

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

**MAUREEN ELIZABETH McCAGG**

Petitioner

- and -

**WILLIAM RONALD McCAGG**

Respondent

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Trial of divorce action and claims for spousal maintenance and division of matrimonial property.

Heard at Hay River on February 8 & 9, 1996

Judgment filed: March 19, 1996

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MEMORANDUM OF JUDGMENT  
OF THE HONOURABLE MADAM JUSTICE V.A. SCHULER

Counsel for the Petitioner: Sheila M. MacPherson

Counsel for the Respondent: James D. Brydon

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**MEMORANDUM OF JUDGMENT**

1           In this divorce action, the Petitioner seeks spousal maintenance and resolution of various matrimonial property issues. The parties agreed when this matter was heard on February 8 and 9, 1996, that a divorce judgment could issue, and that was done on March 5, 1996.

**I. Background of the Marriage**

2           The parties were married on November 7, 1970. They cohabited as a married couple for 22 years. They have two adult children, both of whom are independent, although Mr. McCagg apparently provides some financial assistance to them. He testified that in 1995 he contributed \$2,000.00 to their education costs.

3           At the time of the marriage, Mrs. McCagg had obtained a grade 12 education and had worked in clerical jobs. There was no evidence that she had any

particular plans with respect to further career training.

4                   At the time of the marriage, Mr. McCagg was an apprentice electrician.

5                   Mrs. McCagg worked in a clerical job until the birth of the first child in  
1973. Both parties acknowledged in their evidence that they had agreed that Mr.  
McCagg would work while Mrs. McCagg would stay at home to look after the children.

6                   In 1975, the parties moved to Inuvik, Northwest Territories, from Ottawa.  
It was clear from the evidence that Mr. McCagg's desire to work in the North prompted  
this move. They spent 14 months in Inuvik, where Mr. McCagg worked as an electrician.  
Their second child was born there.

7                   Mr. McCagg then obtained employment with one of the mines in  
Yellowknife, where he worked and the family lived for approximately 14 months. They  
moved to Cambridge Bay when he obtained a job there with the Department of Public  
Works of the Government of the Northwest Territories. They lived in Cambridge Bay for  
three years, following which Mr. McCagg took a job with the Government of the  
Northwest Territories in Inuvik. It was clear from the evidence that these various moves  
were instigated by Mr. McCagg. Mrs. McCagg in most instances was satisfied with the  
decision to move.

8                   In Cambridge Bay, Mrs. McCagg began working outside the home to some  
extent, babysitting, cooking at the local hotel and acting as a guard for the Royal  
Canadian Mounted Police. When the parties moved to Inuvik, they made a mutual

decision that she would obtain employment outside the home. She obtained a full-time job as a cashier at the Armed Forces Base canteen. During this time, she continued to be the primary caretaker for the children when they were not in school or in daycare and she was not at work, although Mr. McCagg's participation with the children increased from what it had been. Mrs. McCagg also continued to be the party primarily responsible for the household chores.

9           After approximately 2.5 years in Inuvik, Mr. McCagg applied for a job transfer to Fort Simpson. This was discussed between the parties and, although their evidence differed as to how supportive Mrs. McCagg was of the move, it appears to have been a joint decision in furtherance of the family's well-being.

10           The family remained in Fort Simpson for about 8 years. Mr. McCagg continued to be employed with the Government of the Northwest Territories, initially as an electrician and then as an area maintenance officer. As with the other positions he had held, his job required a substantial amount of travel, sometimes overnight and on short notice.

11           During their time in Fort Simpson, Mrs. McCagg had employment for several months as the cook at the local hospital. She quit that job when she became ill with pneumonia. She also worked for a year as a cashier at a building supplies store. She then obtained clerical employment with the Government of the Northwest Territories for a year or two.

12           In 1990 or 1991, Mr. McCagg took a lateral job transfer to Hay River, so

that the youngest daughter could attend school there. Mrs. McCagg obtained a leave of absence from her job; that job was subsequently eliminated. Just prior to the parties' separation in December of 1992, Mrs. McCagg obtained a clerical position with the Government in its forestry division.

