

2001 CarswellAlta 1294, 2001 ABQB 776, 21 R.F.L. (5th) 451, 297 A.R. 168

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Tabata v. Smith

Cheryl Kiyomi Tabata (Petitioner) and Francis Leigh Smith (Respondent)

Alberta Court of Queen's Bench

Bensler J.

Heard: March 5, 2001

Judgment: September 13, 2001

Docket: Calgary 4801-092836/0001-09405

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Counsel: *D.P. Castle, J.M. Hoffman*, for Petitioner

*R. Forsyth-Nicholson*, for Respondent

Subject: Family; Property

Family law --- Support — Spousal support under Divorce Act and provincial statutes — Lump sum award — Factors to be considered — Facilitating clean break

Parties were married in 1991 and separated in 1996 — Wife moved from Quebec, leaving company she had started, to be with husband in Alberta where husband had purchased small farm — Husband was employed by airline and wife tended farm and held occasional part-time employment — There were no children of marriage — Husband earned \$60,000 per year and since separation, wife earned \$30,000 per year and claimed shortfall of \$675 per month — Wife brought proceedings seeking order for spousal support — Wife awarded lump sum spousal support of \$21,000 — Marriage of only five years did not justify presumption of equal standards of living — Proper test for self-sufficiency in case at bar was reasonable standard of living and applying this standard, wife was well on way to self-sufficiency — Wife was homeowner and in good health and had not established that she had suffered serious economic hardship as result of breakdown of marriage — However, wife had left business in Quebec which would have continued as successful enterprise if she had stayed there — Accordingly, wife was entitled to compensatory support — Support was to be paid as lump sum since husband had means to pay lump sum and it was appropriate, since parties had no children, that they leave marriage behind them and not be tied by ongoing support.

Family law --- Support — Spousal support under Divorce Act and provincial statutes — Entitlement — General

Parties were married in 1991 and separated in 1996 — Wife moved from Quebec, leaving company she had started, to be with husband in Alberta where husband had purchased small farm — Husband was employed by airline and wife tended farm and held occasional part-time employment — There were no children of marriage — Husband earned \$60,000 per

year and since separation, wife earned \$30,000 per year and claimed shortfall of \$675 per month — Wife brought proceedings seeking order for spousal support — Wife awarded lump sum spousal support of \$21,000 — Marriage of only five years did not justify presumption of equal standards of living — Proper test for self-sufficiency in case at bar was reasonable standard of living, and applying this standard, wife was well on way to self-sufficiency — Wife was homeowner and in good health and had not established that she had suffered serious economic hardship as result of breakdown of marriage — However, wife had left business in Quebec which would have continued as successful enterprise if she had stayed there — Accordingly, wife was entitled to compensatory support — Support was to be paid as lump sum since husband had means to pay lump sum and it was appropriate, since parties had no children, that they leave marriage behind them and not be tied by ongoing support.

Family law --- Family property on marriage breakdown — Assets which may be excluded from property to be divided — Assets brought into marriage — General

Parties were married in 1991 and separated in 1996 — Wife moved from Quebec, leaving company she had started, to be with husband in Alberta where husband had purchased small farm — Husband was employed by airline and wife tended farm and held occasional part-time employment — There were no children of marriage — Prior to marriage husband had used \$80,000 from sale of his home in Quebec to purchase, in his name alone, home in Alberta that served as matrimonial home — Prior to marriage, husband also owned cottage property in Quebec which parties used during marriage — Wife brought proceedings claiming half of amount of down payment on matrimonial home on basis that husband intended to put property into joint names as gift to her — Downpayment was exempt from distribution as property brought into marriage — No gift had been made with regard to matrimonial home so that wife only had interest in remaining equity in home after deduction of capital gains taxes and legal fees related to sale — Similarly, wife had no interest in cottage except for distribution of half of increase in market value over term of marriage.

