
CANADA / JUDGMENT

I.S. v. M.W.E.

2005 BCSC 1034

COURT

Supreme Court of British Columbia

DECIDED

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IN THE SUPREME COURT OF BRITISH COLUMBIA

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Citation:

I.S. v. M.W.E.,

2005 BCSC 1034

Date: 20050711

Docket: 04 2130

Registry: Victoria

Between:

I.S.

Plaintiff

And

M.W.E.

Defendant

Before: The Honourable Mr. Justice Ehrcke

Reasons for Judgment

Counsel for the Plaintiff

R. Faber

Counsel for the Defendant

J. Stewart

Date and Place of Trial/Hearing:

June 20, 22, 30, 2005

Victoria, B.C.

Introduction

- [1] In this family law proceeding tried under Rule 18A of the Rules of the Court, the parties seek a divorce and various forms of corollary relief. In her notice of motion dated May 17, 2005, the plaintiff seeks final orders of maintenance for herself and the children, as well as a division and reapportionment of family assets. The defendant in his notice of motion dated March 10, 2005 seeks, among other things, a reduction of arrears on the order for interim maintenance made by Master McCallum on June 23, 2004.

Facts

- [2] The plaintiff and defendant were married on July 13, 1985 when she was 21 and he was 27 years old. They had three children together, who are now aged 14, 16 and 18. All three children have lived with the plaintiff since separation. The eldest has just graduated from high school and will start college in September.
- [3] The couple separated on March 29, 2004 when the defendant moved out of the family home. He is now in a new relationship and lives in a two-bedroom apartment in Victoria with his new partner and her seven-year-old daughter. The plaintiff lives with the couple's three children in a rented home in D.[].
- [4] The former matrimonial home was sold on May 30, 2005. The net proceeds of the sale, amounting to \$54,146.09, are being held in the trust account of plaintiff's counsel. That is the major family asset to be divided.
- [5] During the first year of their marriage, the plaintiff worked for the U.[]. She left that job to follow her husband to the L.[], where he had found permanent employment.
- [6] For the next ten years she did not work outside the home, but rather stayed at home to care for their children. In January 1997, when their youngest child turned six years old and was attending kindergarten, the plaintiff returned to work part-time, adjusting her hours so that she could be at home when the children were not in school. Over the next few years, she started taking courses to upgrade her education. She also worked at a number of different jobs, many of them in restaurants, sometimes full-time, sometimes part-time.
- [7] The plaintiff started full-time studies in September 2003. She and the defendant declared bankruptcy that year and had few borrowing options. In the fall of 2003, the plaintiff received \$5,080 from her parents to pay for tuition as well as family expenses such as food and braces for one of the children. It was shortly after this, on March 29, 2004, that the defendant moved out of the family home.

- [8] The plaintiff commenced this action in May 2004. At a Judicial Case Conference on June 23, 2004, a declaration was made under s. 57 of the Family Relations Act, R.S.B.C. 1996, c. 128, that there was no reasonable prospect of reconciliation. On the same date, by consent of both parties, Master McCallum ordered that the defendant pay interim spousal maintenance of \$1,950 per month and interim child maintenance of \$1,109 per month commencing August 1, 2004, based on a guideline income of \$63,164. Either party was at liberty to apply to vary the order without having to demonstrate a change in circumstances. The order also provided that the plaintiff would be responsible for making the mortgage payments on the matrimonial home.
- [9] The plaintiff worked during the summer of 2004 and resumed her studies in August of that year. In December 2004 she graduated from University with a Bachelor of Education degree. She was hired as a teacher-on-call with the C. [] School District (School District No. []) on February 24, 2005. The first day she worked was March 1, 2005 for a half day. She is currently earning about \$500 per month but anticipates that will increase as time goes on and she gets more work. She explained her future employment prospects in this way at para. 49 of her affidavit sworn May 13, 2005:

I will now have to work as a teacher-on-call for a time (3-5 years) before, hopefully, being offered a full-time position as a teacher. Starting salaries for teachers are approximately \$37,000 per year. Based on 190 teaching days a year, the maximum gross income that I would receive as a teacher-on-call is \$31,350 per year. At this time, my employment income is approximately \$500 per month. I am called in to teach and try to be available at all times. This month I have been called in once so far, for a half day. I need to be available every weekday possible in order to build up my reputation and move towards hopefully being offered a full-time position, as the calls come in without much notice. Teachers who are on call are basically substitute teachers, called in when other teachers are sick or otherwise unable to teach.

