in the statement of property. Since the trailer was sold by Mr. Hoffman for an undisclosed amount, Ms. Lamb will be entitled to one-half of the difference between the appraised value of the tractor and the sum of \$10,000.00. For the sake of clarity I give the example of the tractor having a value of \$6,000.00. Ms. Lamb may keep the tractor upon giving a credit of \$1,000.00 to Mr. Hoffman. If the tractor has an appraised value of \$4,000.00, Mr.

Hoffman will give Ms. Lamb \$1,000.00.

The next category, page 2 of the statement, deals with R.R.S.P.s. There are two categories, one entitled R.R.S.P.s Ben and the second a spousal R.R.S.P., Carrie's. I am prepared to order that Mr. Hoffman retain one-half of all of the items listed under the R.R.S.P. He will hold for Ms. Lamb one-half of that asset, net of taxes for Ms. Lamb. I am going to give a latest return date when Mr. Hoffman may come to Court and explain why or if he liquidated those R.R.S.P.'s. I understand that while the Court has ordered a freeze on the assets, Mr. Hoffman was required to live. So as long as he was living reasonably it may have meant that he did liquidate some of the assets and/or R.R.S.P.s to live. If this liquidation did occur the asset will not be transferrable in species. If Mr. Hoffman does not submit to the jurisdiction of the Court then I can only order an equal division of that R.R.S.P. based on the assumption it was retained at the current value of the holdings assumed to be held in that investment vehicle. In the meantime, I am ordering that one-half of those assets showing in that R.R.S.P. be held for the benefit of Ms. Lamb. I understand you do have particulars as to what company held that R.R.S.P. and you can send an order to that company indicating that they are to be held to the extent that I have mentioned.

Ms. Lamb's R.R.S.P's and spousal R.R.S.P.'s were liquidated for ongoing maintenance needs. She is not required to convey to Mr. Hoffman any portion of those R.R.S.P's. Any interest he had in that R.R.S.P. is considered as past maintenance due and paid.

I turn now to the issue of securities. I am not going to go through all of these securities counsel and indicate where the present value is. I am saying that either they have to be returned in species, where I so order, or the equal amount in terms of monetary value has to be paid based on present value.

I start by referring to Tab 4, Exhibit #1, page 3, there is an insurance annuity. It shows an approximate value of \$100,000.00. Ms. Lamb is entitled to one-half of the insurance annuity, \$50,000.00.

All payments are net of taxes counsel. If there is a tax consequence for Mr. Hoffman to transfer the shares, or any of the items I ordered to be turned in species over to Ms. Lamb, there will be a deduction or repayment by Ms. Lamb for income tax. These are some ways to minimize income tax. I refer, for example, to

the butterfly provision that was referred to by counsel. If Ms. Lamb is able to take advantage of those provisions and allow for something of a tax roll-over, then she will be getting them free of taxes. If, however, Mr. Hoffman is required to pay any taxes on anything he is ordered to turn over to Ms. Lamb, then she will be responsible to pay the taxes.

I refer next to the limited partnership, “amalgamated income \$206,000.00”. Ms. Lamb is entitled to a half interest in that.

The next item is a “limited partnership BPI worth \$9,000.00.” That is net of taxes, because I understand there’s about \$6,000.00 taxes due on that. That tax amount has been pre-determined as I understand the statement of property. She is entitled to one-half of the net amount.

The next item on the statement is entitled “Securities, Wi-Lan”. There are 52,000 restricted shares. They show a value of \$78,000.00 in the statement. I am however, satisfied that it is appropriate, in keeping with the *Smith v. Smith* decision which I referred to above, that the shares be transferred in species. Ms. Lamb will be

entitled to 26,000 shares in Wi-Lan under that column. If the shares are not transferred in species then she is entitled to the value for 26,000 shares based on today's closing stock market price as quoted on the Toronto Stock exchange.

The next line is securities, "Wiacom Cell-ock". It shows 1:22 shares in Cell-ock. I understand from the evidence that when that company went public there was a share split. Those 1:22 shares are now equal to 60,600 publicly traded shares. Mr. Hoffman will turn 30,300 of those shares over to Ms. Lamb or the equivalent monetary based on today's closing trade on the Toronto Stock Exchange.