13                   From time to time during the years they cohabited, Mr. McCagg offered to provide the financial means for Mrs. McCagg to upgrade her schooling or retrain. Mrs. McCagg testified that she consistently rejected these offers for two reasons: because she wanted to work rather than go to school and because she felt she could not rely on Mr. McCagg to be there for the children if she were to attend courses in the evening or in another community. It was her evidence that Mr. McCagg frequently did not come home at night or on weekends and did not tell her where he was. Mr. McCagg admitted only to staying out late and the possibility that he did not always tell her where he was. In addition, Mr. McCagg spent a significant time away from home due to the demands of his jobs over the years.

14                   In my view, it is clear that the parties made Mr. McCagg's career the priority. It was their mutual decision that Mrs. McCagg would take on the primary caregiver role while the children were young. Their moves to various communities were made to further Mr. McCagg's career aspirations or for family reasons, such as the last move to Hay River. Although Mr. McCagg urged his wife to further her education and training, her decision not to do so was the result of the family circumstances as I have mentioned and what she felt was in the children's interests. Mr. McCagg, although raising the issue of education and training on a regular basis, ultimately acquiesced in his

wife's decision not to pursue these. While there was some dispute (or, perhaps more correctly, uncertainty on the part of Mr. McCagg) about the uses to which Mrs. McCagg put the money she earned during the years the parties cohabited, I am satisfied on all the evidence that it was used for items for the home, the children and Mrs. McCagg, as well as family activities such as vacations.

15           Upon the separation in December, 1992, Mrs. McCagg left Hay River and her Government job. She testified that she left Hay River to avoid a nervous breakdown. She said that there were problems in the marriage, Mr. McCagg was drinking a lot and seldom at home and she had been in the hospital and had some counselling. Mr. McCagg did not challenge these allegations to any great extent, and I accept Mrs. McCagg's evidence in this regard. Mr. McCagg's conduct or misconduct is not, of course, relevant to the issue of Mrs. McCagg's entitlement to support (s.15(6) of the *Divorce Act*). What is relevant is the effect on Mrs. McCagg of the emotional upset resulting from the marriage breakdown.

16           After leaving Hay River, Mrs. McCagg spent a month in Calgary. She looked unsuccessfully for employment there. Friends provided her with a plane ticket to Fort Simpson in January of 1993. Within one week of arrival she obtained a clerical job with a local construction company. She remained in that job until the summer of 1993, when she was offered a casual position with the Government. She accepted that job, expecting it to provide more security and also benefits, which her job with the construction company lacked. The casual position terminated in May of 1994, and she was unable to obtain further employment with the Government.

17                   Mrs. McCagg next obtained a position as a caregiver at a seniors' home in Fort Simpson; she was laid off after six months. She was on unemployment insurance while looking for work during the summer of 1995. It was her evidence that she felt that she could not take any upgrading because she had to work to pay expenses and that little was available that she could afford in Fort Simpson in the way of skills training. In October 1995, she moved to Hay River to seek employment, thinking that the job prospects might be better since it is a larger community.

18                   Since the separation, Mrs. McCagg has not contributed to the support of either of the parties' children.

## II. Division of Matrimonial Property

19                   There are a number of assets to be dealt with, including the former matrimonial home in Hay River.

20                   The *Matrimonial Property Act*, R.S.N.W.T. 1988, ch. M-6 provides that a judge may make an order that he or she considers fair and equitable, notwithstanding that the legal or equitable interest of the husband and wife in the property in question is otherwise defined. Section 27(4) of the Act requires that the judge 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.

21                   In this case, in my view, the parties were equal contributors during the 22 year marriage. As indicated earlier in these reasons, both contributed to the family

income, childcare, household duties and all of the other efforts that go into family life. There is no reason in this case to depart from an equal division of the matrimonial property: *Bartolozzi v. Bartolozzi*, [1992] N.W.T.R. 347 (NWTSC); *Kucey v. Kucey*, [1990] N.W.T.R. 234 (NWTSC). Counsel in argument did not suggest otherwise.

