CV 04084 and
(6101-00266)

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

SHIRLEY MARIE McGRATH

Plaintiff
(Respondent)

- and -

ALEXANDER MacDONALD HOLMES

Defendant
(Petitioner)

REASONS FOR JUDGMENT

1 Divorced by the judgment of this Court on May 31st 1993, pursuant to the **Divorce Act**, R.S.C. 1985 (2nd Supp.) c.3, at which time no corollary relief order was made, the parties dispute the disposition of property issues between them and the husband's claim for support by the wife. There are no children of the marriage.

I. Introduction

2 Commendably, the parties have resolved a number of disputed property issues by mediation, agreeing on the division and allocation of certain assets, as well as on their values. Nevertheless some remaining issues await resolution in this action. These remaining issues are to be understood in the context of the separation agreement entered into by the parties on March 3rd 1993, shortly before the divorce judgment. That agreement reads as follows:

BETWEEN

SHIRLEY MARIE McGRATH
(hereinafter referred to as the "wife")
and

ALEXANDER MacDONALD HOLMES
(hereinafter referred to as the "husband")

AGREED TO ITEMS FOR SEPARATION AGREEMENT

WHEREAS the parties are husband and wife having been married on the 3rd day of August, 1985, but had been living together as husband and wife since on or about the 3rd day of January, 1983.

AND WHEREAS the parties have been living separate and apart from each other since January 3, 1992.

AND WHEREAS etc.

AND WHEREAS etc.

THE PARTIES AGREE TO THE FOLLOWING

1. The parties shall hereinafter live separate and apart. Therefore, the parties agree that the period from January 3, 1983 to January 3, 1992 be the basis for settlement of their claims on each other.

2. The parties acknowledge that each is the registered owner of one motor vehicle, the husband being the registered owner of a 1981 Ford F100 half ton truck and the wife being the registered owner of a 1988 Chevrolet Cavalier station wagon. The husband and wife shall each retain possession and control of the vehicle registered in his or her name without claim from the other party.

3. The parties agree that the wife shall retain sole possession and ownership of a bathroom suite, composed of a whirlpool tub, pedestal sink, standard toilet, bidet, shower stall, low flush toilet and fixtures. Husband to sign a release.

4. The parties agree that the husband shall retain sole possession and ownership of a time share held with World Class Resorts International Inc., as number 937181. The husband will assume the outstanding debt on this property. Wife to sign a release.

5. Other than the provision of paragraph 3 herein, the parties agree that the furnishings, household contents, personal property, extra building materials and contents of the Prelude Lake property have been divided to the mutual satisfaction of the parties and that each party shall be entitled to full possession of such items now in his or her control without claim from the other party now or at anytime in the future.

6. The parties agree that the wife's interest in the matrimonial home, known as the Prelude Lake Property, is valued at $30,000.00, after having agreed that the Prelude Lake property be assigned a January 3, 1992 value of $100,750.00 for calculation purposes. Upon settlement of this provision the husband shall retain sole possession and ownership of the property and the wife shall have no further claim on said property. (As the property is only in AMH's name now, there should be no need for releases.)

7. The parties agree that the wife shall retain for her own use any and all investments, RRSP's, pensions, bank accounts, jewellery, gifts and any other such personal property which is now in the name and/or possession of the wife.

8. The parties agree that the husband shall retain for his own use any and all investments, RRSP's, pensions, bank accounts, jewellery, gifts and any other such personal property which is now in the name and/or possession of the husband.

9. The husband acknowledges that the wife, on or about June 15, 1992, deposited all her shares (50 of a total of 100) of DragonFly Enterprises Ltd. with the Company's treasury.

10. The parties agree that the above issues and those indicated in Appendix A (attached) are all the issues that need to be settled in order to arrive at a final settlement.