- [10] The plaintiff went on to explain at the next para. of her affidavit that it will likely take her another year or two before she has a permanent job. She deposed:

I really hope that I will obtain a full-time job and I am quite confident that eventually I will but not right now as the school district offers its temporary contracts to those with a bit of experience first. After two temporary contracts that total 10 months and then a third contract that determines your status (full or part-time) the school district must provide you with hours according to your status. If there is no work available, you are put on a recall list and you are then given first pick when new positions come up that you are qualified for. This all will take time. It does not benefit a new teacher to be on too many teacher-on-call lists, as each district will get upset if you are not available to take their calls, this then doesn't look good when you are applying for temporary contracts.

- [11] The defendant has been working for the same employer for a number of years, namely the British Columbia Solicitor General's Department Gaming Policy and Enforcement Branch. In his form 89 Financial Statement filed March 10, 2005, he stated that his annual employment

income was \$62,842.52. In the defendant's affidavit No. 2 dated March 10, 2005, he again stated that his employment income for the year 2004 was \$62,842 and that he expected to earn the same income for the year 2005. He has not yet filed an income tax return for the year 2004. However, the T4 slip from his employer for the year 2004 shows his employment income as \$68,590.38. In the absence of any other evidence, I am satisfied that is his actual income for the year 2004.

- [12] Notwithstanding his statement in his March 10, 2005 affidavit that he expected his income to be the same for the year 2005, the defendant now says he is working only three days a week and expects to earn only \$37,700 this year. There is an issue between the parties as to whether support payments should be calculated on the basis of his current reduced part-time income or whether income should be imputed to him at the level he was previously earning.
- [13] The circumstances of the defendant's reduced working schedule are set out in his affidavit dated June 9, 2005, where he deposes that he went on unpaid leave in March 2005 and while off work made the decision to take courses to obtain a private pilot's license.
- [14] The defendant enrolled at the V.[] School in mid-April 2005 because he wanted to obtain credentials as an inspector/investigator for T.[]. He states in his affidavit that if he obtained that position he would be able to earn between \$70,000 and \$80,000 per year but that it would take him 16 months to complete his training. While that training is ongoing, he states that he cannot return to full-time work as an investigator with the M.[]. His annual income will therefore be only \$37,700.
- [15] The plaintiff takes the position that the defendant's decision to go down to part-time employment in order to obtain pilot's training is not a reasonable decision in light of his support obligations. She referred to various passages from the defendant's examination for discovery which make it clear that it was the defendant's choice to go on unpaid leave in the Spring of 2005 and that it was he that suggested to his employer that he take an unpaid leave of absence rather than use his vacation time. Interestingly, at question 424 in his examination for discovery, the defendant states that if he is able to get the new job he seeks, his yearly income would be between \$50,000 and \$70,000 per year, that is, either the same as or less than he was previously earning.

Issues Settled By Consent

- [16] Some of the issues have been settled, and the parties invite me to make a number of orders by consent. These include the relief sought in para. 1 of the defendant's notice of motion and the relief sought in paras. 4, 12, 13 and 14 of the plaintiff's notice of motion. Accordingly, I make the following orders by consent:

1. The defendant shall have reasonable access to the children of the marriage, A.M.S.E., born [], 1987, V.L.A.E., born [], 1989, and A.M.J.E., born [], 1991. The access shall be at days and times mutually convenient to each of the children.
 2. The defendant shall provide medical and dental insurance coverage for the children for so long as it is available through his employment.
 3. The plaintiff and defendant shall each be responsible for their own debts.
 4. The benefits accrued to the defendant under the Public Service Pension Plan (person id []) shall be divided between the plaintiff and the defendant, with the period subject to division being from the date of the marriage to the date of the section 57 declaration, that is, from July 13, 1985 to June 23, 2004.
 5. Pursuant to section 5 of the Name Act, R.S.B.C. 1996, c. 328, the plaintiff's name shall be changed from I.S. to I.S..
- [17] The parties are also in agreement that they wish to be divorced from each other. The plaintiff and defendant having lived separate and apart for more than one year, and all other requirements of the Divorce Act, R.S.C. 1985, c. (2nd Supp.) being satisfied, there will be an order for divorce to take effect 31 days from today's date.
- [18] The remaining issues to be determined are the division of matrimonial property, a final order for child support, a final order for spousal support, calculation or reduction of arrears, and costs.