22 Counsel for Mr. McCagg argues that \$10,000.00 which Mr. McCagg received from a claim arising from a car accident and brought into the marriage should be taken into account in any calculations so that Mr. McCagg receives credit for that contribution. The money was used in the purchase of a property early in the marriage; that property was sold and the proceeds used to build another family home, which in turn was sold and the proceeds used to purchase another home. In my view, it would not be fair and equitable in the circumstances of this case to deal with that sum of money separately. It was clearly used by the parties for their mutual benefit and that of the family and, in effect, has become subsumed in the family assets, to which Mrs. McCagg also contributed in the various ways discussed above. I will not therefore use it in any way in the calculations.

23 I will deal first with the items of property with respect to which the parties are in agreement:

**Mr. McCagg's pension plan**

24 Mr. McCagg has a pension plan resulting from his employment with the Government of the Northwest Territories. An order will issue that his pension credits be split equally between the parties as of the date of separation, pursuant to the provisions



of the federal *Pension Benefits Division Act*.

**Nevada lot**

25                   The lot in Nevada shall be sold and the proceeds split equally between the parties after deducting the costs of the sale.

**Fort Simpson vacant lot**

26                   The vacant lot in Fort Simpson shall be sold and the proceeds split equally between the parties after deducting the costs of the sale and crediting Mr. McCagg for property taxes paid by him with respect to this lot.

27                   With respect to the remaining items of property, they shall be dealt with as follows:

**The joint account**

28                   The parties maintained a joint account for family purposes. Mr. McCagg gave evidence that at the time of separation, December 7, 1992, there was approximately \$10,000.00 in the account. He said that subsequent to the separation approximately \$5,000.00 was withdrawn from the account and not by him. Mrs. McCagg was the only other person with access to the account; she testified that she took only \$1,000.00 or so out of the account. I found the evidence of neither party to be very clear or satisfactory on this item. In my view, the fairest way to deal with the joint account is as suggested by counsel for Mrs. McCagg: that is, to say that if Mrs. McCagg took

\$5,000.00, she has already obtained her half of the value of the account. If, in fact, she took less than that amount, it is clear, as admitted by her counsel, that she makes no claim for any credit for the balance. Therefore, the joint account will be considered as already dealt with and will not come into the calculations.

**Mr. McCagg's Registered Retirement Savings Plan**

29                    Mr. McCagg has in his name a self-directed Registered Retirement Savings Plan through RBC Dominion Securities. He began contributing to it during the marriage. Mrs. McCagg admits that since the date of separation she has made no contributions to the Plan. Exhibit 8 indicates that as at November 30, 1992, the Plan was worth \$59,432.29. Since the separation, Mr. McCagg has contributed a further \$2,000.00 to the Plan, and it has increased in value due to interest earnings. Exhibit D-1 indicates the value as at December 30, 1994 to be \$74,125.10; Mr. McCagg said in his evidence that the value at the time of trial is \$85,000.00.

30                    Counsel for Mr. McCagg urges me to value the Plan as at the date of separation and credit to Mr. McCagg the \$2,000.00 and any increase in value after the separation other than due to interest. Counsel for Mrs. McCagg submits that the increase in value is really due to market forces and therefore valuation should be as at the date of trial with an equal split save for the \$2,000.00 contributed by Mr. McCagg.

31                    There was no evidence of any particular skill, effort or expenditure of time on the part of Mr. McCagg which can be said to have resulted in the increase in the value of the Plan from the date of separation to the date of trial. The Plan was an asset which

the parties clearly expected would grow over time to their mutual benefit. In my view, it would be fair and equitable to take the value of the Plan as at the date of trial (\$85,000.00), credit to Mr. McCagg his \$2,000.00 contribution, and divide the balance equally between the parties.