#### Cases considered by *Bensler J.*:

*Bandurak v. Bandurak* (1983), 24 Alta. L.R. (2d) 157, 44 A.R. 165 (Alta. Q.B.) — referred to

*Bracklow v. Bracklow*, 1999 CarswellBC 532, 1999 CarswellBC 533, 169 D.L.R. (4th) 577, [1999] S.C.J. No. 14, 236 N.R. 79, 44 R.F.L. (4th) 1, 120 B.C.A.C. 211, 196 W.A.C. 211, [1999] 1 S.C.R. 420, 63 B.C.L.R. (3d) 77, [1999] 8 W.W.R. 740 (S.C.C.) — followed

*Gallant v. Gallant* (1998), 166 D.L.R. (4th) 79, 131 Man. R. (2d) 15, 187 W.A.C. 15, 42 R.F.L. (4th) 353 (Man. C.A.) — referred to

*Linton v. Linton* (1990), 1 O.R. (3d) 1, 42 O.A.C. 328, 30 R.F.L. (3d) 1, 41 E.T.R. 85, 75 D.L.R. (4th) 637 (Ont. C.A.) — referred to

*Mazurenko v. Mazurenko* (1981), 23 R.F.L. (2d) 113, 30 A.R. 34, 15 Alta. L.R. (2d) 357, 124 D.L.R. (3d) 406 (Alta. C.A.) — considered

*McAlister v. McAlister* (1982), [1983] 2 W.W.R. 8, 23 Alta. L.R. (2d) 141, 41 A.R. 277 (Alta. Q.B.) — considered

*Moge v. Moge* (1992), [1993] 1 W.W.R. 481, 99 D.L.R. (4th) 456, [1992] 3 S.C.R. 813, 81 Man. R. (2d) 161, 30 W.A.C. 161, 43 R.F.L. (3d) 345, 145 N.R. 1, [1993] R.D.F. 168, [1992] S.C.J. No. 107, 1992 CarswellMan 143 (Eng.), 1992 CarswellMan 222 (Fr.) (S.C.C.) — followed

*Sutton v. Davidson* (1999), 244 A.R. 126, 209 W.A.C. 126, 1 R.F.L. (5th) 157, 76 Alta. L.R. (3d) 216 (Alta. C.A.) —

followed

*Wooldridge v. Wooldridge*, 1999 CarswellAlta 320, 172 D.L.R. (4th) 637, 45 R.F.L. (4th) 308, 237 A.R. 64, 197 W.A.C. 64 (Alta. C.A.) — considered

**Statutes considered:**

*Divorce Act*, R.S.C. 1985, c. 3 (2nd Supp.)

Generally — considered

s. 15.2 [en. 1997, c. 1, s. 2] — considered

s. 15.2(1) [en. 1997, c. 1, s. 2] — considered

s. 15.2(4) [en. 1997, c. 1, s. 2] — considered

s. 15.2(6) [en. 1997, c. 1, s. 2] — considered

*Matrimonial Property Act*, R.S.A. 1980, c. M-9

Generally — considered

s. 7 — referred to

s. 7(1) — referred to

s. 7(2)(c) — considered

s. 7(2)(e) — referred to

s. 7(2)(f) — referred to

s. 7(3) — referred to

s. 7(4) — considered

s. 8 — considered

s. 8(c) — considered

s. 8(m) — considered

APPLICATION by wife for orders for spousal support and division of matrimonial property.

***Bensler J.:***

**FACTS**

1 This action arises as the result of a failed marriage which ended in a divorce judgment dated November 22, 2000. The issues of spousal support and matrimonial property division remain outstanding. The facts are briefly stated as fol-

lows and are revealed in more detail as needed during my consideration of various dispositions ordered in this action.

2 The parties, Mr. Smith and Ms. Tabata met in June of 1989 and maintained a long distance relationship for almost two years prior to marrying. This was facilitated by the fact that Mr. Smith was an employee of Canadian Airlines and was able to travel at no cost. During that period Mr. Smith was stationed in Calgary while Ms. Tabata lived in Quebec.

3 The couple were married in July 1991 and commuted for the first seven months of the marriage. In February of 1992 Ms. Tabata left Quebec to be with her husband in Alberta. In doing so she left a company which she co-owned and helped build. As a result of her leaving, the company experienced financial difficulties and eventually failed.

4 The couple lived on a small farm outside of Beiseker. Mr. Smith maintained his employment with Canadian Airlines while working on the small farm mornings and evenings. Ms. Tabata spent time working around the farm, tending to household needs and held occasional part-time employment.

5 The parties began to experience marital difficulties and tried, with the help of counselling, to work out the problems. This was to no avail and the parties separated at the end of August 1996. There were no children.

