
CANADA / JUDGMENT

Larochelle v. Larochelle

2018 BCSC 1347

COURT

Supreme Court of British Columbia

DECIDED

10 August 2018

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2018 BCSC 1347 Larochelle v. Larochelle

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Larochelle v. Larochelle,

2018 BCSC 1347

Date: 20180810

Docket: E49127

Registry: New Westminster

Between:

Vanessa Marina Larochelle

Claimant

And

Brian Edward Larochelle

Respondent

Before: The Honourable Mr. Justice Jenkins

Reasons for Judgment

Counsel for the Claimant:

S.E. Morse

Counsel for the Respondent:

T.E. Hoover

Place and Date of Hearing:

New Westminster, B.C.

March 2 and 16, 2018

Place and Date of Judgment:

New Westminster, B.C.

August 10, 2018

Table of Contents

I. Introduction. 3

II. Factual Background. 3

III. Analysis. 7

A. The Claimant's Entitlement to Spousal Support 7

B. The ManuLife Annuity. 12

IV. Conclusion. 14

I. Introduction

- [1] In this summary trial application, the claimant seeks spousal support from the respondent based upon an average of the respondent's income over the three preceding years and retroactive spousal support from July 2015 pursuant to the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.). As well, the claimant is seeking an equal division of the respondent's annuity with ManuLife (the "Annuity") which was purchased when the respondent's Registered Pension Plan ("RPP") was paid out by his employer in 2012.
- [2] A divorce was granted on February 9, 2017. All other issues between the parties were resolved at a Judicial Case Conference ("JCC") on September 15, 2017.

II. Factual Background

- [3] The parties separated in 2015 after a 29 year relationship. The claimant is 53 years of age and the respondent is 58 years old. The three children of the marriage are no longer children of the marriage as that term is defined in the Divorce Act.
- [4] During their relationship, the respondent was the primary income earner. He worked for the same employer from 1984 to 2012 when he was laid off. Since 2012, the respondent has worked on heavy equipment for an excavation contractor, earning in excess of \$90,000 from 2014-2016. His 2017 income was \$69,720. Due to winter weather, the respondent did not work between December 2016 and March 2017. He also worked reduced hours in December 2017 and was laid off due to a shortage of work on February 13, 2018. Clearly, his ability to work is

dependent weather conditions, particularly in the winter months. He deposed that he has been looking for other work. Included in his income in the years 2014-2016 was the approximately \$9,700 of income from the Annuity which he purchased after his RPP was paid out in 2012.

- [5] The claimant moved out of the former family home in 2015 and the respondent remained in the home with the three children who were then ages 17, 20 and 22. Until the house was sold, the respondent maintained the home with some assistance from the claimant.
- [6] Prior to the birth of their three children, the claimant worked largely in the service industry. She did not complete her high school education. The first child was not born until nine years after the parties began to cohabit. During those nine years, the claimant worked at various low-paying jobs. She did not attempt to advance her education or training. After the children were born, the claimant worked periodically in office jobs as a receptionist and in customer service. These were also low paying positions. It is not disputed that the claimant was the primary care-giver for the children for many years prior to the separation of the parties.
- [7] In 2011, the claimant was diagnosed with cancer and withstood a lengthy period of recovery. Subsequently she was again diagnosed with cancer in 2016. Currently, her history with cancer does not appear to be impeding her ability to work.
- [8] In 2015, the claimant attempted to further her education, however, she was unable to complete the course for reasons which are in dispute. The claimant alleges she was unable to complete the course as a result of the respondent's harassment of her. The respondent denies harassing the claimant.
- [9] In March 2017, the claimant commenced employment as a rock truck driver and has continued in that job. The work requires her to be on-call and does not provide certainty in the sense of consistent work. She earns \$25 per hour as a truck driver. In the nine months she worked as a rock truck driver in 2017, she earned \$37,087 which extrapolates to \$49,500 for the year.
- [10] The claimant has not filed a F8 Financial Statement. In responses provided to questions from her examination for discovery, the claimant disclosed that as of January 17, 2018, she maintained over \$179,000 in her bank account which is approximately the amount she received in 2017 from the sale of the family residence.
- [11] On September 15, 2017, Ball J. ordered, among other orders, that "50% of all future payments under the Annuity shall be redirected to the claimant " The claimant was to receive \$407.50 per month after the date of the order. As of the hearing date, the respondent has not complied with that part of the order.