**Mrs. McCagg's Registered Retirement Savings Plan**

32 Mrs. McCagg had in her name during the marriage a Registered Retirement Savings Plan which she cashed in and used after the separation. Exhibit 6 indicates the value as cashed in to be \$6,679.10. This should also be divided equally, and therefore Mrs. McCagg will owe Mr. McCagg \$3,339.55.

**CIBC Dividend Reinvestment Plan**

33 There is a CIBC Dividend Reinvestment Plan in Mr. McCagg's name. The only evidence relating to its value is contained in Exhibit 9, which shows a price of \$29.89175 per share and a balance of 205.784 shares as at November 3, 1994. It appears from the evidence that any increase in the value of this Plan from the date of separation to the date of trial was due to market forces and the reinvestment scheme rather than new contributions. Accordingly, the shares as held at the date of trial will be divided equally between the parties.

**The GICs**

34 Mrs. McCagg acknowledges that after the separation she received \$25,000.00 from her husband, which he obtained from a GIC. The evidence was that

the GIC was in the amount of \$45,000.00 and was purchased from the proceeds of sale of a home owned by the parties. They also had a GIC in the amount of \$8,000.00 which was partly used by Mr. McCagg during a brief period of separation prior to the final separation. Mr. McCagg paid any tax on the interest earned on the GICs. In receiving the \$25,000.00, Mrs. McCagg received almost half of the combined value of the GICs and, in my view, she should be considered as having received her share and no further calculation need be done with respect to these items.

### Vehicles

35                   Upon the separation, Mrs. McCagg kept a 1986 Ford vehicle and Mr. McCagg kept a "beater" truck and the family snowmobile. There was no reliable or clear evidence as to the value of these items. The parties' evidence as to sale value was based on hearsay. Accordingly, the evidence is not sufficient to allow me to attribute any firm values, and I decline to do so. Mrs. McCagg shall retain the vehicle in her possession and Mr. McCagg the vehicles in his possession.

### The MURBs

36                   The parties own two Multi-Unit Residential Buildings purchased during the marriage. Mr. McCagg received some tax benefits from them but, in his evidence at trial, said that they are now of no value for tax purposes. He estimated a value of \$5,000.00 total as at the date of separation and was apparently offered that amount (\$2,500.00 each) for them after the separation. In these circumstances, I think it would be equitable that Mr. McCagg pay to Mrs. McCagg the sum of \$2,500.00 with prejudgment interest

thereon at 5.5% from December 7, 1992.

**9 Gaetz Drive, Hay River (Lot 447)**

37           The matrimonial home is located at 9 Gaetz Drive, Hay River. The parties paid \$101,200.00 for it in 1991. The only other evidence as to its value was from James Douglas Henderson, an appraiser called by Mr. McCagg as a witness. Mr. Henderson valued the property at \$106,000.00 as at January 12, 1996.

38           Mrs. McCagg left the home when the parties separated; Mr. McCagg remained in it until November of 1994, when he moved to Fort Simpson. It was vacant until January 15, 1995, when a tenant moved in. The tenant pays monthly rent of \$1,000.00. Mr. McCagg has spent money on repairs and maintenance and has made all mortgage and property tax payments since the date of separation. Mrs. McCagg has not contributed to any of the expenses for this property since separation.

39           Counsel for Mrs. McCagg argues that the property should be valued as at the date of trial, while counsel for Mr. McCagg argues that the date should be that of separation. There was no evidence as to the value of the property as at the date of separation, nor was there an updated figure for the amount owing on the mortgage on the property as at the date of trial. Despite, however, using different dates, counsel have come to almost the same figure in suggesting what payment should be made to Mrs. McCagg by Mr. McCagg. Counsel for Mr. McCagg submits that the equity in the property as at the time of separation was approximately \$17,000.00, as indicated in Mr. McCagg's evidence. He argues that this amount should be divided equally and that, with

interest since the date of separation, Mrs. McCagg's share comes to just under \$10,000.00.