Next in the statement of property is 1800 Pembina shares. Ms. Lamb had received approximately \$100,000.00, or just under \$100,000.00 in an inheritance from her father. The evidence of Ms. Lamb is that \$100,000.00 was turned over to Mr. Hoffman to invest and he was investing in his name. He kept the Pembina shares in his name but they were definitely shares that were bought on behalf of Ms. Lamb, using her money. Those will be returned to Ms. Lamb. If there is a tax consequence in returning them, he will be entitled to tax relief in that regard.

Next on the statement of property is 50,000 PRI shares. There is an undetermined value for those shares as they are not shares in a publicly traded company. The evidence would indicate that these were purchased using Ms. Lamb's money from the inheritance. Those 50,000 shares will be returned to her as well.

I might note counsel that the evidence of Ms. Lamb and the transcripts that I reviewed indicated that Mr. Hoffman and Ms. Lamb both considered that the money from the inheritance was Ms. Lamb's. It was not included as part of the matrimonial assets. That inheritance was received very recently in terms of the chronology of this case. Mr. Hoffman was investing the money and he even was giving advice to Ms. Lamb. He took a different approach to Ms. Lamb's money received from the inheritance. Sometimes she followed his advice and sometimes she did not, but clearly the evidence as to the intention of the parties is that this would not become and did not become a matrimonial asset. It remained an asset of Ms. Lamb.

There was some suggestion in the transcripts and the evidence that Mr. Hoffman also had an inheritance. I do not know when he received it, what it was, or where it went. In the absence of any evidence on that point I am satisfied that if

there was any such inheritance it became a part of the family assets. It was used by and for the family. There was never any distinction as between what he may have inherited and what was being used for family purposes. If Mr. Hoffman was here to give evidence, as indeed he should have been, then the result may have been different. With the evidence that I have now before me, the disposition that I make is appropriate.

The next item on the statement of property is the labour fund. This is described as "working ventures, \$10,000.00". The evidence I understand is that those funds are actually now in Ms. Lamb's name and held by her. Mr. Hoffman will be entitled to one-half of the current value of that labour fund based on today's market value. Mr. Hoffman's entitlement will be offset from the assets he is required to transfer to Ms. Lamb.

I turn now to page 4 of Tab 4. It refers to business interest. I have already dealt with the fact that I have determined that, as between these parties, they were not business interests, they were family assets. Nova Scotia Limited 3001495 incorporated October 1st, 1996, holds a number of shares including 601,000 shares in

Nova Scotia Limited 30016711. I refer here to them as “PRI shares”. In addition it held Wi-Lan shares 57,436 shares and Cell-ock 86,000 shares. Ms. MacNeil urges the Court to divide the assets held by the company. I am satisfied that it is appropriate that the company be ordered not to transfer any of those assets. I make this order on the assumption that Mr. Hoffman complied with the previous Court orders and did not transfer any of those assets or shares. Ms. Lamb is entitled to one-half of the assets held in that company. If the shares are not turned over then she will get one-half the value of those shares based on the closing price TSE values as of today’s date.

The one concern that I have is in relation to the PRI shares, 601,000 shares. The evidence would indicate that there is not a current market value the Court can use to determine the value of those shares. I am ordering that Mr. Hoffman turn over the 300,500 shares in that PRI company. If he refuses or fails to do that, then at some future date of Ms. Lamb’s choice she can come back to Court and ask the Court to determine what the appropriate value is for those shares. As I say they have no current market value, so I cannot very well say he is to give her half of a hundred thousand or half of a million or whatever it is. She certainly has an interest in those

shares and he is deemed to be holding them in trust for her at this point in time. In addition, there were other PRI shares noted on the second line, or the second column, page 4, 100,000 shares. She is to get half or 50,000 of those shares.