- [12] The former family residence was sold in August 2017. The proceeds from the sale were divided so that the claimant received \$205,533 and the respondent received \$199,191.20 after payment of a joint Visa debt. From the \$205,533 the claimant has deposed that her share of the joint Visa debt, interest payments and the reduction in the mortgage amount from payments made by the respondent left her with a net amount from the sale of the family home of \$178,387.
- [13] Regarding her current living arrangements, the claimant has deposed that her primary residence is at her mother's home since separation in 2015 and that she spends time with her boyfriend. The respondent has deposed at para. 15 of his affidavit of February 23, 2018 that:
15. Vanessa did not ask me for assistance or support after our separation. She did not appear to be lacking money. She lived with her boyfriend, Jim Pope. She took long vacations with him. She let me know she had turned down a better position with her employer (Michael's) because she did not want to work more hours. She did not push to get the house listed for sale and in fact delayed the sale which we had started to discuss in May 2016.
- [14] Mr. Pope and his son are employed by the former employer of the respondent. The respondent is familiar with Mr. Pope and the work he performs.
- [15] An affidavit dated February 26, 2018, was filed for the respondent by their son, Ryan, who has deposed:
3. My mother...has been living with her boyfriend Jim Pope at [a Surrey address] since May, 2015.
4. I have visited my mom at the [Surrey] residence on several occasions and it is evident that she lives there. Her jewellery cabinet is there, her clothes and purses are there
5. Even when I have not stopped in at the [Surrey] residence I have seen my mom's car at that residence, day or night, when I went to our family home before it was sold, or when I go to visit (my mom's mom) who lives nearby.
- [16] Ryan also deposed that his mother has not been living at his "mom's mom's" place and that the claimant has not been communicating with him since November 2017.
- [17] An affidavit has also been filed for the claimant by their daughter, Sierra, in which Sierra does not depose as to her mother's residence but is generally supportive of her mother, indicating she has not had contact with the respondent since September 2017. The result of the conduct of the parties is that their children have become alienated from one or the other, which does not reflect well on either of the parents.
- [18] The respondent has deposed that he has cohabited with his girlfriend since August 2017 and that she is employed.

- [19] As a finding of fact based upon the affidavits before me, I find that it is more likely than not that the claimant has been cohabiting with Mr. Pope since the time of or shortly after the separation of the parties. I note that Ryan clearly deposes from his observations that his mother is residing with Mr. Pope but that their daughter, Sierra, did not discuss the topic. The claimant deposes that Mr. Pope is her boyfriend. Based upon all of the material before me, which included the exchange of texts between the parties and Mr. Pope, I conclude that the claimant resides with Mr. Pope and not her mother.
- [20] I also note from all of the affidavits that both parties are residing with new partners who also earn an income, have multiple vehicles and have been able to take comfortable vacations. I also note from the respondent's F8 Financial Statement of October 11, 2017, that he has accumulated \$62,000 in debt even though he maintains financial investments exceeding \$150,000 in value (which would be the balance of his share of the proceeds of sale of the family residence).
- [21] The claimant has not deposed a F8 Financial Statement and the only debt she has referred to in her affidavits is that in para. 50 of her affidavit filed February 2, 2018:
50. Since separation, my mother has assisted me greatly by loaning me funds and as well adding me to her bank account so that I can access funds if I needed them.
51. I also borrowed approximately \$8,000.00 from Jim [Mr. Pope] in or about 2015 to assist with my living expenses.
- [22] It should be noted that neither party has entitlement to a pension other than CPP and OAP.