## ISSUES

6 Two issues remain outstanding and form the basis for this decision. The first issue concerns the amount of spousal support, if any, to which Ms. Tabata is entitled under the *Divorce Act*, R.S.C. 1985, c. D-3.4; the second involves the appropriate disposition of the former couple's matrimonial property pursuant to the *Matrimonial Property Act*, R.S.A. 1980, c. M-9 (the "*MPA*"). I shall deal with each in turn.

### A. SPOUSAL SUPPORT

7 The right to spousal support is not automatic nor is it guaranteed simply because two parties share a failed marriage. The starting points for considering entitlement to support are s. 15.2 of the *Divorce Act*, and the Supreme Court's decisions in *Moge v. Moge*, [1992] 3 S.C.R. 813 (S.C.C.) and *Bracklow v. Bracklow*, [1999] 1 S.C.R. 420 (S.C.C.).

8 It is useful to restate the parts of s. 15.2 of the *Divorce Act* which form the statutory basis for spousal support that is relevant to this case.

15.2 (4) In making an order under subsection (1) or an interim order under subsection (2), the court shall take into consideration the condition, means, needs and other circumstances of each spouse including

- (a) the length of time the spouses cohabited;
- (b) the functions performed by each spouse during cohabitation; and
- (c) any order, agreement or arrangement relating to support of the spouse.

15.2 (6) An order made under subsection (1) or 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 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) insofar as practicable promote the economic self-sufficiency of each spouse within a reasonable period of time.

9 McLachlin J. (as she then was) stated the proper approach a court should follow in considering a support claim in *Bracklow*, *supra*, at p. 440:

*Moge*, *supra*, sets out the method to be followed in determining a support dispute. The starting point is the objectives which the *Divorce Act* stipulates the support order should serve: (1) recognition of economic advantage or disadvantage arising from the marriage or its breakdown; (2) apportionment of the financial burden of child care; (3) relief of economic hardship arising from the breakdown of the marriage, and (4) promotion of the economic self-sufficiency of the spouses: s. 15.2(6). No single objective is paramount; all must be borne in mind. The objectives reflect the diverse dynamics of the many unique marital relationships.

Against the background of these objectives the court must consider the factors set out in s. 15.2(4) of the *Divorce Act*. Generally, the court must look at the "condition, means, needs and other circumstances of each spouse". This balancing includes, but is not limited to, the length of cohabitation, the functions each spouse performed, and any order, agreement or arrangement relating to support. Depending on the circumstances, some factors may loom larger than others. In cases where the extent of the economic loss can be determined, compensatory factors may be paramount. On the other hand, "in cases where it is not possible to determine the extent of the economic loss of a disadvantaged spouse...the court will consider need and standard of living as the primary criteria together with the ability to pay of the other party": 430 A.P.R. 147 (C.A.), at p. 156, per Bastarache, J.A. (as he then was). There is no hard and fast rule. The judge must look at all the factors in the light of the stipulated objectives of support, and exercise his or her discretion in a manner that equitably alleviates the adverse consequences of the marriage breakdown.

10 In *Wooldridge v. Wooldridge*, [1999] A.J. No. 433 (Alta. C.A.), the Alberta Court of Appeal also described the circumstances in which compensatory support is awarded, at paragraph 22:

In addition to looking beyond self-sufficiency as the pre-eminent goal of spousal support, a judge must consider not only the effects of the marriage on the economic situation of the spouse requiring support, but also the effect of the breakup of the marriage. Looking at the effects of the marriage takes into account factors such as foregoing career or educational opportunities to stay at home and raise children or support a spouse's career. Spousal support based on these factors is compensatory in nature; that is, it is designed to compensate the spouse who stayed home for the disadvantages he or she faces when forced to return to the workforce.

11 Before considering the objectives of a support award under the *Divorce Act* it is necessary to consider the relevant factors pertaining to Mr. Smith and Ms. Tabata's marriage. The first important factor is the length of cohabitation. In many cases a very long marriage may be a key factor and the longer a marriage lasts the greater the need to try and create equal standards of living. A very long marriage also implies there will always be disadvantages arising from the breakdown of the marriage. Conversely, a shorter marriage with younger spouses generally indicates such disadvantages are not as significant, and there is a reasonable expectation that parties will endeavour to move on and become self sufficient. This was short marriage lasting only five years, there were no children, both parties are employed and Ms. Tabata is on her way to becoming self sufficient.