AGREED BY SIGNATURE

Date March 3/93

(Signed) "A.M. Holmes"
A.M. Holmes

(Signed) "Donna M. Portz"
Witness

Date 3 March 1993

(Signed) "Shirley M. McGrath
S.M. McGrath

(Signed) "T.F. Brown"
Witness

APPENDIX A

ITEMS NOT AGREED TO

AGREE TO DISAGREE

CLAIMED BY AMH

1. Claim for credit of residual value of AMH's investment in SMM's education. Amount claimed $44,700.00.

2. Claim for reimbursement for 50% of total joint debt outstanding on January 3, 1992, less amount all ready assumed by SMM. Amount claimed $4,434.00.

CLAIMED BY SMM

1. Claim for additional monetary credit for shares of DragonFly Enterprises Ltd. Amount . . . . .

2. Claim for credit against debt obligation of $13,000.00 relating to the loss on the sale of 24 Calder Cres.

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The parties agree to defer discussion on the claims and counterclaims of the following items, pending the outcome of the above items.

1. The wife's claim for rent for her share of the Prelude Lake property.

2. The husband's counterclaim for reimbursement for payments made for the benefit of the wife between January 3, 1992 and April 30, 1992.

3. Any other issue that may arise directly from the settlement of the above issues.

3 It need only be added that "SMM" refers to the wife while "AMH" refers to the husband. The reference to "RRSP's" is to Registered Retirement Savings Plans; and "Company" refers to DragonFly Enterprises Ltd., a private company incorporated in the

Northwest Territories, in which the parties held equal shares prior to the wife's deposit of her shares in the treasury of the Company, by way of surrender or sale.

4 The husband's claim for support from the wife is not mentioned in the separation agreement. And it does not seem to fall implicitly within the category of unresolved issues deferred pending resolution of other items or issues, as mentioned in paragraph 3 at the foot of Appendix A to the agreement. The claim for support is pleaded in the divorce petition in the form of, and in conjunction with, claims to "interim spousal support". Those claims were severed from the divorce action and were conjoined with the matrimonial property action by order of a Chambers judge. They are now therefore properly before the Court for disposition although not referred to in the separation agreement.

5 The husband's claim for support is as follows, as set out in the divorce petition:

(a) interim spousal support in the amount of $1,000.00 per month, commencing December 1, 1992 and continuing on the 1st day of each and every month thereafter until March 1, 1994;

(b) interim spousal support in the amount of $500.00 per month, commencing March 1, 1994 and continuing on the 1st day of each and every month thereafter until March 1 in the year 2000.

6 No interim spousal support has been ordered since the divorce action was commenced on December 1st 1992. What the husband seeks now is a final order, to the

extent that spousal support orders under the **Divorce Act** can be so described. And it is apparent that his claim to spousal support is contingent upon the outcome of his other claims against the wife. Those other claims, and hers against him, must therefore be first considered against the general factual background.

II. Factual Background

7 The brief preamble to the separation agreement merely states the date of the marriage between the parties, that is to say August 3rd 1985, and the period of their cohabitation from January 3rd 1983 until their separation on January 3rd 1992, a total of exactly nine years. And while the parties have agreed (in paragraph 1 of their agreement) that this period is to be the basis for settlement of their claims against each other, the evidence adduced at trial reveals that more is required in terms of fact in order to understand their respective claims against (and responses to the claims of) the other party.

8 At the time of the trial the husband was 65 and the wife was 39 years of age. When they began cohabiting in 1983, he was 53 (turning 54 in February that year) and she was 28 (turning 29 in August that year). On the date of their marriage, he was 56; and she was 30. And, when they separated, he was 62 and she was 37. The difference of some 26 years in their ages was known to both of them throughout their period together.

9 It is within the context of their respective ages and educational attainments,

at the inception of their relationship and later, that the respective intentions and expectations of the parties are partly to be understood. The husband, when the parties met, had not only a considerable edge in terms of life experience, in comparison to the wife; but he had at that time two university degrees (B.Sc., M.B.A.) behind him, whereas she had as yet not acquired a university education. This was not the husband's first marriage; however, it was the first for the wife.