The next issue – and I return to page 4 on Business Interests, Rocky Mountain Chocolate Factory Ontario Limited. There was approximately \$630,000.00 invested in that franchise as of the date of the Statement of Property. There was an unknown value showing at that point in time. The evidence is that the Rocky Mountain Chocolates investment was a failure. The investment both before and after the Statement of Property was filed lost a total of about a million dollars of the family asset.

The parties made that investment in anticipation of a separation. It was to set up a business to secure an income for Ms. Lamb after separation. Mr. Hoffman eventually gave Ms. Lamb an ultimatum; either abandon her plans for separation and divorce or he would not convey any interest in the Rocky Mountain Chocolate factory to her. The investment of \$630,000.00 was made prior to Ms. Lamb saying that she wanted nothing more to do with it. That loss is a joint loss of family assets and that

is taken into account in the sense that their assets are reduced by that amount by the time the statement of property was filed. Mr. Hoffman does have the benefit of a possible tax advantage as a result of that loss and if there is any tax relief as a result of that loss then as we go through the list of liabilities on page 5, Ms. Lamb is entitled to half of that tax relief.

As regards the investments made in Rocky Mountain Chocolate factory after December, that was a choice Mr. Hoffman made contrary to the instructions and the agreement of Ms. Lamb. Mr. Hoffman, according to the transcripts and evidence, went on to continue spending money trying to reduce or off-set some of his losses in Rocky Mountain. If there were any losses subsequent to the December date then they will be borne solely by Mr. Hoffman. If he gets any tax advantages as a result of those subsequent losses, he alone will enjoy those tax savings. Ms. Lamb will not share in the tax saving resulting from the post December investments in Rocky Mountain.

I turn now to the issue of matrimonial debts. There was a first mortgage on the family home. I indicated that Mr. Hoffman was to convey the matrimonial

home and farm to Ms. Lamb free and clear of any matrimonial debts. He is entitled, however, to receive a credit back from Ms. Lamb for one-half of the first mortgage on the matrimonial home. Ms. Lamb contests as between her and the lending institution the validity of the second mortgage. She said she had no participation in the mortgage. She did not sign it. I do not decide that issue as between her and the third party. As between her and Mr. Hoffman, I am satisfied, based on what I have seen, that the proceeds from that mortgage were used to acquire additional assets or investments for this family. In that sense Mr. Hoffman has been ordered already to convey assets to Ms. Lamb and he should not be denied a credit in terms of the source of those investments. In that regard, he will be entitled to deduct one-half of the second mortgage from assets to be conveyed to Ms. Lamb.

There are a number of other items identified as matrimonial debt. They start on page 4 of the statement beginning "credit cards". The list includes credit cards and TD Bank overdraft. The credit cards and TD Bank overdraft are bills that would normally have been paid by Mr. Hoffman throughout the marriage from income that the family would have earned. It is appropriate, considering the maintenance that was paid, or lack thereof, that he be responsible for those bills. The

total is \$18,000.00.

There is one item showing under the heading liabilities which is identified "Supplier - wood floor installed summer 1998/ \$7,000.00". That was for flooring installed in the house. Ms. Lamb is going to get the house and she will be responsible to pay that bill.

There is an accounting fee identified as "NS. Ltd. 30116711 (PRI) in the amount of \$5,000.00. That amount again would have been used to acquire assets for the family and it is an appropriate liability to be shared equally by the parties. I impose no burden on Ms. Lamb to pay that account, instead one-half of that debt can be offset from what Mr. Hoffman owes her. I do not want to make any order which places a burden on Ms. Lamb to come up with this money now unless she indeed gets her share of the assets.

The final item under debts is the Hampstead Financing Corporation for Grosvenor partnership. It shows a liability of \$140,000.00, due 2003. Counsel I indicated that, while Mr. MacLean's submission was not evidence, I do take into

account the fact that I understand based on his written submission, that debt was basically related to a limited partnership. Mr. Hoffman was able to obtain tax relief at the time of the investment in the form of a tax deferral. This allowed him to get \$120,000.00 immediate tax relief, or whatever the amount was set out in Mr. MacLean's brief. While I say that, Mr. MacLean's brief is not evidence, it is obvious that the family has enjoyed the benefit of having that money available either to live on or to make further investments. When the division of property is made and there is a final reconciliation, Mr. Hoffman will be entitled to deduction for one-half of that future liability.