Division of Family Assets - Chattels

- [19] The parties have already divided most of their chattels. A few items remain contentious. At para. 53 of her affidavit sworn May 13, 2005, the plaintiff sets out a list from (a) to (j) of the things the defendant wants but which she does not agree to him retaining. At paras. 37-39 of his affidavit sworn June 9, 2005, the defendant sets out his position on these items. After considering the stated positions of each party, I conclude that the plaintiff should have the items listed in (a), (c), (f) and (g), that is, the piano, CD's, computer, and garden tools. The defendant shall have items (b) and (e), that is, the teak wall unit and the china cabinet, as agreed by plaintiff's counsel.
- [20] That leaves items (d), (h), (i) and (j): the silverware, the red knitted coat, the three heirloom blankets, and the family photographs. The defendant agrees that the plaintiff should keep the silverware that came from her side of the family. The other silverware that was a wedding gift shall be divided equally between the parties. The defendant shall have the right to retain the red knitted coat and heirloom blankets that came from his side of the family. As to the family photographs, any items that are desired by both parties shall be professionally copied, and the parties will share in that expense.

[21] All other items already in the possession of one or the other party shall be that party's sole and separate property. This includes the defendant's 1994 Dodge Caravan.

The \$5,080 Loan

[22] In 2003, the plaintiff received \$5,080 from her parents to pay for tuition, food and braces for one of the children. She says this was a loan and constitutes a family debt that should be shared equally between the parties. The defendant claims that he knew nothing of this payment and that the plaintiff has not established it was not a gift.

[23] The defendant relies on *Locke v. Locke* 2000 BCSC 1300 for the proposition that money advanced from the parents of a married person to be used for a family purpose should, upon divorce, be presumed to have been a gift, unless there is clear evidence to the contrary. Some of the factors to be considered are set out at para. 20 of that case:

1. whether there were any contemporaneous documents evidencing a loan;
2. whether the manner for repayment is specified;
3. whether there is security held for the loan;
4. whether there are advances to one child and not others, or advances of unequal amounts to various children;
5. whether there has been any demand for payment before the separation of the parties;
6. whether there has been any partial repayment; and
7. whether there was any expectation, or likelihood, of repayment.

[24] The defendant submits that in this case there is no documentary evidence that this money was a loan, and that the plaintiff is simply asking the court to take her word for it.

[25] That ignores, however, the fact that the payment is described as a loan not only in the plaintiff's affidavit, but also in affidavits sworn by both of her parents. In those affidavits, both parents depose that the money was borrowed by both the defendant and the plaintiff, and that both the defendant and plaintiff agreed the loan would be repaid once the plaintiff finished her studies and started working. In Mrs. I.S.'s affidavit at para. 3 she states that the defendant personally thanked her for the loan shortly after it was made:

We did not ask that the loan be documented in any way, but agreed that once I.S. finished her studies and started working, the loan would be repaid. Shortly after that, we gave them the money. I specifically recall that a little while after that, when the family was over at our home visiting, Mr. M.W.E. personally thanked me for the loan. We had no idea that Mr. M.W.E. would end the marriage just months later.

[26] On the evidence, I am satisfied it has been established that the \$5,080 advanced in 2003 was a loan, and that it should be repaid equally by the parties as a family debt. While some of the money was used to help finance the plaintiff's education, it was intended that the entire family would benefit from her enhanced employment qualifications. Payment of the loan shall be made to Mr. M.W.E. and Mrs. I.S. by deducting \$5,080 from the proceeds of the sale of the matrimonial home.

The Matrimonial Home

[27] The net proceeds of the sale of the matrimonial home were \$54,146.09. From that amount must now be deducted \$5,080 as set out above. That leaves \$49,066.09 to be divided between the parties. Pursuant to s. 56(2) of the Family Relations Act each party is entitled to an equal share unless a reapportionment is ordered under s. 65. In this case, the plaintiff submits there should be a reapportionment in her favour.