10 They were both employed by the Government of the Northwest Territories when they met, each of them occupying rental accommodation obtained through their employer. Not long afterwards, the husband left his apartment to cohabit with the wife in hers. He eventually gave up his apartment, engaging with his previous spouse in the sale of their jointly owned home at 28 Calder Crescent, Yellowknife. The husband at this point had a number of debts in addition to his share of the unpaid balance on the mortgage against that property. He borrowed $25,000 from the Bank of Montreal and used it to pay off all his debts, including a shortfall of $13,000 after sale of the property. Of the remaining $12,000, he gave $5,000 as a gift to the wife, who was then contemplating how she might herself obtain a university qualification. And he used the balance of $7,000 to improve his cottage property at Prelude Lake outside the City of Yellowknife.

11 The husband paid off the Bank of Montreal loan, in monthly amounts including interest, during the next five years, from his income as an employee in the public service of the Northwest Territories. There is no evidence before the Court to

indicate that the $13,000 of accumulated debt which was included in the amount of that loan was ever regarded by the parties as an item of credit and debit between them. And it is not an item of matrimonial property; nor is there anything to show it as contributing in any way towards the acquisition or upkeep of any such property of the parties other than the $7,000 used by the husband for the improvement and upkeep of the Prelude Lake property as already mentioned.

12 The parties shared in payment of rent on the apartment which they occupied together on entering into cohabitation; and no doubt they shared in the payment of other living expenses. At that time the husband earned about $58,000 while the wife earned about $34,000 (plus allowances), annually, both from government employment. I accept that the husband paid the lion's share of the household expenses in addition to his retirement of the Bank of Montreal loan, while the wife saved and made preparations to enter university, which she did in August 1984, leaving Yellowknife then for that purpose to attend the University of New Brunswick at Moncton.

13 The husband remained at Yellowknife, inhabiting the Prelude Lake cottage property to which they had moved in 1983 and which he improved for that purpose. They discussed marriage before the wife moved to New Brunswick, but this was deferred at her request. They were married on August 5th 1985 at Discovery, an abandoned gold mine some distance by air from Yellowknife. Meantime, the wife was successfully pursuing her studies. She graduated with a degree in business administration near the top of her class in 1987. This was in part made possible by the husband's financial support,

he paying the rental of her living accommodation at Moncton for a year or more as well as substantial amounts for their telephone communications and certain travel expenses.

14 The wife returned to Yellowknife on obtaining her degree although her prospects of remunerative employment elsewhere were excellent at the time. She started up her own company with an office at Yellowknife and became Director of Training of Tamarack Computers there, doing very well in that position by 1989. So much so indeed that she was offered a major interest amounting to a one-third partnership in that business; but she declined it. Meanwhile the husband decided to take an early retirement, at age 60, from his position as a programme analyst of financial programmes with the Government of the Northwest Territories. He had developed an automated system of budget preparation for the Government and was able, on retirement, to obtain a contract for its implementation. The parties incorporated DragonFly Enterprises Ltd. for this purpose and successfully carried out the contract until it expired in 1991.

15 During the period 1984-87 the wife made no contributions to the parties' joint bank account at Yellowknife or, for that matter, to the upkeep of the matrimonial home at Prelude Lake. On her return to Yellowknife in 1987 she began to contribute about a third of the amounts deposited monthly in the joint account, out of which the joint living expenses of the parties were paid. That appears to have continued to be the situation at least until the husband retired from the public service and they both began to work full-time together in DragonFly Enterprises Ltd.

On his retirement, the husband received $11,151.00 in severance pay in

addition to his monthly pension from the Government as a retired employee, amounting to $1240.00 a month before deductions. The parties used these funds, and the husband's final paycheque from the Government, to capitalise DragonFly Enterprises Ltd. during its first two years but in due course the Company found itself adversely affected by the general economic downturn in Canada and, in consequence, by Government policies of financial restraint. The husband began worrying about their financial position and introduced cost-cutting measures in an effort to keep the Company afloat.