I refer next to page 5 of the statement of property. It refers to a loan on BMW on sale of Porsche. There is no indication there was ever any delivery of the BMW. I have no evidence before me in relation to that loan and if he made the arrangement to buy a new BMW that will be Mr. Hoffman's responsibility.

The next item is a loan in relation to Wi-Lan, \$20,000.00. The evidence before me would indicate that loan has been paid. I assume it was paid out of family assets. It is not even clear as to the nature of that loan, where it came from

or where it went. I am not satisfied that Ms. Lamb is in any way responsible for that loan.

The next item is stated to be a cash deficiency Lyngate MURB \$6,000.00. That would be a family investment and that MURB loss was something from which the family stood to gain and probably did gain tax relief for in the past. On the final division Ms. Lamb will be responsible to reimburse Mr. Hoffman for one-half of that liability.

The final section deals with Income Tax. There are stated income tax liabilities on the medical corporation \$67,000.00; tax on the limited partnership income \$30,000.00; recapture on apartment building in Toronto, \$100,000.00; limited partnership deferral - on the amalgamated income, \$137,000.00; BPI, \$6,000.00; capital gain on sale of shares and limited partnerships \$284,000.00. Counsel what I am prepared to do on this is to adjourn my decision in relation to Ms. Lamb's responsibility for the income tax amounts. I am not satisfied that there is enough evidence before me to prove that there is indeed any liability. I am going to adjourn final disposition of this matter and give Mr. Hoffman an opportunity to come to Court

with full documentation as to his income tax liability. If indeed it turns out that he does have tax liability and if it can be properly documented, then he should get credit for one-half of that liability on the final division of property. I suggest that it would be an accountant's nightmare to put this all back together, but if the tax liability does exist then he will get credit.

If Mr. Hoffman cannot or does not satisfy to the Court as to those liabilities, then he will not get credit. In saying that, I am satisfied that there should be a closing date on this. Mr. Hoffman should indicate to the Court within 90 days from the release of this decision that he does intend to come to Court and satisfy the Court as to those liabilities with the proper documentation. If he does not indicate that he is going to be coming with proper documentation, then Ms. Lamb you will not be held liable for any of those debts. That is not to say Mr. Hoffman has to be here within 90 days, but he has to indicate that he will be coming. Any subsequent hearing will be managed very closely in terms of disclosure and documentation. The Court and Ms. Lamb will have to have some assurance that there are proper steps being made or taken in terms of the necessary tax information and accounting. We will then set a date for the actual hearing on those amounts. That should not hold up the division

of property. The division that I am ordering should occur immediately.

In relation to enforcement, I refer to Rule 53.04 of the Nova Scotia Civil Procedure Rules and any other tool that this Court has at its disposal. In this regard, I would order that any company that is presently holding any assets by, for, or on behalf of Mr. Hoffman, will not transfer or convey any of those assets until such time as Mr. Hoffman gets leave of this Court to make such transfer. The one exception is that Mr. Hoffman will be free to convey shares in satisfaction of the order of this Court where the Court has ordered shares to be transferred in species to Ms. Lamb. The order will include the numbered companies, it includes the R.R.S.P.s and it includes any shares that are held by Brimstone Trust.

I have not referred to the full and proper name of Brimstone Trust. There were different points in evidence where it is referred to as the Brimstone Foundation Trust or Brimstone Trust. When the order is formalized all possible names of Brimstone Trust will be included. As regards the institutions which hold his R.R.S.P.s they will also be advised as to the restriction on further transfer. Cell-ock and the other publicly traded companies will also be advised of the restrictions because this

decision will also restrict transfer of Wi-Lan or Cell-ock shares. There are also CGI, (32 shares); CGI.WT (70 shares); Luscar, (210 shares); CMDF; Triax growth fund; and PRI. All of those companies will be instructed not to convey any further shares that are owned by or on behalf of Mr. Hoffman or held in his R.R.S.P. except to Ms. Lamb as per the terms of this decision.