[28] Section 65(1) of the Family Relations Act provides:

65 (1) If the provisions for division of property between spouses under section 56, Part 6 or their marriage agreement, as the case may be, would be unfair having regard to

- (a) the duration of the marriage,
- (b) the duration of the period during which the spouses have lived separate and apart,
- (c) the date when property was acquired or disposed of,
- (d) the extent to which property was acquired by one spouse through inheritance or gift,
- (e) the needs of each spouse to become or remain economically independent and self sufficient, or
- (f) any other circumstances relating to the acquisition, preservation, maintenance, improvement or use of property or the capacity or liabilities of a spouse,

the Supreme Court, on application, may order that the property covered by section 56, Part 6 or the marriage agreement, as the case may be, be divided into shares fixed by the court.

[29] The party seeking a reapportionment bears the onus of establishing that an equal division would be unfair having regard to the factors set out in s. 65: *Toth v. Toth* (1995), 13 B.C.L.R. (3d) 1 (C.A.) at para. 62. In this case, the plaintiff relies particularly on s. 65(1)(a), (e) and (f) to support a judicial reapportionment in her favour, which she submits should be 65% - 35%. The defendant submits that there should be no reapportionment and that an equal division would not be unfair. He points out that the amount to be divided is not large, and that both parties should be able to have a small capital base from which to start building their new lives.

- [30] The plaintiff relies specifically on the factors mentioned in ss. 65(1)(a), (e) and (f). I agree that the other factors mentioned in s. 65(1), that is, ss. 65(1)(b), (c) and (d), would not tend to support an unequal division on the facts of this case. As to s. 65(1)(a), the duration of the marriage, the cases suggest that while a short marriage may increase the likelihood that a reapportionment of family assets is required, a longer marriage will generally support the inference that the family assets should be equally divided. In this case, the parties were married for 19 years. The duration of the marriage is not a factor supporting the plaintiff's claim.
- [31] The plaintiff's real argument depends on the factors in s. 65(1)(e) and (f). The plaintiff points out that by spending years out of the work force raising the children, she is now in a position where she can never catch up to the defendant in future earning capacity, and this should be addressed through a reapportionment to help her become economically independent. She relies on cases such as *Wilson v. Wilson* (1997), 31 B.C.L.R. (3d) 332 (B.C.C.A.), *Thiessen v. Thiessen* 2003 BCSC 1431, and *Tedham v. Tedham* (2003), 20 B.C.L.R. (4th) 56, 2003 BCCA 600. In the latter case, Prowse J.A. observed at para. 50:

There are numerous decisions in which courts have referred to the difficulties encountered by women, in particular, seeking to rejoin the paid workforce in their late 40s or early 50s after raising families. One example is *Lodge v. Lodge* (1993), 79 B.C.L.R. (2d) 360 (C.A.) where, on facts somewhat similar to those here, this Court referred to the capital loss suffered by such women (at paras. 20-1):

The fact that spouses, usually women, who stay at home to care for their children often suffer such a loss is now being recognized in the case law, frequently in relation to statutory provisions relating to maintenance. One expression of this loss is found in *Moge v. Moge* (1992), 43 R.F.L. (3d) 345 ... (S.C.C.), where, in considering the support provisions of the Divorce Act, 1985, Madam Justice L'Heureux-Dubé, speaking for the majority, made the following comments at p. 389 of the decision:

The financial consequences of the end of a marriage extend beyond the simple loss of future earning power or losses directly related to the care of children. They will often encompass loss of seniority, missed promotions, and lack of access to fringe benefits, such as pension plans, life, disability, dental and health insurance... As persons outside of the workforce cannot take advantage of job retraining and the upgrading of skills provided by employers, one serious economic consequence of remaining out of the workforce is that the value of education and job training often decreases with each year in comparison to those who remain active in the workforce and may even become redundant after several years of non-use. All of these factors contribute to the inability of a person not in the labour force to develop economic security for retirement in his or her later years.

Madam Justice McLachlin, in separate concurring reasons, adopted the following comments from the reasons for judgment of Twaddle, J.A., [1990] M.J. No. 176, in the Manitoba Court of Appeal, at p. 398 of the *Moge* decision:

As Twaddle J.A. put it:

Depending on the duration of the marriage, and the wife's education and work experience, economic self-sufficiency may mean a permanent disadvantage from which the wife cannot recover. Having concentrated her efforts for many years on looking after the home, the husband and the children, the wife may have lost opportunities to learn, to train, to grow. Those lost opportunities may not be regainable.