III. Analysis

A. The Claimant's Entitlement to Spousal Support

- [23] The claimant seeks spousal support on a compensatory basis from July 2015--the date the notice of family claim was issued in which there was a claim for spousal support and which is the date the claimant deposes that the respondent received notice of the claim for spousal support. The respondent was not served with the notice of family claim until January 9, 2016 and did not file a response to family claim until March 2017.
- [24] Section 15.2 of the Divorce Act provides the objectives of spousal support and the factors to be considered when making a spousal support order:

Factors

- (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.

...

Objectives of spousal support order

- (6) An order made under subsection (1)...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.

[25] The parties cohabited for 29 years. Theirs was a lengthy relationship which is a significant factor for consideration in a claim for compensatory support. In *Zacharias v. Zacharias*, 2015 BCCA 376 [Zacharias], Groberman, J. stated at paras. 47 and 48:

[47] The significance of a long marriage is as stated in *Moge* at 870:

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.

[48] Thus, the fact of a long marriage does not, in and of itself, support an award of compensatory support. Rather, it supports such an award if the court concludes that such an award is necessary to achieve a parity of living standards, and if the court accepts that "presumptive claim" as the appropriate goal.

[26] Regarding the issue of whether there has been an economic advantage enjoyed by one party to the disadvantage of the other, the court in *Zacharias* stated at para. 26:

[26] Compensatory entitlement will arise where, as a result of the parties' roles during the marriage, one spouse has suffered economic disadvantage or has conferred economic advantages on the other. Most often, such entitlement will arise where one spouse has sacrificed career opportunities in order to take on more of the family's household or child-rearing responsibilities. Upon the dissolution of the marriage, the spouse who has given up opportunities may be entitled to spousal support, either to compensate for diminished earning capacity, or to share in the augmented earning capacity of the other spouse. The main goal of compensatory spousal support is to provide for an equitable sharing of the

economic consequences of the marriage (see *Moge v. Moge*, [1992] 3 S.C.R. 813 at 858-66).

[Emphasis added.]

[27] Also in *Zacharias* at para. 15, Groberman J. referred to a finding of the trial judge regarding whether the wife had sacrificed career opportunities to take on family responsibilities.

There Groberman J. stated:

[15] He then considered the factors that typically result in an entitlement to compensatory support. First, he addressed the question of whether Ms. Hannigan had sacrificed career opportunities in order to take on family responsibilities. His conclusions were as follows:

[63] One can project a theoretical past that sees the wife in this case employed in a position whose income, fringe benefits, seniority, and promotions the marriage arrangement foreclosed. But absent evidence of a thwarted career path, as in [*J.W.J. McC. v. T.E.R.*, 2007 BCSC 252], the case for such deprivation is weak. There is no evidence of a specific career the wife had to give up to support her husband's career or that she had ever wanted to engage in one that likely presented specific opportunities for advancement. No high school transcripts signal a likely sacrificially forgone future as a professional, for example. In fairness to the wife on this point, however, she was 17 when she married.

[28] The Court of Appeal did not disagree with the statements referred to above made by the trial judge in *Zacharias*, however, having reviewed the decision in *J.W.J. McC v. T.E.R.*, 2007 BCSC 252 [*J.W.J.*], I question the trial judge's reliance on *J.W.J.* for the principle that there must be evidence of a specific career the wife had to sacrifice. In that case, the parties married at a young age and the wife was enrolled in college with intentions to go into nursing but dropped that goal to travel and eventually take a clerical position in business.

[29] In the case now before the court, I note the claimant was 18 years old when the parties began to cohabit. I also note that it was nine years after cohabitation commenced that their first child was born, during which time the claimant was engaged in the workforce.

[30] In the case before me, has the claimant suffered economic disadvantage or conferred economic advantages on the other and in the process sacrificed career opportunities?

[31] I refer to authorities referencing the significance of the relative standard of living of the parties post separation by quoting from *Tedham v. Tedham*, 2005 BCCA 502 [*Tedham*]:

[48] The leading authorities which are almost invariably referred to in cases involving spousal support are *Moge v. Moge*, [1992] 3 S.C.R. 813, and *Bracklow v. Bracklow*, [1999] 1 S.C.R. 420.