I do not refer to all of the companies by name counsel, but they will have to be in the order. The orders are going to have to be very specific.

Money Invested For Child Of The Marriage:

The one final matter arising from the evidence was monies invested in trust, to be held in trust for Emma. Mr. Hoffman felt free to invest and re-invest those amounts on behalf of Emma. Whatever the current value of those shares are, and I do not know the history of them counsel, but I will say the current value of the shares that were in his possession on Emma's behalf, shall be turned over to Ms. Lamb to be held in trust by her for Emma. I would be open to hearing from Mr. Hoffman at a later date as to why it should not be held jointly. I doubt whether the parties in this

case would ever be able to work together and make decisions in terms of investments.

If they could I would hear from Mr. Hoffman.

COSTS:

I now turn to the issue of costs. I would have to say to Ms. Lamb that if you are able to realize on the judgment or the order that I would make, a two or three day proceeding is miraculously short to deal with the substantial assets we were dealing with in this case. In that sense, I am not satisfied that there should be costs awarded to either party on the main application. It has only been a three day hearing. I am however satisfied, that in terms of taking steps to deal with the custody and access issues and in trying to protect the assets, it was entirely within Mr. Hoffman's power to have eliminated the need for those applications. Mr. Hoffman, through his action's, has cost this family thousands of dollars in unnecessary legal fees. Ms. Lamb should not have to bear any responsibility for those wasted fees. Insofar as Ms. Lamb is able to separate the costs of those applications out from the main application, I am prepared to order that they be awarded on a solicitor-client basis. Solicitor and client costs will also be recoverable for future steps required to enforce

the decision of this Court. If Mr. Hoffman is going to cost this family or Ms. Lamb a fortune in trying to collect, then all collection expenses will be for Mr. Hoffman.

I wish Ms. Lamb good a luck in collecting on the judgment as I foresee Mr. Hoffman being very uncooperative. If he does come through and pay what I have ordered him to pay, then there will be relatively minimal collection expenses. If he does not, then you are entitled to collection related expenses on a solicitor-client basis.

The third parties affected by the execution orders and Rule 53.04 orders, are also entitled to come back before the Court and explain why they cannot do something or why they should not do something. That is something that I will leave up to those third parties. They can make application on short notice if they wish. There are possibly some hypothecations of shares of which I am not aware. There may be a third party come back and say, look, I can't do this because he has already hypothecated the shares. I refer, for example, to the PRI account where he potentially pledged some shares. Those are the types of third parties who may be able to come back in relatively short notice.

I also refer to Mr. Hoffman and say that in many ways he does not deserve a chance to be heard on these matters. He has refused to come to the jurisdiction and deal with this matter. I would not want to see an obvious injustice perpetrated as a result of this decision. He will have a very limited right to come back. I can tell Mr. Hoffman, through a copy of this decision, that if does come back he better have all his ducks lined up in terms of documentation and explanation on every item. He is not simply going to be able to come back and say to the Court this is the way it was, take me at my word. There is just so much money involved here one would expect that there must be a paper trail some place. He cannot just postpone any payment or transfer of assets indefinitely by saying some day down the road I am going to do this. There will be a sunset clause and if he does not indicate, as I said, within the time limits that I had mentioned earlier, that he's coming back on any of the issues, tax or anything else, then that's the end of it. My order will be final.

Contempt Issue:

Counsel have suggested on the record that Mr. Hoffman has been in contempt of Court. They ask that I indicate it is not just civil contempt but a criminal

contempt. I refer for example, as I have already, to the fact that there is the Brimstone Trust and the attempt by Mr. Hoffman to certainly enter into a tax avoidance scheme. He said as well it might protect him from creditors and he would not answer emphatically as to whether or not the creditors included Ms. Lamb. He did say in the discovery, however, that it was an investment decision, or an investment strategy that he would have made irrespective of the divorce proceedings.