12 A second factor to consider when making an award is the means and needs of the parties to the marriage. Mr. Smith has been employed for 17 years, has some retirement investments and enjoys an annual salary of nearly \$60,000.00. Ms. Smith's means are not that of Mr. Smith but they are respectable as she earns nearly \$30,000.00 a year or approximately \$1,800.00 a month. But, based on a reasonable budget she submits she experiences a shortfall in the amount of approximately \$675.00 a month.

13 These factors, when considered within the context of the objectives behind spousal support, clearly indicate such an award is appropriate in this case.

14 The first objective set out in s. 15.2(6) is an order should provide for any economic advantages or disadvantages that arise from the marriage or its breakdown. This objective focuses on providing compensation to a spouse who has often forgone personal advantages as a result of the marriage. In this case, prior to the marriage, Ms. Tabata owned and operated a business in Quebec. As a result of the marriage and the need to relocate to Alberta she was forced to abandon that business and it failed shortly thereafter.

15 I am satisfied based on Ms. Tabata's evidence, had she not married she would have remained in Quebec and would have continued running her business. I am also satisfied had she remained in Quebec to run the business it could have continued as a successful enterprise. Ms. Tabata was required to forgo this business opportunity because of the marriage and falls within the parameters of compensatory support. (see: *Woolridge, supra*).

16 The second objective to consider deals with children but is not relevant in this case as neither Ms. Tabata nor Mr. Smith have any children.

17 The third objective behind a support award is to relieve any hardship arising from the breakdown of the marriage. In *Bracklow, supra*, McLachlin stated at p. 443 that the focus of this objective was not on compensations but rather relieving economic hardship that is the result of the breakdown of the marriage.

18 While the evidence in this case has established Mr. Smith enjoys a slightly better standard of living than Ms. Tabata, it does not establish Ms. Tabata has suffered any serious economic hardships as a result of the breakdown of the marriage. This is not a case where one party has become totally dependent or lacks the ability to become self sufficient because of a long term marriage and the roles played within the home or other factors like illness.

19 Ms. Tabata was employed full-time immediately after the breakdown and is still employed today. She is a homeowner. She is in good health and faces no barriers as a result of the marriage breakdown that would prevent her from achieving the lifestyle of her choice.

20 The final objective an award for support should strive to achieve is to promote the economic self-sufficiency of each spouse within a reasonable period of time. At the time of this trial Ms. Tabata was near complete self sufficiency. Her full-time job appears to be stable and she meets her financial obligations as they come due. I do not accept Ms. Tabata's submission that self sufficiency must be equated to a standard of living that is equal to that which she enjoyed during her brief marriage. In *Moge*, the Court stated at p. 870: "[a]s marriage should be regarded as a joint endeavour, the longer the relationship endures, the closer the economic union, the greater will be the presumptive claim to equal standards of living...". The marriage in this case was only five years which does not justify the presumption of equal standards of living. The proper test for self sufficiency is a reasonable standard of living, having in mind the circumstances of the marriage (*Linton v. Linton* (1990), 30 R.F.L. (3d) 1 (Ont. C.A.)).

21 Even after considering the fact that Ms. Tabata is reasonably self sufficient now, I am of the view that she is en-

titled to support based on compensatory approach taken in *Moge*. Having decided on entitlement I will now proceed to set the appropriate quantum. After giving equal consideration to all of the above objectives, and in light of the appropriateness compensatory support after *Moge, supra*, I am of the view a spousal support award of \$21,000.00 is appropriate in this case.

22 I am of the view in this case, a lump sum award is more appropriate than ongoing support for a fixed term. Section 15.2(1) of the *Divorce Act* provides that a court of competent jurisdiction may require one spouse to pay a lump sum the court thinks is reasonable for the support of a spouse. Lump sum payments are not to be used as "back door equalizations" but in some cases lump some payments are more appropriate than ongoing fixed term awards (*Gallant v. Gallant* (1998), 42 R.F.L. (4th) 353 (Man. C.A.)). This is such a case.

23 In *Payne on Divorce*, (J.D. Payne, 3<sup>rd</sup> ed., Toronto: Carswell, 1993) the author states that some courts have expressed the view that lump sum orders should be the exception and not the rule. At p. 140, the author notes the factors to be considered in determining a lump sum award is appropriate including, the respective ages of the spouses, their means and current livelihood, the prospect of their remarriage and their parental responsibilities. He notes where the marriage has been of a short duration, a modest lump sum in lieu of periodic support payments is sometimes favoured.