17 In January 1991 the parties nevertheless took a vacation in Hawaii, notwithstanding the husband's expressed reservations. As events revealed, 1991 was a bad year financially for the Company. In May 1991 the husband suffered severe haemorrhaging from the nose which required him to be evacuated by air for medical attention on an emergency basis. The wife had been elected President of the Yellowknife Chamber of Commerce in April 1991; and it appears that there were strains between the parties even before that due to difficulties experienced by the Company and, no doubt, due also to their different views and approaches to dealing with those difficulties. The parties took marital counselling in May 1991, at the wife's insistence; but so far as the husband was concerned it was not a positive experience. They continued the counselling until December 1991. Early in January 1992, the wife left the matrimonial home, never to return.

18 It is the husband's evidence, as set forth in his affidavit sworn on November 23rd 1992, that there was an express or implied agreement between the parties that the

wife's university degree was acquired for their joint and mutual benefit; and that they both understood and agreed that the husband would have a lower financial standard of living while the wife was engaged in her university studies, in part due to the financial support extended to her by him during that period and in part due to her making no contribution then to the maintenance of the matrimonial home or their joint bank account. The wife acknowledged in her evidence at trial that this was in part a joint savings account. And though, according to her calculations, she earned some $40,000 in excess of her expenses during her time in New Brunswick, she was unable to say that any of that amount was deposited by her to the credit of the joint account.

19 Part of the approximately $40,000 above mentioned was a $12,000 student loan received by the wife from the Government of the Northwest Territories, the amount of which was forgivable in the event that she returned to the Northwest Territories following her studies, as she did. Notwithstanding her excellent job prospects elsewhere, she did not even apply for employment outside the Northwest Territories upon achieving her degree. The husband would no doubt have found it difficult to relocate, in any event in 1987, bearing in mind his age then, in spite of his extensive experience, his special skills and his academic qualifications.

20 At the time of the trial, three years after the parties' separation, the wife was earning an annual salary of $46,000 whereas the husband received pension income totalling annually some $23,000 (in each case before deductions). The husband's earnings from the Company in 1992 were approximately $500 a month (gross); but that

source of income appears to have dried up and is said to have been unreliable even in 1992. The wife lives in a rented apartment while the husband continues in residence of the matrimonial home at Prelude Lake some distance by road outside the City of Yellowknife. And since there is no public transportation between Prelude Lake and Yellowknife other than by taxi, the husband is obliged to drive to and from the City for groceries and other needs, or in connection with any casual work which might still be done by him through DragonFly Enterprises Ltd.

III. The Legislation

21 As yet, the only legislation governing the division of matrimonial property in the Northwest Territories is the **Matrimonial Property Act**, R.S.N.W.T. 1988, c. M-6. And since the bulk of that Act remains at present to be proclaimed in force, it is enough to refer to s.27:

> 27. (1) In any question between a husband and wife as to the title to or possession, ownership or disposition of all property real and personal, the husband or wife or any person on whom conflicting claims are made by the husband and wife may apply in a summary way to a judge.
>
> (2) Subject to any written agreement to the contrary, in an application under subsection (1) the judge is empowered to make any order with respect to the property in dispute that the judge considers fair and equitable including an order for one or more of the following, namely,
>
> (a) the sale of the property or any part of it and the division or settlement of the proceeds,
> (b) the partition or division of the property,
> (c) the vesting of property owned by one spouse in both spouses in common in the shares that the judge thinks fit,