40 Counsel for Mrs. McCagg submits that the equity in the property is approximately \$20,000.00 as at the date of trial. This would result in a payment of \$10,000.00 to Mrs. McCagg, if one does not take into account the amounts paid by Mr. McCagg on the mortgage as well as the amounts spent by him on repairs and upkeep of the property. All considered, in my view, it is fair and equitable that Mr. McCagg pay Mrs. McCagg \$10,000.00 for her share of the 9 Gaetz Drive property.

41 In the result, Mr. McCagg will transfer or pay to Mrs. McCagg the following:

- a) one-half of the CIBC Dividend Reinvestment Plan shares at the date of trial;
- b) one-half of the value of the RBC Dominion Securities Registered Retirement Savings Plan as at the date of trial less the \$2,000.00 contributed by Mr. McCagg and less his \$3,339.55 share of her R.R.S.P., which results in a value of \$38,160.45;
- c) \$10,000.00 for her share in the 9 Gaetz Drive property;
- d) \$2,500.00 plus interest of 5.5% per annum from December 7, 1992, representing Mrs. McCagg's share of the MURBs.

42 Mr. McCagg's pension plan will be dealt with as indicated in the reasons above.

**III. Spousal Support**

43 At the time of trial, Mrs. McCagg's sources of income were as follows:

- a) unemployment insurance benefits of \$422.00 every two weeks;
- b) spousal support of \$800.00 per month pursuant to an interim order issued by this Court;
- c) \$25.00 per day for boarding a highschool student and out of which she must pay expenses incurred for the student's room and board.

44 At the time of trial, Mr. McCagg was the area manager for the Government's Department of Public Works and Services, earning a base salary of \$63,000.00 yearly, plus a yearly housing allowance of \$5,400.00. He receives other benefits to which he expects significant cuts in the future. His current position is the result of a promotion which he received in 1994.

45 At the time of trial, Mr. McCagg was 51 years of age and Mrs. McCagg, 45.

46 Counsel for Mr. McCagg submits that Mrs. McCagg's present financial and unemployment situation is the result of her own choices not to pursue upgrading or skills training both before and after the separation, quitting her job with the Government to go to Calgary and quitting her job with the construction company in Fort Simpson to go to a Government job which was not secure because of Government policies on affirmative action. He says that there is no causal link to the marriage.

47 Counsel for Mrs. McCagg argues that Mr. McCagg has been economically

advantaged by the marriage and since the separation has been able to live comfortably and acquire new assets as well as contribute to existing assets. Mrs. McCagg, it is submitted, has been economically disadvantaged by the marriage by taking on a stay-at-home role and subordinating any career of her own to that of her husband. Since the separation, Mrs. McCagg has had to use assets and monies received from Mr. McCagg to pay her living expenses. These expenses are approximately \$2,000.00 per month.

48                   As indicated earlier in these reasons, I am satisfied on all the evidence that Mrs. McCagg's career role throughout the marriage was subordinate to that of Mr. McCagg and also subordinate to her role as primary caregiver for the children. I am also satisfied that although Mr. McCagg urged her to retrain or upgrade, he acquiesced in her decision not to do so and that her decision was based on family considerations. I am satisfied that Mr. McCagg was economically advantaged by this long term marriage by having been able to maintain long term stable employment and make career moves and choices as he wished while having the benefit of a family life.

49                   The law I must apply is found in ss.15(5) and 15(7) of the *Divorce Act* as discussed in *Moge v. Moge*, [1993] 1 W.W.R. 481 (S.C.C.).

50                   Referring to s.15(7)(a), I am satisfied that Mrs. McCagg has been economically disadvantaged by the role she assumed in the marriage, whereas Mr. McCagg has been economically advantaged by his career having been given priority. I am also satisfied that Mrs. McCagg has suffered economic hardship and her standard of living has declined as a result of the breakdown of the marriage. Her departure from Hay River



and her Government job in December, 1992 was the result of her emotional upset over the breakdown. The fact that she gave up the job with the construction company in Fort Simpson for what she hoped would be a more secure Government job may, in hindsight, have been unwise, but I do not think it can be said to have been unreasonable at the time. The reason that Mrs. McCagg is in the situation she now finds herself is related to the marriage.