[49] In *Moge*, Madam Justice L'Heureux-Dubé, speaking for the majority (McLachlin J., as she then was, wrote separate concurring reasons), made it clear that the objective of self-sufficiency was not to be given overriding significance in determining the entitlement to spousal support, its quantum or duration. At p. 853, she also stated that:

It is also imperative to realize that the objective of self-sufficiency is tempered by the caveat that it is to made a goal only "in so far as practicable". This qualification militates against the kind of "sink or swim" stance upon which the deemed self-sufficiency model is premised. [Citations omitted.]

- [50] The limited-term order made in this case reflects an aspect of the "sink or swim" philosophy and assumes that Ms. Tedham is capable of swimming; that is, of making her own way without relying on Mr. Tedham for support. While she has proven that she can contribute to her own support, there is no evidence that she is capable of earning anything resembling the income which would permit her to live in accordance with the standard of living of the parties during marriage (even after adjusting for the contributions the parties received from her parents and Mr. Tedham's inheritance). Mr. Tedham, on the other hand, with his track record as a successful businessman with substantial income, has the ability to sustain a standard of living commensurate with that enjoyed during the marriage.
- [52] In this case, a 16-year marriage in which Ms. Tedham stayed home to take care of the home and the children called for a support order which, after taking into account Ms. Tedham's ability to contribute to her own support, provided a standard of living reasonably commensurate with that enjoyed during the marriage and which compensated Ms. Tedham, to the extent possible, for the losses she had suffered by remaining out of the paid work-force for so many years. In that regard, the court in Moge discussed (at p. 867) the nature of the loss suffered by spouses (like Ms. Tedham) who removed themselves from the work-force in order to assume a homemaking role:

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 [citations omitted]. As persons outside of the work force cannot take advantage of job-retraining and the upgrading of skills provided by employers, one serious economic consequence of remaining out of the work force is that the value of education and job training often decreases with each year in comparison to those who remain active in the work force 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.

- [53] In summary, the Moge decision distanced itself from the clean-break theory of divorce which had elevated the objective of self-sufficiency to the governing factor in making a spousal support order.
- [32] Finally in the Tedham decision, Prowse J. quoted from the decision of Allaire v. Allaire 2003, 35 R.F.L. (5th) 256 (Ont. C.A.) at para. 60:
- [60] While Allaire is what I will refer to as a "non-interference" case, it makes the point that an order of spousal support which is based on compensatory principles should continue until adequate compensation has been made, even if the spouse has achieved a degree of self-

sufficiency. It also reinforces the point that self-sufficiency must be viewed in the context of the marital standard of living. In this case, the marital standard of living was, and is, considerably higher than Ms. Tedham is able to achieve on her own and is more akin to that currently enjoyed by Mr. Tedham.

- [33] In the case before me, it is apparent that the claimant has achieved a degree of self-sufficiency in that she has a job which appears to be paying her at a rate higher than she experienced in her previous occupations. She also appears to have a relatively comfortable arrangement with Mr. Pope--one comparable to that of which she had during her relationship with the respondent. She purchased her used Mercedes-Benz prior to starting her current job and prior to receiving her share of the proceeds of sale of the family home. I add that the failure of the claimant to file a comprehensive F8 Financial Statement has made it more difficult to assess her current financial situation.
- [34] It is also noted that the claimant has not, other than during her recent failed attempt in 2015 to pursue training and additional education, indicated in her evidence any specific goals or preferences for a career which she may have foregone. While the claimant was out of the workforce to raise their children, she was not disadvantaged by this due to the nature of her work before and after having children. The jobs she performed and continues to perform do not require technical training, education or continual upgrading to be successful.
- [35] In making a decision on the entitlement to compensatory spousal support "it is rather a matter of applying the relevant factors and striking the balance that best achieves justice in the particular case before the court" (Bracklow v. Bracklow, [1999] 1 S.C.R. 420 at p. 438). Also, at p. 440, the Supreme Court of Canada held:"
36. Against the background of these objectives the court must consider the factors set out in s. 15.2(4) of the Divorce Act. Generally, the court must look at the "condition, means, needs and other circumstances of each spouse". This balancing includes, but is not limited to, the length of cohabitation, the functions each spouse performed, and any order, agreement or arrangement relating to support. Depending on the circumstances, some factors may loom larger than others. In cases where the extent of the economic loss can be determined, compensatory factors may be paramount. On the other hand, "in cases where it is not possible to determine the extent of the economic loss of a disadvantaged spouse the court will consider need and standard of living as the primary criteria together with the ability to pay of the other party".
- [36] Based on the foregoing, I conclude that the claimant is not entitled to spousal support. There is no evidence before me that she sacrificed educational opportunities. Nor is there any indication she gave up employment opportunities as a result of her relationship with the respondent or her role as primary caregiver to their children. She continues to have the same standard of living now as she did during her relationship with the respondent.