> (d) the conversion of joint ownership into ownership in common in the shares that the judge thinks fit, and
> (e) the transfer from one party to the other party or to a child of either or both parties of the property that the judge may specify,
>
> and may direct any inquiry or issue touching the matters in question to be made in the manner that the judge thinks fit and may make an order as to the costs of and consequent on the application that the judge thinks fit.
>
> (3) Subject to subsection (4), the judge may make any order under this section, whether affecting the title to property or otherwise, that the judge considers fair and equitable, notwithstanding that the legal or equitable interest of the husband and wife in the property is in any other way defined.
>
> (4) In considering an application under this section, the judge shall take into account the respective contributions of the husband and wife whether in the form of money, services, prudent management, caring for the home and family or in any other form.
>
> (5) A judge making an order under this section may direct the Registrar of Land Titles to cancel, correct, substitute or issue any certificate of title or make any memorandum or entry on it and otherwise to do every act necessary to give effect to the order.
>
> (6) An order made under this section is subject to appeal in the same way as an order made by a judge in an action.

22 The matrimonial home at Prelude Lake is held in the name of the husband, to whom it belonged in sole ownership prior to the marriage. The parties have reached agreement, as shown above, on the disposition of their respective interests in that item of matrimonial property. The remaining property issues are to be now determined against the background of that agreement.

23 With respect to the husband's claim for support from the wife, it is only necessary to refer to s.15 of the **Divorce Act**, R.S.C. 1985, c.3 (2nd Supp.), to the extent following:

15. (1) In this section and section 16, "spouse" has the meaning assigned by subsection 2(1) and includes a former spouse.

(2) A court of competent jurisdiction may, on application by either or both spouses, make an order requiring one spouse to secure or pay, or to secure and pay, such lump sum or periodic sums, or such lump sum and periodic sums, as the court thinks reasonable for the support of

(a) the other spouse; ...

(3) Where an application is made under subsection (2), the court may, on application by either or both spouses, make an interim order requiring one spouse to secure or pay, or to secure and pay, such lump sum or periodic sums, or such lump sum and periodic sums, as the court thinks reasonable for the support of

(a) the other spouse, ...

pending determination of the application under subsection (2).

(4) The court may make an order under this section for a definite or indefinite period or until the happening of a specified event and may impose such other terms, conditions or restrictions in connection therewith as it thinks fit and just.

(5) In making an order under this section, the court shall take into consideration the condition, means, needs and other circumstances of each spouse and of any child of the marriage for whom support is sought, including

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

(6) In making an order under this section, the court shall not take into consideration any misconduct of a spouse in relation to the marriage.

(7) An order made under this section 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 the obligation apportioned between the spouses pursuant to subsection (8);
(c) relieve any economic hardship of the spouses arising from the breakdown of the marriage; and
(d) in so far as practicable, promote the economic self-sufficiency of each spouse within a reasonable period of time.

IV. Discussion

24 Although the relationship between the parties is not pleaded as being one of partnership within the meaning of the **Partnership Act**, R.S.N.W.T. 1988, c. P-1, and neither party relies upon the provisions of that Act, their respective positions in the course of the trial are more suggestive of a business partnership than a purely marital or spousal relationship. This is quite apparent, for example, in Appendix "A" to the separation agreement quoted above. As yet, the Northwest Territories does not have the sort of comprehensive family law legislation to be found elsewhere which would enable the Court to treat a marriage as a partnership other than in a figurative sense.

25 The parties have agreed, furthermore, that the basis for settlement of their claims on each other is the period from January 3rd 1983 to January 3rd 1992, their marriage having taken place on August 5th, 1985. This was the period of their cohabitation, which began over two years before the marriage took place. The question to which this gives rise, however, is whether the same period should apply to claims made in but not settled by the separation agreement.

26 For example, there is the husband's claim, as noted in Appendix "A" to that agreement, for a credit of $44,700.00 as the residual value of the couple's investment in the wife's education. Part of that is presumably to be considered as an investment made before the parties entered into the marriage; i.e. in the academic year 1984-85. Likewise, there is the wife's claim, also noted in that Appendix, for a credit against the $13,000 debt of the husband, payment of which was financed by the Bank of Montreal loan of $25,000.00. That debt was incurred in the period before the marriage took place

in 1985. And the evidence reveals that the wife made no contribution of a financial nature towards payment of that debt or the ultimate complete retirement of that loan.

