

<u>CASE NO.</u>	<u>VOLUME</u>	<u>PAGE</u>
HOLLY REARDON (SMITH) (Appellant)	- and -	CHRISTOPHER ADAM SMITH (Respondent)
C.A. No. 155948	Halifax, N.S.	Glube, C.J.N.S.

[Cite as: Reardon v. Smith, 1999 NSCA 147]

APPEAL HEARD: October 6, 1999

JUDGMENT DELIVERED: November 25, 1999

SUBJECT: **DIVORCE: Child Support; Matrimonial Property**

SUMMARY: The parties were married for 27 months, separating in January 1997 with one child. As part of her employment package, the wife received stocks which were jointly held, and also matching stocks and stock options.

ISSUES:

- 1) whether certain stocks are matrimonial property; if yes, the allocation of tax consequences;
- 2) valuation date of the stock options and matching stocks;
- 3) whether the respondent is entitled to an unequal division of matrimonial assets;
- 4) whether the appellant should receive retroactive child support and nanny costs to the date of separation;
- 5) whether child support should be ordered to begin the first full month following the trial decision.

RESULT:

- 1) Matching stocks and stock options, whether exercisable or not prior to separation, acquired or earned solely during the period of cohabitation, are matrimonial property. They are a present right to acquire something in the future. Trial judge exercised his discretion properly and divided these assets equally. At the time of the appeal, these assets had been exercised and consisted of actual stocks and cash. Equal division ordered with any tax consequences to be shared equally.

- 2) No requirement for one valuation date for all matrimonial assets. When matrimonial assets passively appreciate between the date of separation and trial, the latter date is sound policy and equitable. In this case, the rights to the matching shares and stock options exercised shortly after the trial and before the appeal. Actual value used for purposes of distribution.
- 3) After dividing the assets and debts equally, the trial judge awarded the respondent a credit of \$5,000, being an amount brought into the marriage from prior employment. The trial judge chose to trace the funds used for the down payment on the matrimonial home. These funds included income of the appellant earned prior to cohabitation, but not the \$5,000 from the respondent. In failing to examine all the evidence before awarding an unequal division, the trial judge committed a significant error. Appeal granted and the award of the additional \$5,000 credit overturned.
- 4) The trial judge found the parties had an arrangement for child support and nanny costs and refused to award retroactive payment. Deference to findings of facts by the trial judge. Parties should be encouraged to work to a negotiated settlement and not be required to make an immediate interim application upon separation. Trial judge gave bare minimum reasons as required by s. 15.1(6) of the **Divorce Act**. However, no error found.
- 5) Child support and nanny costs should be awarded to commence the first full month following the decision.
- 6) Costs reserved for further submission.

This information sheet does not form part of the Court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 27 pages.