24 Here, the parties were married for a relatively short period, both are working full-time and neither have any parenting responsibilities. Given these factors, and because of the very short term during which periodic spousal support payments would be warranted, the means of Mr. Smith to pay a lump sum award, and the clear need for these parties to put this process behind them and move on, I am satisfied this is an appropriate case for a lump sum spousal support award.

25 Because I have decided to award a one time spousal support award, I need not deal with the issue of whether or not it is appropriate for a spousal support award to be applied retroactively. Any entitlement to a retroactive spousal support award is addressed by the quantum of the lump sum payment.

## **B. DIVISION OF MATRIMONIAL PROPERTY**

### **Matrimonial Property Disposition under the MPA**

#### **Matrimonial Home**

26 Evidence was adduced before me that Mr. Smith sold his principal residence in Quebec in 1991 and applied \$80,000.00 of the proceeds from that sale towards the purchase of real estate in the Beiseker area (the "Beiseker Property" or "Property"). The Beiseker Property, which was subject to a mortgage, was acquired by Mr. Smith prior to (but in contemplation of) his marriage to Ms. Tabata. The Property was conveyed to him in his name alone and subsequently served as the matrimonial home. At no time prior, during, or subsequent to the marriage was the Beiseker Property transferred jointly into the names of both Mr. Smith and Ms. Tabata.

27 Ms. Tabata argues both she and Mr. Smith intended the Beiseker Property to be conveyed to them jointly but because she was in Quebec at the time the sale closed she was precluded from executing the necessary documents. She asserts the Property was intended to be a wedding gift from Mr. Smith to her, that they had searched for the Property together and moreover, had made a joint decision to purchase it with the intention of using it as their matrimonial home. There was also some suggestion a solicitor had stated that it was not necessary to convey the Property jointly in both their names as it would belong to them both by virtue of their impending marriage.

28 On these grounds Ms. Tabata contends that half of the \$80,000.00 that Mr. Smith used as a down payment on the house falls outside of the exemption from distribution provided under s. 7(2)(c) of the *MPA*. In effect, Ms. Tabata argues that Mr. Smith conveyed or intended to convey an \$80,000.00 gift to her, an amount that should now be split equally between the parties.

29 There is no basis in law nor on the facts to substantiate Ms. Tabata's position. The Beiseker Property remained solely in the name of Mr. Smith at all material times and the mere assertion by Ms. Tabata that she and her former husband intended to have the Property conveyed jointly in both of their names is an insufficient basis on which to conclude that Mr. Smith conferred a gift upon his wife. Property acquired prior to marriage that is subsequently brought into the marriage relationship (as was the \$80,000.00 amount used as a down payment in relation to the purchase of the Property) is exempt from distribution under s. 7(2)(c) the *MPA* within the guidelines stipulated in s. 7(2)(e) and (f). See, e.g.: *Bandurak v. Bandurak* (1983), 24 Alta. L.R. (2d) 157 (Alta. Q.B.). As no gift was made, I find that Mr. Smith is entitled to an exemption from distribution in the amount \$80,000.00 under s. 7(2)(c) of the *MPA*, which represents the market value of the property (i.e., cash proceeds) at the time of his marriage to Ms. Tabata in relation to his down payment on the Beiseker Property.

30 Therefore, the remaining equity that is available for division is \$65,012.91 which should be deducted capital gains taxes in the amount of \$5,220.32 and legal fees related to the sale of the home in the amount of \$538.97. The total amount to be divided is \$59,253.62. Ms. Tabata's share of the matrimonial home is \$29, 626.81.

### **Cottage**

31 On the basis of the reasoning outlined above, I similarly find that Mr. Smith is entitled to an exemption in the amount equivalent to the market value of his Quebec cottage (the "Cottage") as of the date of his marriage to Ms. Tabata in July 1991. Ms. Tabata makes no claim to the Cottage as it was purchased by Mr. Smith prior to his marriage to her and at all times remained solely in his name though the former couple occasionally vacationed there. I do however find that, pursuant to s. 7(3) of the *MPA*, Ms. Tabata is entitled to a distribution of one-half of the increase in market value of the Cottage over the term of their marriage, having taken into consideration the factors outlined in s. 8 of the *MPA*. The evidence before me indicates that the increase in the market value of the Cottage between 1991 and 1996 was \$8,622.00. I am cognisant of, but do not accept, the higher figures that were tendered in this regard. Ms. Tabata is therefore entitled to a distribution equal to one-half of the amount of the increase in value for a total of \$4,311.00.