27 There is, in my respectful view, no basis in the **Matrimonial Property Act** for either of these claims.

28 The wife's university degree is not "property" in the sense intended by the **Matrimonial Property Act**. The Saskatchewan legislation on which a contrary decision rests in **Stewart v. Green** (1983), 26 Sask. R.80 (Q.B.) contains specific provisions not to be found in our Act. Although our Act is not the full equivalent of the Ontario legislation considered in **Caratun v. Caratun** (1993), 42 R.F.L. (3d) 113, 96 D.L.R. (4th) 404, 10 O.R. (3d) 385, 58 O.A.C. 140, 47 E.T.R. 234 (C.A.), leave to appeal to the S.C.C. refused 46 R.F.L. (3d) 314, the principles discussed there are as valid under our law in the Northwest Territories as in Ontario. Not being "property", for purposes of the Act, the value of the joint investment of the parties in the wife's university degree is of no assistance to the husband here with reference to the **Matrimonial Property Act**. However, I propose to examine this aspect of matters further in reference to the **Divorce Act**.

29 The $13,000 paid by the husband out of the mortgage proceeds of $25,000 earlier mentioned is likewise not susceptible to treatment as an item to be weighed in the balance under the **Matrimonial Property Act**. Of those proceeds, $5,000 was paid to the wife as a gift from the husband to further her university education. A further $7,000 was used to improve the Prelude Lake property. And the parties have already come to terms, in their separation agreement, as to the wife's share in the value of that property. The

$13,000 debt was incurred by the husband before the parties entered into cohabitation. But the $25,000 mortgage loan was paid, with interest, solely by the husband from out of his monthly earnings as deposited in the parties' joint account at a time when the wife made no contribution to that account. She, for her part, withheld her resources during that period from any pooling with those of the husband; and she cannot therefore now be heard to say that his settlement of the $13,000 pre-marital debt is to be looked on as part of their mutual accounts.

30 With respect to the shares of DragonFly Enterprises Ltd., these have not been given an agreed value by the parties. These shares are clearly matrimonial property, the value of which at the date of separation, that is to say on January 3rd 1992, shall be divided equally between the parties. There is no evidence before the Court from which the value of the shares can be derived, other than the evidence of the husband. On the basis of that evidence, I assess their value in January 1992 at $10,000. One half of that sum shall be credited to each party in the final reckoning.

31 Likewise, the husband's claim to a half share reimbursement by the wife of their joint debt load on January 3rd 1992, amounting to $4,434.00 is also supported by his testimony and is not seriously contested by the wife.

32 Indeed, the wife admits all but a half share of a bill for $1,164.32 incurred to buy carpet for the matrimonial home at Prelude Lake. But she does not claim that there was no need to buy the carpet, or that this need was unconnected with her use of the home while living there. I find as a fact that this expense was incurred on her behalf as well as that of the husband. And as for $654.56 paid by the husband on the wife's

behalf between January 3rd 1992 and April 30, 1992, this the wife concedes as an amount to be credited to him by her. If that is done, there is a balance due to him by her calculated as follows:

1. Wife's shares in the Company		$5,000.00
2. Wife's share of joint debt		4,434.00
3. Post-separation debt by wife to husband		654.56
	Subtotal:	$5,088.56
	Less	5,000.00
Balance due to husband		$88.56

33 The wife's claim for compensation in the form of occupation rent due to her by the husband upon her leaving him in sole occupancy of the Prelude Lake property must, however, fail since there is no evidence of her having been ousted from the property by him; and the evidence indeed is to the contrary. It is true that he has remained in sole occupancy of the property and that she has derived no immediate benefit from it in the meantime. But that was solely her choice, not his. He has, in the meantime, had sole responsibility for the upkeep of the property, including the payment of insurance and taxes, and the condition of the property would no doubt have seriously deteriorated if he also had vacated it. Besides, there is no evidence to show what is due to the wife under this head. This claim is therefore denied: see **Filewych v. Filewych** (1992) N.W.T.R. 356 (S.C.); **Diotallevi v. Diotallevi** (1982), 27 R.F.L. (2d) 400 (Ont. H.C.).