The husband, in the meantime, may not only have earned a living for the family, or part of one, but also have expanded his knowledge and experience in work-related areas. He may have a higher earning potential than his wife because of their domestic arrangements.

[32] I am satisfied that the plaintiff has established a basis for reapportionment, but not to the extent she requests. There shall be a reapportionment of the proceeds of the matrimonial home 55% in the plaintiff's favour. This means that the plaintiff's share will be approximately \$26,986, and the defendant's share approximately \$22,080.

Child Support

[33] The defendant agrees that he should pay support for his three children as required by the Child Support Guidelines. The issue is what income should be attributed to him for the purpose of this calculation.

[34] The defendant maintains that the support should be based on his actual current income, which he says is \$37,700 per year. The plaintiff submits that the defendant has voluntarily chosen to work less than he is capable of in order to train as a pilot. She submits that his decision to do so is unreasonable, and his past year's income should be attributed to him for this year.

[35] Section 19(1)(a) of the Federal Child Support Guidelines, S.O.R./97-175 provides:

19.(1) The court may impute such amount of income to a spouse as it considers appropriate in the circumstances, which circumstances include the following:

(a) the spouse is intentionally under-employed or unemployed, other than where the under-employment or unemployment is required by the needs of a child of the marriage or any child under the age of majority or by the reasonable educational or health needs of the spouse;

[36] On the evidence before me, I must conclude that the defendant's decision to go down to part-time work in order to obtain pilot's training is not a reasonable educational purpose. By his own admission, the end result of this training, even if he is able to get the kind of work he desires, is that his income will remain the same as, or perhaps less than, what he was earning before. In his examination for discovery he said at Q422-425:

Q. What does that mean?

A. I wish to get myself re-educated so I can go back to school and have a career change as well.

Q. What is the career change you wish to have?

A. I wish to become a staff transport member for T.[] and be an investigator for them.

Q. How much will you earn?

A. Fifty, \$70,000 a year.

Q. About the same as you are now?

A. Correct.

[37] The defendant's reasoning seems to be that since the plaintiff was able to take time to go to school to train for a new career, he should be entitled to the same opportunity. However, the two cases are not at all parallel. The plaintiff needed to go back to school because she had been out of the work force for ten years raising the couple's three children. Her decision to get her teaching qualifications resulted in her becoming more employable. As a result, she had a far better ability to become self-sufficient than she would have otherwise. She has significantly increased her income-earning potential.

[38] The defendant's decision to get training as a pilot is not similarly career-enhancing. While it may be that he would get more satisfaction out of a different type of work, his retraining will not increase his ability to meet his support obligations. If he wishes to pursue that training, he cannot do so at the expense of his children and the plaintiff.

[39] I conclude that the defendant is intentionally, and without reasonable justification, under-employed. I find that but for his voluntary choice, he could be working full-time at the same salary he earned in the year 2004, that is, \$68,590. Accordingly, I attribute that income to him for child support purposes. Based on that income, according to the Guidelines, I order that he pay \$1,182 per month for the support of his three children commencing July 1, 2005.

[40] I do not propose to deal with extraordinary expenses at this time. Plaintiff's counsel, in her submissions, said that there are no such expenses now, but there likely will be in the fall. Her notice of motion does not include a request for special expenses. I do not consider that this issue is properly before me, nor would it be useful to deal with it in the abstract without knowing what the expenses will be, and what the plaintiff's income at that time will be.

Spousal Maintenance

[41] The plaintiff applies for spousal support pursuant to s. 15.2 of the Divorce Act. The relevant factors to be considered are set out in s. 15.2(4) which provides as follows:

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 either spouse.

[42] The objectives of a spousal support order are set out in s. 15.2(6):

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 any obligation 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) in so far as practicable, promote the economic self-sufficiency of each spouse within a reasonable period of time.

[43] The defendant argues that the plaintiff is unjustifiably restricting her employment prospects by seeking work only in the C.[] School District. He submits that she should be exploring opportunities in Nanaimo. I accept as reasonable the explanation given by the plaintiff in her affidavit in this regard. She and her children live in D.[]. It would take her about an hour each way to commute to Nanaimo. I am satisfied that at this time she is taking reasonable steps to pursue her teaching career in order to make herself economically independent. If in the years to come she still cannot find permanent employment near D.[], there may have to be a re-evaluation, but at present, her decision to focus her career goals on the C.[] School District is reasonable.