B. The ManuLife Annuity

- [37] In July 2012, the respondent purchased the Annuity after having been paid out on the RPP which had accumulated from his employment between 1984 and 2012 when the respondent was laid off by his previous employer.
- [38] Shortly after the Annuity was purchased, the respondent began to receive payments amounting to \$815 which were to continue for life.
- [39] In May 2017, the parties entered into an agreement which resolved all property division. This agreement included a term that the Annuity with entitlement periods between 1984 and 2013, would be divided equally between the parties.
- [40] The agreement was then presented to the court and on September 15, 2017, an order was granted by Ball J. which stated as follows:
2. (1) the annuity held in the respondent's name at ManuLife, account number xxxxxxxx (the "Annuity") is family property and shall be divided pursuant to Part 6 of the Family Law Act, with the entitlement dates being 1984 and 2013;
 - 2) the Annuity shall be divided between the claimant and respondent as follows:
 - a. 50% of all future payments under the Annuity shall be redirected to the claimant, and
 - b. each party may designate a payee for his or her share of the Annuity in the event of his or her death, by letter of direction addressed to ManuLife;
- [41] The claimant submits that the terms of the order differed from the wording of the agreement to reflect that 50% of future payments shall be directed to the claimant. The claimant submits the change reflecting 50% of all future payments is in conflict with the agreement and with a division pursuant to Part 6 which called for an equal division between the entitlement dates. The intent, if not the agreement, was that the entire Annuity be divided equally.
- [42] The claimant submits that the agreement reflects that she would be receiving one-half of the Annuity payments from the date of the agreement which would entitle her to one-half of each payment of \$815 as of the date of the agreement. She claims the amount due to her from June 2015 to and including the payment for March 18, 2018 amounts to \$13,855.
- [43] Having reviewed the terms of the order of September 12, 2017, Ball J. clearly divided the Annuity equally but in claims 2.(2)(a) was merely referring to the means of payment, ie. that as of that date future payments be redirected to the claimant by the insurer. That clause does not take away from her full entitlement to one-half of the Annuity.

[44] As the administrator of the Annuity had not completed division of the Annuity as of the date of this application, and as a result the respondent had received the full benefit, ie. payments of \$815 per month which was 100% of the amount paid out monthly on the Annuity, the claimant is entitled to her one half share of the annuity in accordance with the order of Ball J. made September 15, 2017, plus interest in accordance with the Court Order Interest Act, R.S.B.C. 1996, c. 29 [the "Act"].

IV. Conclusion

[45] The claimant's application for an order of spousal support is dismissed.

[46] The respondent is to comply of the order of Ball J. made September 15, 2017, included earlier in these reasons. To bring the respondent into compliance with this order, I order the respondent to pay to the claimant one half of the Annuity plus interest in accordance with the Act from June 2015 to present.

[47] Success having been divided, neither party is substantially successful, hence, there will be no order as to costs.

"Jenkins J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/18/13/2018BCSC1347.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/larochelle-v-larochelle-2018>

Prepared on 28 October 2026 · Esheria