34 The remaining point in contention between the parties is as to the husband's

claim for spousal support pursuant to s.15 of the **Divorce Act**. Subsection 15(5) requires me to take into consideration the condition, means, needs and other circumstances of each spouse. There are no children to be taken into consideration in this case. More particularly, I am to bear in mind the nine years of cohabitation and the functions performed by the husband during that time. He was virtually a bachelor from 1984-1987, while the wife was in New Brunswick, so that he had the sole responsibility then for the upkeep of the home. There is no evidence to suggest that either spouse had more domestic duties than the other while they lived together, except that the husband testified that he carried most of the household expenses at those times. There is no previous court order or any agreement or arrangement between the parties regarding the payment of support by the wife to the husband.

5 Initially, there was some mutual economic advantage to the parties after they had begun to cohabit, and after the husband had given up his apartment. Likewise, there was probably some further mutual economic advantage after they moved to Prelude Lake and had given up the wife's apartment. But apart from those arrangements, and the husband's expectation of hoped for future economic advantage to be had by him from the relationship, there do not appear to have been any significant economic advantages to him from the marriage. As to economic disadvantages, there were the expenses which he incurred in contributing to payment of the cost of the wife's attendance at university in New Brunswick. At the same time, it is apparent that the husband has suffered a quite marked drop in his material standard of living since the parties separated in January 1992. And it may be, as well, that the wife is today also relatively less well off.

Taking into account each of these factors, as set out in s.15(5) and (7) of the **Divorce Act**, and not ignoring the additional objective mentioned in paragraph 15(7)(d) of the Act, I conclude that this is an appropriate case in which to make an order for compensatory support for the husband, in a lump sum as to the period between the separation and the date of filing of these reasons; and thereafter in a monthly amount until the husband attains his 70th birthday.

36 In reaching this conclusion, I am guided not only by the highly persuasive authority of **Caratun v. Caratun** (***supra***) but also by the more recent decision in **Elliot v. Elliot** (1993), 48 R.F.L. (3d) 237, 15 O.R. (3d) 265 (C.A.). However, I note that the husband has only claimed interim spousal support of $1,000 a month commencing on December 1st 1992, when the divorce action commenced, and not on the date of separation. And he has reduced the monthly amount claimed in the divorce petition to $500 as of March 1st 1994, with all support ceasing in March 2000. The amounts to be paid have been calculated with these claims operating as limits.

V. Disposition

37 The wife shall pay the following to the husband, as support for the husband pursuant to s.15 of the **Divorce Act**:

1. $17,500 which may be deducted from any amount due to the wife by the husband under the separation agreement;

2. $500 a month, on the 1st day of the month, commencing on July 1st 1994 and continuing until the husband has attained 70 years of age.

38 I make no disposition as to pre-judgment interest, since that issue was not argued on the basis of the foregoing findings and the foregoing disposition as to spousal support. Counsel are at liberty to seek an appointment to make submissions on that issue, should it be necessary.

39 Costs may be spoken to on the same basis.

M.M. de Weerdt
J.S.C.

Yellowknife, Northwest Territories
June 6th 1994

Counsel for the Plaintiff (Respondent): Adrian C. Wright, Esq.

Counsel for the Defendant (Petitioner): Ms. Sheila M. MacPherson

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REASONS FOR JUDGMENT OF THE
HONOURABLE MR. JUSTICE M.M. de WEERDT