[44] The defendant clearly has an obligation to pay spousal support, given the length of the marriage, the plaintiff's contribution in raising the children, her economic disadvantage arising both from the marriage and its breakdown, and her need to become self-sufficient. The real issue is the amount and duration of any spousal maintenance order.

[45] Both parties made reference to the proposed Spousal Support Advisory Guidelines. Both agreed that these guidelines are simply one tool, among others, for determining an appropriate level of spousal support. I note that the proposed guidelines have not yet been adopted. Even if they are adopted, they will not be binding.

- [46] Based on the defendant's imputed income of \$68,590, the guidelines show a range of support from \$606 to \$919 per month. The plaintiff seeks a permanent order in the lower end of that range, with a review in a few years because the plaintiff's income will likely change over that period of time.
- [47] The defendant submits that any order should be based on his actual current income of \$37,700. He submits that spousal support should be set at \$300-\$400 per month, to be reviewed in one year.
- [48] Taking all the circumstances into account, I am satisfied that there should be an order that the defendant pay to the plaintiff spousal support in the amount of \$650 per month starting July 1, 2005. Given the length of the marriage, I am not at this time setting a termination date. Either party will be at liberty to seek a review of this order after 24 months.

Arrears

- [49] According to the calculation performed by the Family Maintenance Enforcement Program, the defendant has paid a total of \$10,670.19 in child and spousal support from September 2004 to June 2005. As of June 22, 2005, he owed \$19,026.49 in arrears, plus \$277.05 interest.
- [50] The defendant has applied to have the amount of the arrears reduced. He submits that he was not represented by counsel when the consent order was made before Master McCallum on June 23, 2004. He submits that he foolishly made "an improvident bargain" that he simply could not afford. He submits that the amount owing should be recalculated as if the amount for child support and spousal support that I have now ordered were made retroactive for the past ten months, to replace the amounts ordered by Master McCallum. If I were to accede to that suggestion, the amount of arrears owing would be reduced to \$7,650.
- [51] The plaintiff opposes any reduction in the amount of the arrears. She submits that while the amount of spousal support in the consent order of Master McCallum may look high, this was part of an overall agreement that was both fair, and beneficial to both parties. She points out that the plaintiff was required to make the full mortgage payments for the matrimonial home. This, she says, benefited the defendant. As well, the spousal support payments were tax-deductible for the defendant, whereas the mortgage payments would not have been. Thus, it was to everyone's benefit to structure the order as Master McCallum did. Overall, the plaintiff submits, the interim order was fair, and it should not be varied. She relies on the decision of Martinson J. in *Earle v. Earle*, [1999] B.C.J. No. 383 (B.C.S.C.).
- [52] The consent order before Master McCallum required the defendant to pay \$1,950 per month in interim spousal maintenance. That is three times the amount that I have now ordered. While it is true that the defendant benefited from having the plaintiff make the mortgage payments, she also had the benefit of continuing to live in the matrimonial home rent-free. As well, she failed to make the full amount of all the mortgage payments, thereby reducing the proceeds of the sale of the home. Interim orders are typically made on the basis of far less information than is available at trial. For that reason, there will be occasions when, with

the full information available at trial, it becomes apparent that there is a legitimate reason to adjust the amounts awarded on an interim basis, either up or down. I am satisfied that this is one of those occasions. While I would not reduce the amount of the arrears to the extent requested by the defendant, I am satisfied they should be reduced to some extent. I fix the amount of arrears owing as of June 30, 2005, including interest, at \$15,000.

Life Insurance

[53] At para. 6 of her notice of motion, the plaintiff requests an order that the defendant maintain sufficient life insurance to secure his child and spousal support obligations or that there be an order that his support obligations be binding upon his estate. I have not been persuaded that either order is appropriate in the circumstances of this case.

Disclosure

[54] Each party shall be required to deliver to the other a true copy of his or her income tax return and notice of assessment for the previous year on July 1, 2006 and on July 1 of each succeeding year, for so long as spousal and child maintenance is payable.

Costs

[55] The plaintiff is entitled to her costs on scale 3, to be paid out of the defendant's share of the proceeds of the sale of the matrimonial home.

"W.F. Ehrcke, J."

The Honourable Mr. Justice W.F. Ehrcke

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