### **Pension and Severance**

32 In May 1996 Mr. Smith received \$64,376.61 as a pension settlement. That settlement has subsequently grown to \$71,628.39 in value as of the date of trial. The parties agree that the pension amount represents 12.5 years of service by Mr. Smith prior to his marriage to Ms. Tabata as well as five (5) years of service incurred by Mr. Smith during the marriage, for 17.5 years of service in total.

33 On the basis of the principles set out in *McAlister v. McAlister* (1982), 41 A.R. 277 (Alta. Q.B.), I find Ms. Tabata is entitled to one-half of the value of Mr. Smith's pension in May 1996 multiplied by the ratio represented by years of service during the marriage divided by years of service in total. That equation yields a figure of \$9,012.73. Pursuant to s. 7(1) of the *MPA*, I find that Ms. Tabata is additionally entitled to one-half of the value of the increase in the pension from May 1996 until the date of trial. One-half of \$7,521.78 is equal to \$3,760.89. The total amount to which Ms. Tabata is entitled under this head is therefore \$12,773.62.

34 Submissions were also made by Ms. Tabata wherein she asserted her entitlement to a portion of the severance

package received by Mr. Smith at the time of his departure from the airline. Our Court of Appeal recently had occasion to consider the test to be applied in determining the apportionment of termination payments under the *MPA* in *Sutton v. Davidson* (1999), 76 Alta. L.R. (3d) 216 (Alta. C.A.). Succinctly stated, the issue that presents itself in this regard concerns whether the severance payment is properly construed as matrimonial property or income. If construed as matrimonial property the severance amount is subject to distribution pursuant to ss. 7 and 8 of the *MPA*. Income is not property for the purposes of the *MPA* and is therefore not subject to distribution.

35 In *Sutton* the Court of Appeal accepted that the test for construing whether a payment is property or income requires the court to consider how payment of the severance amount was treated after it has been received (at p. 222). The Court noted that income does not remain so indefinitely. If income is earned and subsequently saved within the term of the marriage it becomes distributable matrimonial property at the time it is saved (at p. 223). The test in *Sutton* therefore requires the court to determine not only how the severance payment was treated but consideration must be given to when the severance payment was dealt with. In this case, \$42,000.00 of Mr. Smith's severance payment was rolled into an RRSP shortly after he received payment, at which point that income effectively became property for the purposes of the *MPA* according to the reasoning in *Sutton*. As property, it is subject to the scheme of distribution set-out in ss. 7 and 8 of the *MPA*.

36 Pursuant to s.7(4) of the *MPA* matrimonial property should be distributed equally unless it appears after taking into consideration the factors in s.8 that an equal distribution would be unjust and inequitable. In *Mazurenko v. Mazurenko* (1981), 15 Alta. L.R. (2d) 357 (Alta. C.A.) the court held at p. 364:

It would be extremely difficult, indeed impossible, to establish any formula for the application of the heads in s. 8. The legislation avoids formulation. The court must, in my view, look at the relevant facts under s. 8 and then ask itself if it would be unjust or inequitable to divide the property equally. That conclusion would not be lightly reached. There must be some real imbalance in the contribution having regard to what was expected of each or attributable to the other factors in s. 8.

37 Section 8(m) permits the court to take into account any factor that is relevant when deciding whether to award an unequal distribution of assets. In this case, the severance payment was received less than one month prior to the parties leaving the marriage. In fact Mr. Smith gave evidence to the effect that the only reason Ms. Tabata stayed as long as she did was to make a claim against the severance package. I accept this evidence and find it more than just coincidence that Ms. Tabata left almost immediately after the severance package was paid out. Further Mr. Smith testified a large portion of the severance was transferred in to an RRSP in his name alone to avoid any confusion as to entitlement. Finally, while the classification of a severance package as relating to past years of service or future years of service is not critical for its classification as income or property it is relevant in considering the distribution. Section 8(c) requires the Court to consider the contribution of one spouse to the acquisition of the asset. In this case the severance was compensation for future loss of income, all of which would have occurred after the parties separated. Ms. Tabata has contributed little, either directly or indirectly to the acquisition of the severance package.