I am concerned at the suggestion that he has been in criminal contempt. It is only as a last resort that people are charged with criminal contempt. Justice Cacchione in his decision said that the Petitioner had leave to cite Mr. Hoffman for contempt and have him come back to Court and show that he was not in contempt. Mr. Hoffman has not been here. It is not clear as to why he did the Brimstone Trust transfer. Certainly it is getting very close to a criminal contempt. It is indeed something that the Crown could look at. I simply say to the parties, and I know Mr. MacLean is here, as watching counsel; Mr. Hoffman has encountered enough

problems already. Many of the problems are of his own making and I would hate to see criminal charges in this case. The whole situation could be remedied in terms of division of property and settlement of those issues by simply complying with the order. If he chooses not to, then part of the evidence of criminal contempt may well be that, yes, he has transferred these funds into the offshore trust and he is not complying with the order, or at least the intent of the order.

The Court is now giving him an opportunity. Mr. Hoffman, no doubt, will be getting some very good legal advice on a number of issues. Possibly he will be told that his actions can be considered in any future criminal contempt proceeding, if any. If he is found to be in criminal contempt it is an indictable offence and an extraditable offence. Extradition and incarceration could follow.

I am not prepared at this point in time to say on the record it is apparent that there is criminal contempt. I simply say that if it turns out that this order is not complied with, it is one more piece of evidence that you will be able to provide to the Crown in criminal proceedings. If there is compliance then certainly it may not be anything more than a tax avoidance scheme. Tax avoidance is legal even if it

makes it difficult for your ex-spouse to recover a division of property.

The intent of this decision is not to see Dr. Hoffman destitute. The intent of this decision is to ensure that Ms. Lamb gets what she's entitled to, to ensure that Emma gets what she's entitled to. It is just as important to see that Mr. Hoffman gets what he's entitled to.

Mr. Hoffman sent a note to the Court this morning. He indicated that he was pleased that the Court, for the first time, took into account something his brother might have to say on the issue of credibility. I can assure Mr. Hoffman that I have done my utmost to protect his rights, both in terms of the evidence that was allowed in this proceeding and in terms of the final disposition. I attempted to give Ms. Lamb no more than she was entitled to. I attempted to give Emma no more than she was entitled to. I tried not to infringe on Mr. Hoffman's rights anymore than I thought they should be.

The flip side to that, and the unfortunate part of these whole proceedings, is that Ben Hoffman has chosen not to show up. Mr. Hoffman has not enjoyed the

benefit of cross-examination of the witnesses that were here and he has not enjoyed the benefit of perhaps giving evidence and giving better or further explanations as to what may have happened. That is the result of his actions. No one else is to blame. We do have his sworn statement in terms of the Statement of Property and to Ms. Lamb's credit she says that is a valid starting point. That is what we have to go on. The assumption is, based on that document, that there were no other assets. Mr. Hoffman has not had the opportunity of being able to explain how some of those may have been lost since the date of the filing of the Statement of Property. He has not offered any explanation as to why some of these assets should not be divided the way I said they are to be divided. I have to use the best evidence that I have before me to make the division that I think is most appropriate. I hope that it is just as fair and appropriate as it would have been had Mr. Hoffman been here. That is what I attempted to achieve.

I do wish Carrie Lamb, Emma Hoffman and Ben Hoffman well in the future and I hope things can be cleared up so this family can get on with their lives.

Mr. MacLean I did indicate before you came in that I felt it important that the

Court render at least a summary of the decision. The essence of the decision is not going to change. Because of the nature of the assets and the valuations and how quickly they are changing, I want to fix a date for valuation. I want to give the parties, through my oral decision, an idea as to where we are going. You can get copies of the tapes I am sure by Monday because you were not here for the whole proceedings. I did reserve the right to give a more detailed decision with case references and more detailed reasons. I thought it appropriate that the decision be given immediately. The decision, I am sure, is not very structured and it is very rough in terms of the crafting. The essence of the decision, if you want to get the tapes on Monday, it will be the same.

I know Mr. MacLean has not been solicitor of record but at least if he listens to the tapes and he points out an obvious error in your order it will perhaps help the Court. If he can consent to it, fine. If he's not prepared to consent to it, or cannot get

instructions from his client, forward it on to me in any event.

J.

04/06/00