51           In many ways, Mrs. McCagg's job history since the separation has been comparable to her job history during cohabitation: short term jobs requiring relatively little in the way of acquired skills. She has made attempts at self-sufficiency, albeit they have been unsuccessful. Counsel for Mr. McCagg placed some emphasis on the amount of time Mrs. McCagg has spent at Blackstone Creek Park, arguing that she has chosen to spend time on recreational pursuits rather than seeking employment. It does appear that she has spent time staying in the Park, particularly in 1995. She testified that she was not at that particular time aware of any available work and that she had been able to obtain a small amount of work in the Park itself. There was no evidence that she has foregone any job opportunities as a result of the time spent there.

52           Contrary to the case with Mrs. McCagg, Mr. McCagg's standard of living does not appear to have suffered to any degree since the separation, his career has advanced and he has been able to increase his assets, having purchased, for example, a new vehicle and a lot in Fort Simpson. I am satisfied on the evidence that Mr. McCagg enjoys a higher standard of living than does Mrs. McCagg.

53 I take note of the words of L'Heureux-Dubé J. in *Moge v. Moge*, supra, at pages 519-520:

Although the doctrine of spousal support which focuses on equitable sharing does not guarantee to either party the standard of living enjoyed during the marriage, this standard is far from irrelevant to support entitlement (see *Mullin v. Mullin* (1991), supra, and *Linton v. Linton*, supra). Furthermore, great disparities in the standard of living that would be experienced by spouses in the absence of support are often a revealing indication of the economic disadvantages inherent in the role assumed by one party. As 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 upon its dissolution (see Rogerson, "Judicial Interpretation of the Spousal and Child Support Provisions of the *Divorce Act*, 1985 (Part I)," at pp.174-75).

54 It is clear, in my view, that a support order is required in this case. The only question is the amount and whether it should be time-limited.

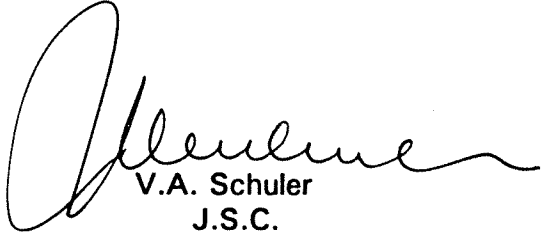
55 The promotion of economic self-sufficiency within a reasonable time should be one of the objects of any order I make: s.15(7)(d).

56 Although this is not a case where it can be predicted with any certainty when Mrs. McCagg might become self-supporting, I note that she has in the past been able to obtain employment when she sought to do so on a fairly regular basis. In my view, an appropriate order in this case is one which will allow her to meet her expenses and to take upgrading or training courses so that her job prospects may be improved. Counsel for Mrs. McCagg suggested an order in the amount of \$2,000.00 per month for an unlimited time. Counsel for Mr. McCagg did not suggest any different figure, but sought a three-year limit on the order, assuming that entitlement was found.

57 I also take into account that Mrs. McCagg will, by virtue of the division of the matrimonial property, have assets of some value as well as the benefit of the pension credits split. *Moge v. Moge, supra*, makes it clear that the division of property is a factor in the equitable distribution of the financial benefits of marriage and thus in the determination of the type of support order that will fairly compensate the economically disadvantaged spouse.

58 I therefore order that Mr. McCagg pay to Mrs. McCagg spousal support in the amount of \$2,000.00 per month commencing April 1, 1996 for a period of four years. This should allow her sufficient time to upgrade her skills or retrain and obtain employment.

59 As costs were not addressed, counsel may arrange to speak to that issue if they are unable to agree.

  
V.A. Schuler  
J.S.C.

Yellowknife, Northwest Territories  
March 19, 1996

Counsel for the Petitioner: Sheila M. MacPherson

Counsel for the Respondent: James D. Brydon

6101-02410

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