38 In light of the above factors, I am of the view that an equal division of the severance package would not be just and equitable. A distribution along the lines of 90/10 in favour of Mr. Smith would be more appropriate.

39 The value of the severance package at the time of this trial is \$50,832.00 and is the proper date for valuing the matrimonial property. Any inequitable distribution arising from this valuation date has been accounted for in my consideration of the s. 8 factors and the 90/10 split I have awarded. (See: *McAllister*, at para 40.). Based on the above ratio, the amount of the severance package owed to Ms. Tabata is \$5,083.20.

40 At this point I also find it necessary to comment on the cash portion of the severance package. I am satisfied based on all of the evidence presented that \$12,285.00 of the severance package was given to Ms. Tabata to pay down a joint line of credit. I am satisfied that this was not done and that the \$12,285.00 is no longer available as a benefit to Mr. Smith as it has, in part, been used to finance the purchase of Ms. Tabata's home. This cash payment received by Ms. Tabata must be factored into the final equalization calculation.

### **RRSP's and Money Market Fund**

41 Ms. Tabata has cashed in a great number of RRSP's since the separation which represent a significant cash value. I am satisfied that the amount that would be owing to Ms. Tabata by Mr. Smith has been balanced out by the amount Ms. Tabata has cashed in. I agree with the Defendant's submission that no further RRSP adjustments are required and no further division is required.

42 I am also satisfied the Money Market Fund is related to Mr. Smith's most recent employment with Canadian Airlines. This fund has clearly come into existence after the parties separated and is not a distributable matrimonial asset.

### **Miscellaneous**

#### ***Vehicles***

43 Ms. Tabata retains possession of a 1986 Honda Accord valued at \$1,000.00 while Mr. Smith continues to use a 1994 Ford pick-up, valued at \$7,500.00, that he purchased after the couple separated though while still married. The total value of the vehicles is \$8,500.00 and I direct that amount be divided equitably. Ms. Tabata is therefore entitled to an equalization payment of \$3,250.00.

#### ***Farm Equipment Proceeds***

44 Cash proceeds in the total amount of \$1,500.00 were received by Mr. Smith in respect of the sale of matrimonial property in the form of a horse trailer and manure spreader. I direct that this amount be split equally. Ms. Tabata is therefore entitled to an equalization payment of \$750.00.

#### ***Travel Vouchers***

45 At the time that Mr. Smith received his severance package from the airline at which he was employed he also received 34 air travel vouchers. Subsequently, one of those vouchers was used by Ms. Tabata to facilitate her return to Quebec. I therefore direct that Mr. Smith sign over 16 of the remaining 33 travel vouchers for Ms. Tabata's use. To my mind this is the fairest manner in which to divide this property given the difficulty of assigning a monetary value to the vouchers either individually or collectively. If the transferring of vouchers is not possible then there will be no other compensation ordered. The value of the vouchers, aside from their use is zero. Mr. Smith receives no compensation for failing to use the vouchers and they cannot be redeemed for cash.

### **CONCLUSION**

#### **a. Spousal Support**

46 Ms. Tabata shall receive \$21,000.00 in spousal support and that amount shall be paid out in one lump sum.

#### **b. Matrimonial Property Division**

**Amount owing to Ms. Tabata:**

Matrimonial home	\$ 29,626.81
Cottage	\$ 4,311.00
Pension	\$12,773.62
Severance	\$ 5,083.20
RRSP's	\$ 0.00
Vehicles	\$ 3,250.00
Farm equipment proceeds	\$ 750.00
Misc.	\$ 4,000.00
<b>Total Amount Entitled:</b>	<b>\$59,794.63</b>

**Amount received by Ms. Tabata:**

Severance cash payment	\$12,285.00
Advance on Beiseker Home	\$25,336.38
Money taken from Credit Line	\$ 2,900.00
Monies taken from Savings	\$ 2,742.32
<b>Total Amount Received:</b>	<b>\$43,263.70</b>

47 Ms. Tabata shall receive \$16,530.93 as the equalization payment for her share of the matrimonial property.

48 The parties are at liberty to speak to costs.

*Order accordingly.*

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